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Monday	Tuesday	Wednesday	Thursday	Friday
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CSA	MSPB*/OPM*		CSA	MSPB*/OPM*
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	HEW/FDA			HEW/FDA

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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.)**

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Reactor Safeguards Advisory Committee; Regulatory Activities, Washington, D.C. (partially open), 3-7-79..... 4056; 1-19-79

Reactor Safeguards Advisory Committee; Reactor Safety Research Subcommittee, Washington, D.C. (open), 3-7-79. 10443; 2-20-79

Reactor Safeguards Advisory Committee; Improved Safety Systems Subcommittee, Washington, D.C. (open), 3-7-079. 10443; 2-20-79

SMALL BUSINESS ADMINISTRATION

Region VI Advisory Council:

Houston, Tex. (open), 3-6-79 ..... 6242; 1-31-79

STATE DEPARTMENT

Law of the Sea Advisory Committee, Washington, D.C. (partially closed), 3-8 and 3-9-79..... 5739; 1-29-79

Office of the Secretary—

International Investment, Technology, and Development Advisory Committee, Washington, D.C. (open), 3-8-79. 10450; 2-20-79

TRANSPORTATION DEPARTMENT

Coast Guard—

National Boating Safety Advisory Council, Washington, D.C. (open), 3-5-79. 8051; 2-8-79

Federal Aviation Administration—

Light transport airplane airworthiness review, Oklahoma City, Okla., 3-5 through 3-8-79..... 7057; 2-5-79

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Educational Allowances Station Committee, San Diego, Calif. (open), 3-6-79 .... 9640; 2-14-79

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Agricultural Marketing Service—

Grapefruit grown in California, proposed marketing agreement and order, Coachella, Calif., 3-8-79 ..... 7730; 2-7-79

CIVIL AERONAUTICS BOARD

Transpacific low-fare route investigation, Washington, D.C., 3-6-79 ..... 8922; 2-12-79

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

[Last Listing Jan. 24, 1979]

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

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Applications Deadlines:

HUD/CPD—Community development block grant program for Indian tribes and Alaska natives, submission dates vary (see document) 10577; 2-21-79

Special innovative grants—fiscal year 1979; applications due by 5-7-79. 10573; 2-21-79

Justice/LEAA—Statistical analysis centers; solicitation regarding competitive research grant program; submit material for consideration by 4-1-79 ..... 10442; 2-20-79

OPM—Intergovernmental Personnel Act of 1970; project grants, fiscal years 1979 and 1980; apply by 4-15-79 ..... 10802; 2-23-79

Meetings:

HEW/NIH—Allergy and Clinical Immunology Research Committee, New Orleans, La. (partially open), 3-21 and 3-22-79. 10550; 2-21-79

Clinical Trials Review Committee, Chevy Chase, Md. (partially open), 3-7 through 3-9-79 ..... 10551; 2-21-79

Communicative Sciences Study Section, Division of Research Grants, Bethesda, Md. (partially open), 3-13 through 3-17-79 ..... 10551; 2-21-79

Genetic Basis of Disease Review Committee, Bethesda, Md. (partially open), 3-12 and 3-13-79 ..... 10551; 2-21-79

National Cancer Institute, review of contract proposals and grant applications, various committees, March 1979. 10552; 2-21-79

Other Items of Interest:

EPA—Subagreements; minimum standards for procurement under EPA grants. 10504; 2-21-79

HEW/HDSO—Child and Family Development Research Review Committee; reestablishment 10791; 2-23-79

NIE—Competition for award to conduct National Assessment of Educational Progress 10432; 2-20-79

LSC—List of grants and contracts under consideration 10442; 2-20-79

OPM—Federal grant-in-aid programs; abolition of certain statutory personnel requirements 10801; 2-23-79

presidential documents

Title 3—
The President

Proclamation 4642 of February 26, 1979

Quantitative Limitation on the Importation of Certain Meat

By the President of the United States of America

A Proclamation

The Act of August 22, 1964 (78 Stat. 594; 19 U.S.C. 1202 note), provides for the limitation of certain meat imports if import estimates exceed 110 percent of an adjusted base quantity for that year. The limitation applies to fresh, chilled, or frozen cattle meat and fresh, chilled, or frozen meat of goats and sheep, except lamb.

The Secretary of Agriculture has determined in accordance with Section 2(b)(1) of the Act that the adjusted base quantity of meat for the calendar year 1979 is 1131.6 million pounds. The Secretary has estimated (in the 1979 first quarterly estimate, 44 FR 1202) that the aggregate imports of meat for 1979 will be 1570.0 million pounds. This estimate exceeds 110 percent of the adjusted base quantity for 1979.

In accordance with Section 2(c) of the Act, the President must limit the import of meat to the adjusted base quantity for 1979 of 1131.6 million pounds, unless he increases or suspends that limitation pursuant to Section 2(d) of the Act.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, by the authority vested in me by Section 2 of the Act, do hereby proclaim as follows:

1. The total quantity of the articles specified in item 106.10 (relating to fresh, chilled, or frozen meat) and item 106.20 (relating to fresh, chilled, or frozen meat of goats and sheep (except lamb)) of part 2B, schedule 1 of the Tariff Schedules of the United States, which may be entered, or withdrawn from warehouse, for consumption during the calendar year 1979, is limited to 1131.6 million pounds.

2. In accordance with Section 2(d) of the Act, I determine that the supply of meat described in Paragraph 1 hereof will be inadequate to meet domestic demand at reasonable prices.

3. The limitation proclaimed in Paragraph 1 hereof is suspended during calendar year 1979, which suspension shall remain in effect unless because of changed circumstances it becomes necessary to take further action under the Act, and I hereby determine that the suspension for such period is necessary in order to carry out the purposes of Section 2(d) of the Act.

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

Jimmy Carter

[FR Doc. 79-6084
Filed 2-26-79; 5:06 pm]

Billing code 3195-01-M

THE PRESIDENT

Executive Order 12121 of February 26, 1979

Energy Coordinating Committee

By the authority vested in me as President by the Constitution of the United States of America, and in order to enlarge the membership of the Energy Coordinating Committee, Section 1-102 of Executive Order No. 12083 of September 27, 1978, is hereby amended by adding in alphabetical order the following:

"(x) The Director of the Community Services Administration.

"(y) The Chairman of the Council on Wage and Price Stability.".

Jimmy Carter

THE WHITE HOUSE,
February 26, 1979.

[FR Doc. 79-6085
Filed 2-26-79; 5:07 pm]

Billing code 3195-01-M

THE PRESIDENT

Executive Order 12122 of February 26, 1979

Office of Administration

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 107(b) of Title 3 of the United States Code, in order to provide limited employment authority for the Office of Administration, it is hereby ordered that Section 4 of Executive Order No. 12028 of December 12, 1977, is amended to read as follows:

"Sec. 4. (a) Subject to such direction or approval as the President may provide or require, the Director shall organize the Office of Administration, contract for supplies and services, and do all other things that the President, as head of the Office of Administration, might do.

"(b) The Director is designated to perform the functions of the President under Section 107(b) of Title 3 of the United States Code.

"(c) The Director may appoint and fix the pay of employees pursuant to the provisions of Section 107(b)(1)(A) of Title 3 of the United States Code without regard to any other provision of law regulating the employment or compensation of persons in the Government service. Under that section the Director may also fix the pay of an employee serving in a competitive position or in the career service in order to avoid the pay limitation imposed by Section 114 of Title 3 of the United States Code. The provisions of other laws regulating the employment or compensation of persons in the Government service shall continue to apply to such employee.

"(d) The Director shall not be accountable for the program and management responsibilities of units within the Executive Office of the President; the head of each unit shall remain responsible for those functions.".

Jimmy Carter

THE WHITE HOUSE,
February 26, 1979.

[FR Doc. 79-6087
Filed 2-26-79; 5:09 pm]

Billing code 3195-01-M

THE PRESIDENT

Executive Order 12123 of February 26, 1979

Offshore Oil Spill Pollution

By the authority vested in me as President of the United States of America by Section 303(b)(3), 305, and 312(a) of Title III of the Outer Continental Shelf Lands Act Amendments of 1978 (92 Stat. 674, 677, and 684, 43 U.S.C. 1813(b)(3), 1815, and 1822), relating to the Offshore Oil Spill Pollution Fund, and by Section 301 of Title 3 of the United States Code, and in order to assign certain management responsibilities related to protecting the environment from offshore oil spill damage, it is hereby ordered as follows:

1-1. *Assertion of Oil Pollution Claims.*

1-101. The authority vested in the President by Section 303(b)(3) of Title III of the Outer Continental Shelf Lands Act Amendments of 1978, hereinafter referred to as the Act (92 Stat. 674, 43 U.S.C. 1813(b)(3)), is delegated to the Secretary of Commerce with respect to those natural resources which are subject to his management or control.

1-102. The authority vested in the President by Section 303(b)(3) of the Act (92 Stat. 674, 43 U.S.C. 1813(b)(3)) is delegated to the Secretary of the Interior with respect to those natural resources which are subject to his management or control.

1-2. *Determination of Financial Responsibility and the Assessment and Compromise of Penalties.*

1-201. The authority vested in the President by Section 305(a)(1) of the Act (92 Stat. 677, 43 U.S.C. 1815(a)(1)), relating to vessels, is delegated to the Federal Maritime Commission.

1-202. The authority vested in the President by Section 305(b) of the Act (92 Stat. 678, 43 U.S.C. 1815(b)), relating to offshore facilities, is delegated to the Secretary of Transportation.

1-203. The authority vested in the President by Section 312(a)(2) of the Act (92 Stat. 684, 43 U.S.C. 1822(a)(2)), relating to the assessment and compromise of penalties concerning vessels, is delegated to the Federal Maritime Commission.

Jimmy Carter

THE WHITE HOUSE,
February 26, 1979.

[FR Doc. 79-6088
Filed 2-26-79; 5:10 pm]

Billing code 3195-01-M

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.

[1505-01-M]

Title 7—Agriculture

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS, PURCHASES, AND OTHER OPERATIONS

[CCC Grain Price Support Regulations, 1978 Crop Soybean Supplement]

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

Subpart—1978 Crop Soybean Loan and Purchase Program

Correction

In FR Doc. 79-1644 appearing at page 3697 in the issue for Thursday, January 18, 1979, on page 3698, first column, the rate for Colorado now reading "4.49" should read "4.39".

[7590-01-M]

Title 10—Energy

CHAPTER I—NUCLEAR REGULATORY COMMISSION

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

Requirements for the Physical Protection of Nuclear Power Plants

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Effective rule.

SUMMARY: The date when pat-down searches of regular employees at nuclear power plants, two-man rule procedures and compartmentalization have to be implemented for protection against insider sabotage is being changed from February 23, 1979 to August 1, 1979. The delay is being granted because such pat-down searches and these other complementary or alternative measures are part of an overall physical security system in which some program of material access authorization, if approved by the Commission, could play an important role. Since the Nuclear Regulatory Commission is presently evaluating the Material Access Authorization Program, it has decided to postpone the need for pat-down searches of regular employees and these other complementary or alternative measures for protection against sabotage by an insider until such time as a decision on the Material Access Authorization Program is made. In the interim, the Commission is satisfied that search procedures and other measures presently employed provide adequate protection against sabotage by an insider at nuclear power plants.

EFFECTIVE DATE: February 28, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert A. Clark, Chief, Reactor Safeguards Licensing Branch, Office of Nuclear Reactor Regulations, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, phone 301-492-7230.

SUPPLEMENTARY INFORMATION: Implementation of pat-down searches of regular employees of nuclear power plants before they are allowed into a protected area was first modified on September 29, 1977 (42 FR 51607) to exclude physical searching of all regular employees at the site except for a well grounded suspicion that they may be carrying firearms, explosives, or incendiary devices. The date to complete this implementation was also changed from May 25, 1978 to August 24, 1978. A detailed procedure for conducting a physical search of visitors and nonregular employees was developed by the Commission, however, and is presently being followed. The time for implementing pat-down searches of regular employees was further extended to February 23, 1979 on August 7, 1978 (43 FR 34765) because the Commission had under consideration a material access authorization program and wanted to evaluate the need for pat-down searches in light of this program.

The material access authorization program was proposed for comment on March 17, 1977 (42 FR 14880). Because of the many comments from industry and the public and because of the complex issues involved, the Commission held a public hearing on July 10, 11, and 12, 1978. The Hearing Board which presided at these meetings is expected to present their findings to the Commission soon. A final Commission decision will be made after review of these findings.

The material access authorization program, or an equivalent program which provides improved assurance that individuals are trustworthy, when coupled with the licensee's physical security program, could, if approved by the Commission, provide enhanced protection against sabotage by an insider. Other complementary or alternative measures that have been considered by the Commission in lieu of the material access authorization program are pat-down searches, two-man rule procedures, and compartmentalization. The latter two measures while not specifically identified in the regulations have been developed during the implementation of § 73.55 in order to comply with the performance requirements of that regulation. The Commission needs more time to evaluate these complementary or alternative measures in context with a decision on the material access authorization program.

In consideration of: (1) The recognized value of the material access authorization program or an equivalent program to the final determination of protecting against the insider; and (2) the findings of the Hearing Board are expected to be available soon and will be an important factor in the Commission's decision whether or not to institute an access authorization program; and (3) the need to avoid an interim solution to the "insider threat" which may not be cost-effective; and (4) the fact that most licensees will have met all the other requirements of section 73.55, the Commission is satisfied that these other measures combined with search procedures presently being followed will in total, for the interim, provide adequate protection against sabotage by an insider at nuclear power plants. The Commission, therefore, has decided to delay the date when pat-down searches of regular employees and these other complementary or alternatives measures to pat-down searches have to be implemented from February 23, 1979 to August 1, 1979.

The Commission has determined that this action is consistent with the common defense and security and the protection of public health and safety.

The Commission has, for good cause, found that notice and public procedure on this amendment are unnecessary because of the earlier public participation in the rulemaking proceeding leading to 10 CFR 73.55. The amendment is also made effective immediately on publication in the FEDERAL REGISTER (February 28, 1979) because it serves to relieve a restriction that would otherwise be imposed on affected licensees of the Commission on February 23, 1979.

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 I, Code of Federal Regulations, Part 72 is published as a document subject to codification.

§ 73.55 [Amended]

1. Section 73.55 of 10 CFR Part 73 is amended to change the date of February 23, 1979 to August 1, 1979 in the second to last sentence of the unnumbered prefatory paragraph of this section.

Effective date: February 28, 1979.

(Sec. 161i, Pub. L. 83-703, 68 Stat. 948, Pub. L. 93-377, 88 Stat. 475; Sec. 201, Pub. L. 93-438, 88 Stat. 1242-1243, Pub. L. 94-79, 89 Stat. 413 (U.S.C. 2201, 5841).)

Dated at Washington, D.C., this 23d day of February 1979.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc. 79-5900 Filed 2-27-79; 8:45 am]

[6450-01-M]

CHAPTER II—DEPARTMENT OF ENERGY

[Standby Regulation Activation Order No. 1]

PART 211—STANDBY PETROLEUM PRODUCT ALLOCATION REGULATIONS

Notice of Activation Order To Update the Motor Gasoline Allocation Base Period

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Activation Order and Request for Comments.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is activating a limited portion of its Standby Petroleum Product Allocation Regulations to update the base period for motor gasoline. The order will allow firms that have allocation entitlements under the Mandatory Petroleum Allocation Regulations to purchase a volume of motor gasoline based in the amount they purchased in the corresponding month of the period July 1, 1977 through June 30, 1978 rather than the corresponding month in 1972 as currently provided. This action will be effective initially for three months (March, April and May 1979), and may be extended after the review of Public comment. The action has been taken because of potential gasoline shortages resulting primarily from an interruption in Iranian crude oil production. It is designed to permit the continued allocation of motor gasoline to reflect market patterns developed during a recent period of adequate supply. Public comments are requested on whether the change in the base period resulting from this limited activation of the standby regulations should be continued in the same or modified form beyond the initial three months.

Only those provisions of the standby regulations relating to the base period for the allocation of gasoline are being activated at this time. The base date for gasoline pricing regulations continues to be May 15, 1973, and notice is given that if the base date or period for pricing purposes is updated at a subsequent time, the base selected will be prior to January 1979.

DATES: Effective date: March 1, 1979. Written comments to be submitted by March 30, 1979. Hearing date: March 27, 1979, 9:30 a.m. Requests to speak by March 19, 1979.

ADDRESSES: Hearing location: Room 2105, 2000 M Street, NW., Washington, D.C.. All comments and requests to speak and statements to: Public Hearing Management, Standby Regulation Activation Order No. 1, Economic Regulatory Administration, 2000 M Street, NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Robert G. Gillette (Comment Procedures), Economic Regulatory Administration, 2000 M Street, NW., Room 2214B, Washington, D.C. 20461, (202) 254-3345.

William Webb (Office of Public Information), Economic Regulatory Administration, 2000 M Street, N.W., Room B-110, Washington, D.C. 20461, (202) 634-2170.

Gerald P. Emmer (Regulations and Emergency Planning), Economic Regulatory Administration, 2000 M Street, N.W., Room 2304, Washington, D.C. 20461, (202) 254-7200.

Michael Paige or Joel M. Yudson (Office of General Counsel), Department of Energy, 1000 Independence Avenue, S.W., Room 6A-127, Washington, D.C. 20585, (202) 252-6744.

SUPPLEMENTARY INFORMATION:

I. Background
II. Findings
III. Provisions Activated
IV. Other Provisions of the Standby Regulations
V. Written Comment and Public Hearing Procedures

I. BACKGROUND

We are today issuing an order, a copy of which is appended to this notice, which activates the provisions of the Standby Petroleum Product Allocation Regulations relating to the base period for the allocation of motor gasoline.[1] This order is effective March 1, 1979. This activation order is based upon the recognition that during a period of motor gasoline shortages, allocations based on the 1972 base period year, as provided in the current Mandatory Petroleum Allocation Regulations applicable to gasoline, do not reflect current market conditions and distribution patterns. When supplies of motor gasoline are adequate, which has been the case over the past few years, there is sufficient surplus gasoline available to accommodate resellers' changing demand requirements, and the allocation regulations are generally superfluous. Recently, however, supplies of gasoline have become increasingly tight, causing the allocation regulations to again have meaning for many refiners. Beginning in November 1978, a number of major refiners petitioned the Office of Hearings and Appeals (OHA) of the DOE to be relieved of, or for modification of, their various motor gasoline supply obligations. Petitions were also filed with the ERA for corresponding regulatory changes. Among the petitions filed with the OHA, Shell, Texaco, Chevron, Standard Oil Company of Indiana (Amoco), Mobil, Atlantic Richfield and Farmland Industries, Inc. have requested that their motor gasoline allocation base periods be updated. Continental and Atlantic Richfield asked to be relieved of their obligation to sell motor gasoline to other refiners. Other refiners have indicated that they may also have to allocate gasoline in the near future. All of these requests were based, for one reason or another, on each firm having, or believing it soon will have, inadequate gasoline supplies to meet current motor gasoline demand and build inventories for the coming summer driving season.

The tightening of gasoline supplies has been caused by a number of fac-

[1] The Standby Petroleum Product Allocation Regulations are found in Special Rule No. 1 to 10 CFR Part 211. They were adopted by the ERA, after the completion of a formal rulemaking proceeding, on January 12, 1979 (44 FR 3928, January 18, 1979).

tors. First, demand for gasoline generally was higher than expected during 1978, and continued at unusually high levels into the fall and winter months. In addition, there have been a large number of refinery shutdowns recently for scheduled or unscheduled repairs. In addition, some refiners have alleged that they have had unexpected demand surges for their products because, under the price regulations, they had no "banks" of unrecouped costs and had to price their product below their competitors.

Some of these supply problems are temporary or unique only to a few firms. Of increasing concern, however, is the possibility of general crude oil and product supply shortages resulting from the continued cessation of crude oil supplies from Iran because of the political turmoil in that country. All exports from Iran were halted in late December 1978. The last of the tankers loaded in Iran and destined for the U.S. is now arriving. While there have recently been signs that some stability may soon return to Iran, it is unlikely that oil production will soon return to normal. Prudent planning for the future requires actions to minimize disruptions that could occur if Iranian and other imported oil supplies are not available in substantially increased quantities in the near future.

Prior to the fall of 1978, Iranian oil exports has reached about 5.5 million barrels a day, about 10 percent of the free world's total production. The United States imported about 900,000 barrels a day of Iranian oil. Increased production from other countries has prevented the total shortfall from being the full amount of the Iranian exports. The net world shortfall is estimated at 2 million barrels a day, and the U.S. shortfall is approximately 500,000 barrels per day.

These shortfalls are being made up by augmented production from other countries and by some U.S. refiners drawing down inventories. Others have begun to reduce refinery runs. Eventually, however, if the shortfall continues and crude oil stocks reach critical levels, most U.S. refiners will have to reduce refinery runs. It is expected that the resultant reduction in gasoline production will be at least half of the total crude oil shortfall.

It is essential that refiners enter the spring driving season with adequate gasoline stocks to meet seasonal demand requirements. We recognize that gasoline stocks are currently at adequate levels for this time of year, which is usually a period of low demand. Recent industry data indicate that total stocks are now in excess of 265 million barrels, which is less than last year's record high levels during the same period but above the average levels of previous years. Our concern is that these stocks not be drawn down precipitously as soon as the impacts of the Iranian shortfall are felt by refiners. Refiners are urged to keep stocks high enough to meet expected demand during the 1979 summer driving season, even if it is necessary to restrict somewhat the amount of surplus gasoline that is made available to purchasers currently. Some refiners have indicated that they intend and in some instances have already begun, to allocate motor gasoline at or near a 1.0 allocation fraction to maintain stocks and to respond to the current tightness in motor gasoline supplies. Our immediate concern is that, to the degree that surplus motor gasoline must be restricted in order to maintain adequate stocks and refiners declare an allocation fraction of 1.0 or less based on a 1972 base period, there will be significant disruptions of the gasoline distribution system.

The current market is considerably different now than it was seven years ago. Allocation based on 1972 will disadvantage those firms whose businesses have expanded since that time and will advantage those whose businesses have declined.

The procedure provided for in the regulations to adjust base period volumes has functioned imperfectly. The adjustments in firms' base period uses have not been comparable among different segments of the industry. For example, new outlets, including the new outlets of existing chain marketers, have been able to receive allocations for new stations based on their high-volume types of operation. Existing outlets that converted to high-volume "gas-and-go" type operations, however, have been able to receive adjustments only if they could demonstrate to the ERA a hardship or gross inequity caused by the regulations. These stations have been able to rely on the availability of surplus product to meet demand. However, if supplies become tight and gasoline has to be allocated on 1972 base periods, viability of segments of the industry that have experienced growth in recent years would be seriously threatened.

II. Findings

Paragraphs 1 and 2 of the Special Rule permit the ERA Administrator to order the provisions of the Special Rule into effect if necessary to attain the objectives of section 4(b)(1) of the Emergency Petroleum Allocation Act of 1973 (Pub. L. 93-159, EPAA). Section 4(b)(1) contains a number of broad objectives relating to, among other things, the preservation of an economically sound and competitive petroleum industry and the need to restore and preserve the competitive viability of all segments of the industry. Furthermore, the EPAA requires the equitable distribution of refined petroleum products at equitable prices among all regions and areas of the United States and sectors of the petroleum industry and minimization of economic distortion, inflexibility, and unnecessary interference with market mechanisms.

Based on the serious possibility that gasoline supplies will in general be inadequate to meet total demand and supplies will have to be allocated, as described more fully in the preceding section, we have determined that to attain the objectives of section 4(b)(1) of the EPAA it is necessary to activate provisions of Special Rule No. 1 to Part 211 with regard to the base period for motor gasoline allocation.

We do not believe that an order activating all or a portion of the standby regulations is an order having the general applicability of a rule within the meaning of section 501 of the Department of Energy Organization Act (Pub. L. 95-91, "DOE Act"), since the regulatory activation provisions themselves are contained in the standby regulations, which have been adopted by rulemaking proceedings in accordance with section 501 and the Administrative Procedure Act (APA). However, notwithstanding this belief, we will observe the requirements of section 501 and the APA in our activation of the standby regulations, and intend to follow these procedures as for all subsequent activation orders in order to assure maximum possible public participation in the decisionmaking process. Furthermore, the circumstances under which the standby regulations would be activated were discussed fully in the notice proposing and the final rule adopting the standby product regulations.

Under section 501(e) of the DOE Act, we may waive the prior notice and hearing requirements of subsections (b), (c) and (d) of section 501 upon our finding that strict compliance with these requirements is likely to cause serious harm or injury to the public health, safety or welfare. We believe such a finding can and should be made in this instance. There is a substantial possiblity, based upon projections of crude oil and gasoline supplies and the information already provided by major refiners to OHA, that many refiners will have allocation fractions at or near 1.0 by March 1, 1979. By taking this action effective March 1, 1979, we expect to reduce the dislocations and competitive imbalances likely to be caused by continued use of the 1972 base period. In accordance with section 501, however, we will receive both oral and written comments on this action as soon as practicable after the action is taken.

III. PROVISIONS ACTIVATED

Under paragraph 7 of the Special Rule, we have ordered into effect amendments to §§ 211.2, 211.9, 211.10, 211.12, 211.102 and 211.106 of the current allocation regulations. The principal effect of these changes is that, beginning in March 1979, the motor gasoline allocation base period for each month will be the corresponding month of the period beginning July 1, 1977 and ending June 30, 1978. This base period was selected because it is the most recent 12-month period in which supplies have been adequate and distribution has been relatively normal. Since July 1978, demand for gasoline has been unusually high and some major refiners depleted their banks, causing a run on their products and some abnormal supply problems.

The order also provides that if in any month during the July 1977 through June 1978 period a firm purchased at least 10 percent less motor gasoline than it purchased in the same month of the prior year and such reduction was caused by a facility shutdown or other temporary exigent circumstance, the base period for that firm for that month shall be the corresponding month of the period July 1, 1976 through June 30, 1977. The purchaser is required to notify its base period supplier of its determination that the earlier month should be used as its base period.

Where a purchaser came into business during the base period, the order provides that the supplier and purchaser shall together determine the appropriate base period volume for the portion of the base period the purchaser was not in business in an amount consistent with the volumes purchased during the portion of the base period the supplier was in business. Where assignments of 12 monthly base period vilumes have been approved by DOE for new stations opened during or after July 1, 1978, these assignments are to be taken into account in determining a purchaser's new base period volumes, in order to avoid duplication of an assignment procedure that has already been completed. Suppliers are reminded that under the present rules, which are not changed in the standby regulations, they may not provide product to unassigned customers, first served after July 1, 1978, unless they have made a surplus declaration and accomplished distribution under § 211.10(g)(5), and have met all requirements of their base period customers.

Section 211.12(c)(3) of the allocation regulations, as amended by the standby regulations, provides a procedure for resolving disputes among suppliers and purchasers as to the appropriate base period volumes for allocation purposes, but we expect suppliers and purchasers to attempt to resolve differences between them without resort to these procedures to the maximum extend possible.

The amendments to the other sections are conforming changes to accommodate the updated base period for motor gasoline. The amendments are not effective as to other allocated products, and the provisions of Part 211 remain unchanged.

We recognize that not all firms are similarly situated and that, while updating the base period will prevent hardship and dislocations for many firms, it may cause them for others. We expect such cases to be limited in number, however, and believe that the exception procedures provided by DOE's Office of Hearings and Appeals will be adequate to provide relief to any firms experiencing serious hardship or gross inequity.

IV. OTHER PROVISIONS OF THE STANDBY REGULATIONS

We are not at this time activating any other provisions of the standby allocation and pricing regulations. In the comments that are submitted on the activation order issued today, however, commenters may address the issue of whether the present or future supply situation might warrant activation of other standby regulation provisions. In this regard, it has come to our attention that some firms, in anticipation of the possibility that we may activate the standby product pricing regulations and update the base date from May 15, 1973 to a current date, are attempting to increase their prices in order to have as high a margin as possible on any base date that may be selected. In order to prevent this activity, we wish to make clear our intention that if in the near future the standby pricing regulations are activated for any product and the May 15, 1973 base date is updated, a base date (or period) prior to January 1, 1979 will be selected. In general, the date (or period) selected will be one on which market conditions were relatively normal and stable, and on which there was not likely to have been pricing actions taken in anticipation of an impending shortage or the activation of standby regulations.

V. WRITTEN COMMENT AND PUBLIC HEARING PROCEDURES

Because the matters contained in the activation order are of important public concern, we have scheduled a public hearing and are soliciting public comments. We are specifically interested in whether the activation order should be extended beyond May 1979, the last month in which the standby regulations activated by the order will be effective unless extended by another activation order. We also specifically request comments on whether the base period year selected is appropriate and, if not, whether other periods would be better. Also, would there be any merit in preserving firms' actual, unadjusted 1972 base period uses as a minimum allocation entitlement?

In the applications made to OHA for exception relief from base period supply obligations, some refiners asked to be relieved of the obligation to supply other refiners to whom they were supplying gasoline during the base period. The allegation was made that it may be inequitable to a refiner's other customers to require the refiner to supply another refiner during a period of shortage, especially if the supplying refiner has to replace the volumes it sells to other refiners by itself purchasing gasoline at high prices on the spot market. We request comments on whether the allocation rules should be changed to relieve refiners and other suppliers of the obligation to supply gasoline to refiners. If so, should such a change apply to sales to all refiners, or just to refiners above a specified size? Should refiners be relieved of the obligation to supply other refiners if the supplying refiner's allocation fraction is less than 1.0?

A. WRITTEN COMMENTS

You are invited to participate in this proceeding by submitting data, views or arguments with respect to the matters contained in the activation order. Comments should be submitted by 4:30 p.m., e.s.t., March 30, 1979 to the address indicated in the "Addresses" section of this notice and should be identified on the outside envelope and on the document with the docket number and the designation: "Standby Regulation Activation Order No. 1." Fifteen copies should be submitted.

Any information or data submitted which you consider to be confidential must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of such information or data and to treat it according to our determination.

B. PUBLIC HEARING

1. *Procedure for Requests to Make Oral Presentation.* If you have any interest in the matters discussed in this notice, or represent a group or class of persons that has an interest, you may make a written request for an opportunity to make oral presentation by 4:30 p.m., e.s.t., March 19, 1979. You should also provide a phone number where you may be contacted through the day before the hearing.

If you are selected to be heard, you will be so notified before 4:30 p.m., e.s.t., March 22, 1979, and will be required to submit one hundred copies

of your statement to the appropriate address indicated in the "Addresses" section of this notice before 4:30 p.m., e.s.t., March 26, 1979.

2. *Conduct of the Hearings.* We reserve the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An ERA official will be designated to preside at the hearing. This will not be a judicial-type hearing. Questions may be asked only by those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

You may submit questions to be asked of any person making a statement at the hearing to the address indicated above for requests to speak before 4:30 p.m. of the day before the hearing. If you wish to have a question asked at a hearing, you may submit the question, in writing, to the presiding officer. The ERA or, if the question is submitted at a hearing, the presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer. The question will be asked of the witness by the presiding officer.

Any further procedural rules needed for the proper conduct of a hearing will be announced by the presiding officer.

Transcripts of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by the ERA and made available for inspection at the DOE Freedom of Information Office, Room GA-152, James Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. You may purchase a copy of the transcript of the hearing from the reporter.

Issued in Washington, D.C., February 22, 1979.

DAVID J. BALDIN,
Administrator, Economic Regulatory Administration.

Part 211 is amended by the addition of "Activation Order No. 1, to the appendix—Special Rule No. 1" as follows:

APPENDIX—STANDBY PETROLEUM PRODUCT ALLOCATION REGULATIONS ACTIVATION ORDER No. 1

I. *Applicability.* This order activates, effective March 1, 1979, a portion of the Standby Petroleum Product Allocation Regulations, Special Rule No. 1 to 10 CFR Part 211 (the Special Rule), for the period March 1, 1979 through May 31, 1979. The provisions of the Special Rule specified in paragraph III below are ordered into effect at all levels of distribution for any firm engaged in the refining, distribution or consumption of motor gasoline. As to suppliers and purchasers of other allocated products, the provisions of Part 211 remain unaffected.

II. *Findings.* The findings upon which this order is based are set forth in the FEDERAL REGISTER notice announcing this order and are incorporated herein by reference.

III. *Modifications of Part 211.* Pursuant to paragraph 3 of the Special Rule, paragraphs 7(a), (b), (c), (d), (h), and (j) of the Special Rule are ordered into effect with respect to motor gasoline only. The provisions of Part 211 that are amended with regard to motor gasoline only are as follows:

A. Section 211.2 is amended by designating the present section as paragraph (a) and by adding a new paragraph (b) to read as provided in the Special Rule.

B. Section 211.9 is amended by revising paragraphs (a) and (b) to read as provided in the Special Rule.

C. Section 211.10 is amended as follows: Paragraphs (a) and (e) are revised as provided in the Special Rule, and paragraph (f), subparagraph (3) is deleted.

D. Section 211.12 is amended as follows: Paragraph (c), subparagraphs (1), (3) and (4), and paragraph (e), subparagraph (2)(i), are revised as provided in the Special Rule.

E. Section 211.102 is amended by revising the definition of "base period" to read as provided in the Special Rule.

F. Section 211.106 is amended as follows: Paragraph (b), subparagraph (4), and paragraph (c), subparagraph (2)(i), are revised as provided in the Special Rule, and subparagraph (2)(ii) is deleted.

IV. *Specification of Dates.* (a) The base period for motor gasoline ad defined in § 211.102 is hereby specified as the month of the twelve-month period from July 1, 1977 through June 30, 1978 corresponding to the current month, except that if a firm in any month of the foregoing base period year purchased at least 10 percent less motor gasoline than in the corresponding month of the period July 1, 1976 through June 30, 1977 and such reduction was caused by a facility shutdown or other temporary exigent circumstance, the base period for that firm for that month shall be the corresponding month of the period July 1, 1976 through June 30, 1977. The purchaser shall notify its base period supplier of its determination that the earlier month should be used as its base period.

(b) Where a purchaser entered business between July 1, 1977 and June 30, 1978, under § 211.12(e)(2), that purchaser and the firm by which it was supplied during the portion of such period it was in business shall agree on a base period volume for those months the purchaser was not in business, which volume shall be consistent with the volumes purchased during the portion of the base period year the purchaser was in business.

(c) Assignments of base period volumes approved by DOE for new retail outlets that entered business subsequent to July 1, 1978 shall be taken into account in establishing base period volumes under the Special Rule.

(d) As to the various other dates required by the Special Rule to be specified by the ERA Administrator, March 1, 1979 is so designated for the purposes of §§ 211.9(b), 211.10(e)(1) and (2), 211.12(c)(1) and (e)(2) and 211.106(b)(4).

Issued in Washington, D.C. February 22, 1979

DAVID J. BARDIN,
Administrator, Economic Regulatory Administration.

[FR Doc. 79-5881 Filed 2-23-79; 2:12 pm]

[6320-01-M]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATION

[Reg. ER-1107; Amdt. No. 7]

PART 213—TERMS, CONDITIONS, AND LIMITATIONS OF FOREIGN AIR CARRIER PERMITS

Filing and Approval of Schedules

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., February 15, 1979

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This rule amends the Board's regulations to remove the mandatory 30-day waiting period for effectiveness of orders requiring foreign air carriers to discontinue operation of existing schedules. This action will give the United States more flexibility in responding to the actions of foreign governments that restrict the operating rights of U.S. carriers.

DATES: Adopted: February 15, 1979. Effective: February 15, 1979.

FOR FURTHER INFORMATION CONTACT:

Joseph DiBella, Civil Aeronautics Board, Bureau of International Aviation, Legal Division, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. (202) 673-5035.

SUPPLEMENTARY INFORMATION: By Notice of Proposed Rulemaking EDR-368 (43 FR 54665, November 22, 1978) the Board proposed to amend § 213.3 of its Economic Regulations (14 CFR 213.3) to eliminate the mandatory 30-day waiting period for effectiveness of orders requiring foreign scheduled air carriers to discontinue existing schedules. These orders are usually issued in response to actions by a foreign air carrier's home government that have denied equal competi-

tive opportunities to U.S. carriers, in contravention of a bilateral air transport agreement between the United States and that country, or of reciprocal operating rights where there is no agreement. The Board has found that a standard 30-day waiting period does not satisfy the need for quick retaliatory action in some cases, or the need for a longer waiting period in other cases to allow for negotiation of bilateral disputes. Elimination of the 30-day rule will allow the Board to tailor the date for discontinuance of existing schedules to the circumstances in each situation.

Pan American World Airways, Inc., the Department of State, and The Flying Tiger Line filed comments in support of the proposed rule. Flying Tiger was concerned, however, that insofar as the amendment allows the Board to lengthen the waiting period, it could be viewed by foreign governments as a weakening of the Board's resolve to assert U.S. air rights and to protect U.S. carriers from discriminatory competitive practices. It therefore recommended that the 30-day rule be retained as a maximum, allowing shorter time periods in emergency situations. The Department of State's only reservation was that the rule might be interpreted so as to allow schedule disapproval orders to become effective before the 10-day period for Presidential review has elapsed, and it has proposed clarifying language.

Air France, Japan Air Lines and Philippine Airlines filed comments opposing the amendment on the grounds that Part 213 orders are incompatible with Bermuda-type bilateral agreements, which allow restrictions on capacity only after arbitration;[1] that the mandatory 30-day period allows the parties a final opportunity to settle their differences amicably through negotiation, and thus avoid escalation of the dispute; that elimination of the 30-day waiting period would inconvenience passengers by interrupting their travel plans on short notice, without allowing sufficient time for arrangement of alternative transportation, which is usually booked well in advance on international routes; and that less than 30 day's notice would cause serious disruption of a carrier's crew assignments, maintenance, and aircraft scheduling.

Upon consideration of the comments and all other relevant facts, we have decided to adopt the proposed rule, with the clarifying language suggested by the Department of State. The objections that a waiting period shorter than 30 days could cause passenger inconveneince, disrupt an airline's operations, and impede the amicable resolution of a dispute through negotiation, while conceivably valid in some circumstances, nevertheless miss the point. This amendment will allow the Board to exercise its judgment and weigh all of these considerations in deciding how long to delay implementation of schedule disapproval. In the event that a standard 30-day waiting period did not allow sufficient time for notice to passengers and airlines, and for negotiations to be conducted, the Board would have the flexibility to lengthen the waiting period. In emergency situations, a proper weighing of these factors might require implementation of schedule disapproval with less than 30 day's notice, even if passenger or airline inconvenience would result, in order to avoid the greater harm to the public interest that would result from a denial of U.S. air rights. The Board intends to take these and all other public interest factors into account in the future in deciding on the timing of Part 213 orders.

We have decided to accept the clarifying language suggested by the Department of State. The Board has always interpreted section 213.3 to mean that schedule disapproval orders do not go into effect, and the 30-day period does not begin to run, until the 10-day period for Presidential review has expired, unless earlier Presidential approval has been received. Likewise, orders disapproving proposed schedules, which are not subject to the 30-day waiting period, do not become effective before Presidential review. Thus, elimination of the 30-day period for discontinuance of existing schedules does not mean a Part 312 order can go into effect before the President has had the opportunity to review it. However, to avoid confusion we will make explicit the Board's previous interpretation of this rule by adopting the language proposed by the Department of State.

In order that the Board may be in a position to react promptly to international developments that may arise in the near future, we find that an immediate effective date is required by the public interest.

Accordingly, the Board amends Part 213 of its Economic Regulations (14 CFR Part 213) as follows:

Paragraph (d) of § 213.3 is amended to read:

§ 213.3 Filing and approval of schedules.

* * * * *

(d) The carrier may continue to operate existing schedules, and may inaugurate operations under proposed schedules 30 days after the filing of such schedules with the Board, unless the Board with or without hearing issues an order, subject to stay or disapproval by the President of the United States within 10 days after adoption, notifying the carrier that such operations, or any part of them, may be contrary to applicable law or may adversely affect the public interest. If the notification pertains to a proposed schedule, service under such schedule shall not be inaugurated; if the notification pertains to existing schedules, service under such schedules shall be discontinued on the date specified in the Board's order. Such date shall be not less than ten days after issuance of the Board's order unless affirmative Presidential approval is obtained at an earlier date.

* * * * *

(Secs. 204(a), 402, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 757; (49 U.S.C. 1324, 1372))

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-5946 Filed 2-27-79; 8:45 am]

[1] We note that in a recent arbitration between the United States and France, an international tribunal ruled on December 9, 1978, that implementation of a Part 213 sanction does not violate Bermuda-type bilaterals.

[6320-01-M]

[Reg. ER-1106, Amdt. No. 36]

PART 241—UNIFORM SYSTEM OF ACCOUNTS AND REPORTS FOR CERTIFICATED AIR CARRIERS

Elimination of CAB Form 41 Schedules P-11(a) and P-11(b) Concerning Charges for Foreign en Route and Airport Facilities and Services

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., Feburary 15, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This final rule eliminates two quarterly schedules that were originally designed to detect discriminatory pricing practices of foreign governments in assessing charges for airport and en route facilities and services. The information provided on these schedules is no longer needed by the Board and does not suit the purposes of users outside the Board.

DATES: Adopted: February 15, 1979. Effective: February 15, 1979.

FOR FURTHER INFORMATION CONTACT:

Clifford M. Rand, Office of Economic Analysis, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, 202-673-6044.

SUPPLEMENTARY INFORMATION:

EDR-358

In EDR-358, dated June 13, 1978 (43 FR 26449), the Board gave notice of its intention to revise and reduce the information collected by the Board on charges by foreign governments and foreign entities for en route and airport facilities and services. The data collected are currently submitted on two quarterly CAB Form 41 Schedules—P-11(a) "Charges by Foreign Governments and Foreign Entities for En Route Facilities and Services" and P-11(b) "Charges by Foreign Governments for Airport Facilities and Services."

Both schedules were originally intended as a means for monitoring the cost recovery policies of foreign governments in recouping the cost of en route and airport facilities and services through the levying of user charges. Pub. L. 93-623 "International Air Transportation Fair Competitive Practices Act of 1974" (FCPA) created a further need for user charge data by requiring the Secretary of Transportation to survey the charges made to air carriers by foreign governments and foreign entities for the use of airport and en route facilities. The purpose of this survey is to identify charges that either unreasonably exceed comparable charges for furnishing airport and en route facilities in the United States or are in another way discriminatory.

Essentially, the Board proposed to revise the reporting requirements applicable to both schedules by (1) reducing their filing frequency from quarterly to annually; (2) providing new formats for both schedules to reduce the data reported; and (3) clarifying the reporting instructions for each schedule. These revisions were proposed to overcome certain problems which the reporting carriers were experiencing in preparing Schedules P-11(a) and P-11(b).

At the same time the Board proposed these revisions, it was noted that the data being collected served no regulatory purpose here at the Civil Aeronautics Board and, accordingly, the Board also solicited comments on whether or not the reports should be eliminated entirely.

COMMENTS

Eleven comments were received in response to the rulemaking notice. Of the eleven, ten were from carriers (American Airlines, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., National Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Trans International Airlines, Inc., Trans World Airlines, Inc., United Airlines, Inc., and World Airways, Inc.) and the eleventh was from the Department of Transportation's Federal Aviation Administration.

Eight of the ten carriers filing comments support the elimination of Schedules P-11(a) and P-11(b). American remains silent on the issue of elimination, but suggests that user charge reporting be required only from those carriers whose total scheduled revenue passenger-miles conducted in international operations exceed twenty percent of the total scheduled revenue passenger-miles of their system operations. This is the same criterion which was proposed in EDR-358 as a basis for reporting major route segment data in Part A of Schedule P-11(a). It should be noted that if American's suggestion were adopted, it would not meet the reporting criterion and, therefore, not have to file either schedule.

Both Pan American and the Federal Aviation Administration (FAA) support the proposed revision of Schedules P-11(a) and P-11(b); however, they do suggest certain modifications to the proposal.

The Department of Transportation's (DOT) Office of Air Transportation filed a late comment requesting a sixty-day deferral in finalizing EDR-358 to allow it time to submit, for the Board's consideration, an alternative report format which would better meet DOT's need for user charge data under the FCPA. While DOT's deferral request was granted, the only item the Board received during the sixty-day delay was a copy of an informal proposal for revising Schedules P-11(a) and P-11(b) that DOT submitted to the Air Transport Association of America for presentation to carrier representatives for their consideration and comments. To date, no submission has been received as to the formal position of DOT on the revision of user charge reporting.

For those carriers supporting the elimination of both schedules, their comments indicate that the carriers feel the burden of reporting outweighs any benefits derived from having user charge data routinely available.

While recognizing that the Federal Government may have a need for user charge data, Continental, Northwest, Trans International, and World believe that *ad hoc* reports would better serve as an information gathering tool. Such reports could be tailored to the needs of a particular situation and result in more timely information. When data are required, Trans World states that carriers can prepare, on short notice, user charge data for a specific foreign entity and sees no need, therefore, for the recurrent reporting of user charges.

The comments of Continental, Delta, Northwest, and World indicate that instances of discriminatory pricing are fairly well known within the air transportation industry and the Government, and sometimes known in advance. These carriers feel that the carriers themselves are in the best position to identify unfair charges and report such occurrences to the Government.

Of the comments received, only Pan American and the FAA are opposed to eliminating Schedules P-11(a) and P-11(b). The FAA states that both schedules are used in implementing the FCPA which requires a survey of en route and airport user charges to identify those which could be discriminatory.

Pan American agrees with the FAA that the elimination of both schedules would deprive the U.S. Government of a valuable source of information in discharging its responsibilities under the FCPA. The carrier further states that the collection of user charge data serves an important role in protecting U.S Carriers from discriminatory practices.

After considering the comments contained in the docket and its own data requirements, the Board finds that there is no longer a regulatory need which supports the retention of Schedules P-11(a) and P-11(b).

While both schedules were originally intended to enable the Board to monitor the cost recovery policies of foreign governments, the enactment of the FCPA has placed primary responsibility for surveying user charges with DOT and there is no apparent reason why DOT cannot collect the data they need directly from the carriers rather than have a third party collect the information. In fact, DOT now receives user charge data from several carriers on an informal basis. These data are already being used by DOT in surveying user charges.

In sum, the Board has decided to eliminate the reporting of en route and airport user charges on Schedules P-11(a) and P-11(b) because: (1) The Board no longer has a regulatory need for the routine filing of such data since *ad hoc* reporting in individual cases will allow the Board to discharge its responsibilities under the FCPA just as well and at a lower cost; (2) DOT has the primary responsibility for surveying user charges; (3) DOT already informally receives user charge data from several carriers; and (4) the carriers, who are the intended beneficiaries of user charge reporting, overwhelmingly support the elimination of Schedules P-11(a) and P-11(b).

EFFECTIVE DATE

The Board finds that because this amendment relieves carriers from the burden of having to file reports that are no longer needed, and imposes no additional burden, notice and opportunity to comment are unnecessary. In order to allow the affected carriers to

take advantage of these benefits as soon as possible, this rule is being made effective immediately upon adoption.

RULE

Accordingly, the Board amends Part 241 of the Economic Regulations (14 CFR Part 241) as follows:

1. Amend the List of Schedules in CAB Form 41 Report in Section 22—*General Reporting Instructions* by deleting Schedules P-11(a) and P-11(b) to read:

Section 22 General Reporting Instructions.

LIST OF SCHEDULES IN CAB FORM 41 REPORT

Schedule No.	Schedule title	Filing Frequency	Applicability by carrier group		
			I	II	III
*	*	*	*	*	*
P-10	Employment statistics by labor category.	Annually	(2)	(2)	(2)
P-12	Fuel inventories and consumption	Monthly	x	x	x
*	*	*	*	*	*

2. Amend the Due Dates of Schedules in CAB Form 41 Report in Section 22—*General Reporting Instructions* by deleting Schedules P-11(a) and P-11(b) to read:

DUE DATES OF SCHEDULES IN CAB FORM 41 REPORT

Due dates [1]	Schedule No.
*	*
Feb. 10 [2]	A, B-1 [5], B-3, B-4, B-5, B-7, B-7(b), B-8, B-10, B-12, B-13, B-14, P-1.1, P-1.2, P-2, P-2(a), P-3, P-3.1, P-3(a), P-4, P-5.1, P-5.2, P-5(a), P-6, P-7, P-8, P-9.2, P-10, T-8
*	*
May 10	A, B-1 [5], B-3, B-4, B-5, B-7, B-7(b), B-8, B-10, B-12, B-13, B-14, P-1.1, P-1.2, P-2, P-2(a), P-3, P-3.1, P-3(a), P-4, P-5.1, P-5.2, P-5(a), P-6, P-7, P-8, P-9.2
*	*
Aug. 10	A, A-1, B-1 [5], B-3, B-4, B-5, B-7, B-7(b), B-8, B-10, B-12, B-13, B-14, P-1.1, P-1.2, P-2, P-2(a), P-3, P-3.1, P-3(a), P-5, P-5.1, P-5.2, P-5(a), P-6, P-7, P-8, P-9.2, T-8
*	*
Nov. 10	A, B-1 [5], B-3, B-4, B-5, B-7, B-7(b), B-8, B-10, B-12, B-13, B-14, P-1.1, P-1.2, P-2, P-2(a), P-3, P-3.1, P-3(a), P-4, P-5.1, P-5.2, P-5(a), P-6, P-7, P-8, P-9.2
*	*

3. Amend Section 24—*Profit and Loss Elements* by deleting the reporting provisions for Schedule P-11(a) "Charges by Foreign Governments and Foreign Entities for En Route Facilities and Services" and Schedule P-11(b) "Charges by Foreign Governments for Airport Facilities and Services."

(Secs. 204(a), 407, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 766, as amended (49 U.S.C. 1324(a), 1377).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-5950 Filed 2-27-79; 8:45 am]

[6320-01-M]

[Regulation ER-1109; Amendment No. 2]

PART 253—COMMISSIONS FOR SALE OF AIR TRANSPORTATION

Number of Copies and Places of Filing Schedules

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., February 21, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB reduces the number of copies of commission schedules filed by air carriers, and changes the filing location. This action is in line with the recommendation of the Commission on Federal Paperwork that agencies should review multi-copy filing requirements with the objective of reducing them to a single copy wherever possible.

DATES: Adopted: February 21, 1979. Effective: February 21, 1979.

FOR FURTHER INFORMATION CONTACT:

Barry L. Molar, Bureau of Pricing and Domestic Aviation, Special Authorities Division, Civil Aeronautics Board, 1825 Connecticut Avenue, Washington, D.C. 20428; (202) 673-5918.

SUPPLEMENTARY INFORMATION: Section 253.4, in 14 CFR Part 253, *Commissions for Sale of Air Transportation* requires each air carrier to file with the Board's Docket Section an original and three copies of its current schedule of the commissions that it pays to any person for the sale of air transportation.

In line with the recommendation of the Commission on Federal Paperwork that agencies should review multi-copy filing requirements with the objective of reducing them to a single copy wherever possible, the Board will now require only the original commission schedule to be filed. It should be filed with the Office of Comptroller rather than with the Docket Section. OC will copy and distribute whatever copies are needed.

Because these amendments relieve restrictions and create no added burden for any member of the public, and relate only to filing procedures, we find that notice and public procedure thereon are unnecessary and that they may become effective immediately.

Accordingly, in 14 CFR Part 253, *Commission for Sale of Air Transportation*, § 253.4 is amended, effective February 21, 1979, to read as follows:

§ 253.4 Place of Filing Schedules; Provision of Requested Copies.

(a) Each carrier shall submit the schedule that it files under § 253.3 (only an original is required) to the Office of Comptroller, Reports Control Section, Data Systems Management Division, Civil Aeronautics Board, Washington, D.C. 20428.

(b) Each carrier shall provide a copy of its currently filed schedule to any person requesting it.

(Sections 204, 403, 407 and 411 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 758, 766, 769; 49 U.S.C. 1324, 1373, 1377, 1381.)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-5960 Filed 2-27-79; 8:45 am]

[6320-01-M]

SUBCHAPTER B—PROCEDURAL REGULATIONS

[Reg. PR-196; Amdt. No. 53]

PART 302—RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

Assessment of Civil Penalties in Enforcement Proceedings

Adopted by the Civil Aeronautics Board at its office in Washington, D.C.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule with request for comments.

SUMMARY: The CAB amends its rules of practice in enforcement proceedings to provide for the assessment of cival penalties for violations of the Federal Aviation Act and of the CAB's regulations and orders. By PDR-63, also issued today, the CAB invites comments on this rule with a view to issuing a revised rule later if necessary.

DATES: Adopted: February 21, 1979. Effective: February 21, 1979.

FOR FURTHER INFORMATION CONTACT:

M. Candace Fowler, Bureau of Consumer Protection, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, 202-673-5158.

SUPPLEMENTARY INFORMATION: The Airline Deregulation Act of 1978 gave the Board authority to order the payment of civil penalties for violations of the economic provisions of the Federal Aviation Act or of the Board's regulations or orders. In the past, the Board could order a violator to cease and desist, but had to bring a separate federal court action to impose a monetary penalty unless the Board and the violator agreed on a compromise penalty amount. The Board now has the power under Section 901 of the Act (49 U.S.C. 1471) to assess a civil penalty itself, "after notice and an opportunity for a hearing and after written notice upon a finding of violation by the Board." We are amending our rules to reflect this change in the law.

One of the major purposes of the amendment, as demonstrated by the legislative history, is to promote efficiency by eliminating the need for duplicative proceedings. *See* H.R. Rep. No. 95-1211, 95th Cong. 2d Sess., at 19-20. We have kept that goal in mind, as well as our own desire to keep our regulatory procedures as simple and straightforward as possible, in determining how best to implement our new authority. We believe that the most logical and effective solution is to provide that civil penalties may be assessed under our existing administrative enforcement procedures.

Under this approach, a civil penalty can be treated basically as an additional administrative remedy available for violation of the law. In the context of its existing enforcement procedures, the Board can consider issuance of an order requiring or prohibiting specified actions, assessment of a civil penalty, or both, as appropriate in any particular case. Our existing procedures will afford the alleged violator the opportunity for a full hearing on all genuinely disputed material facts, and will also provide for summary disposition in appropriate cases.

In addition, the Board may employ existing procedures to enter into consent settlements of civil penalty liability in suitable circumstances. The language of the Airline Deregulation Act refers only to assessment of civil penalties on a finding of violation and does not explicitly mention procedures for the settlement of potential liabilities for suspected or documented violations. We consider, however, that the power of an agency to impose penalties must necessarily include the power to accept a compromise amount agreed on to resolve the issues of violation and remedy without the necessity of full litigation, and this view is plainly in accord with the legislative intent in the Deregulation Act to simplify and strengthen the Board's enforcement program. If any parties believe that Congress intended to withhold from the Board the ability to settle civil penalty matters by consent and without formal proceedings and findings of violation, we invite them to comment on this issue.

Accordingly, we are adding a new § 302.206(a) to our procedural rules governing enforcement proceedings. The section delegates to the Director of the Bureau of Consumer Protection the initial authority to propose an assessment of civil penalties and the responsibility to notify the respondent of the proposed assessment. It requires the respondent to present his evidence and arguments related to the imposition or amount of the penalty to the administrative law judge in the normal course of the proceeding. The section also provides that the administrative law judge and the Board will include the amount of any civil penalty assessed, as well as information on how and when to make payment to the United States, in the decision issued in the proceeding, so that the respondent will receive the "written notice upon a finding of violation" that is required by statute. Of course, § 302.206(a) of the rules, reserving the Board's right to use other procedures as it deems appropriate, will apply to civil penalty assessments as it does to other aspects of enforcement.

We expect that ordinarily each procedural step related to the imposition of a civil penalty will be undertaken simultaneously with the corresponding step related to the underlying violations of law. As a rule, we believe there should be one notice, one hearing, and one ultimate decision. However, this may not always be possible or practicable, and the rule we are adopting here should not be understood to require it.

Thus, the Director of the Bureau of Consumer Protection may include notice of a proposed civil penalty in the notice instituting an enforcement proceeding which is required by § 302.206 of the rules, but he does not have to. The Director is free to propose an assessment at any time, including during the course of a hearing, as long as the statutory requirements of notice and an opportunity for a hearing on the penalty are met. It would be entirely appropriate, for example, for the Director to propose the imposition of civil penalties in administrative enforcement proceedings that were already underway when the Airline Deregulation Act was passed.

There may also be times when the public interest or fundamental fairness will require bifurcated hearings dealing with the underlying violation and the proposed civil penalties. In some cases, notice that civil penalties will be at issue may be given too close to a scheduled hearing to permit full preparation of mitigating evidence or arguments. In other cases, where numerous individual violations are involved, it may be important to obtain a cease and desist order against harmful conduct as quickly as possible, while deferring consideration of detailed evidence on the amount of the civil penalties to be imposed until a later hearing. In these situations, administrative law judges may make appropriate procedural rulings in exer-

cise of their authority, under § 302.22 of the Board's rules, to regulate the course and conduct of hearings. Similarly, the Bureau of Consumer Protection may determine that in a particular situation the public interest would best be served by an action seeking an injuction in a federal court, followed by an administrative proceeding seeking an assessment of civil penalties.

Since the rule we are adopting here supersedes the procedures for the compromise of civil penalties contained in Subpart H of Part 302, we are revoking those rules. Where no formal enforcement proceeding has been instituted, however, the Director of the Bureau of Consumer Protection will retain his delegated authority under § 385.22(a) of our rules to accept on behalf of the Board a civil penalty payment consented to by a person who has committed a violation.

One section of Subpart H, § 302.808, deals not with the compromise of civil penalties, but with the summary seizure of aircraft involved in violations of law for which a civil penalty may be assessed. The case of *United States* v. *Vertol H21C, Registration No. N8540,* 545 F.2d 648 (9th Cir. 1976), casts doubt on the constitutionality of this regulation by ruling that a similar procedure used by the Federal Aviation Administration violated the aircraft owner's right of due process. For this reason, we have decided to revoke Subpart H in its entirety. The Board retains statutory authority to seize aircraft under Section 901 of the Act. If we find that we need a regulation setting out a specific procedure, we will adopt one later.

We note that the Director of the Bureau of Consumer Protection has already notified respondents in some proceedings that they may be liable for civil penalties. We take this occasion to confirm the Director's authority to issue such notices on behalf of the Board in those proceedings.

Since the Airline Deregulation Act has already gone into effect, a regulation explaining how the Board will exercise its new authority should be issued as soon as possible. Moreover, this rule merely establishes procedures that the Board and the administrative law judges already have authority to specify on a case-by-case basis. We therefore find that notice and public procedure before the adoption of a final rule are unnecessary, impractical, and contrary to the public interest. We realize, however, that the public may have valuable suggestions on whether this or some other procedure would be the most effective way of assessing civil penalties. By a separate notice also issued today, therefore, we are inviting comments on this procedure.

Accordingly, the Civil Aeronautics Board amends Part 302 of its Procedural Regulations, *Rules of Practice in Economic Proceedings* (14 CFR Part 302), as follows:

1. The Table of Contents for Part 302 is amended by deleting and reserving Subpart H and adding to Subpart B a new § 302.206a, to read:

PART 302—RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

* * * * *

Subpart B—Rules Applicable to Economic Enforcement Proceedings

* * * * *

Sec.
302.206a Assessment of civil penalties.

* * * * *

Subpart H—[Reserved]

* * * * *

2. In Subpart B a new § 302.206a is added, to read:

§ 302.206a Assessment of civil penalties.

(a) Whenever the Bureau of Consumer Protection seeks an assessment of civil penalties in an enforcement proceeding, the Director of the Bureau of Consumer Protection shall serve on all parties to the proceeding a notice of the violations alleged and the amount of penalties for which the respondent may be liable. The notice may be included in the notice instituting an enforcement proceeding or in a separate document.

(b) Within 15 days after service of a notice proposing assessment of civil penalties, the respondent shall file a response specifically presenting any matters he intends to rely on in opposition to or mitigation of such civil penalties. The response may be contained in an answer filed under § 302.207.

(c) In any proceeding in which civil penalties are sought, the initial and final decisions shall state the amount of any civil penalties assessed upon a finding of violation, and the time and manner in which payment shall be made to the United States.

Subpart H—[Reserved]

3. Subpart H is revoked and reserved.

(Sec. 204, 901, 1001, Federal Aviation Act of 1958, as amended by Pub. L. 95-504; 72 Stat. 742, 783, 788, 92 Stat. 1705; (49 U.S.C. 1324, 1471, 1481))

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-5948 Filed 2-27-79; 8:45 am]

[6320-01-M]

[PDR-63; Docket No. 34794; Dated: February 21, 1979]

PART 302—RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

Assessment of Civil Penalties in Enforcement Proceedings

AGENCY: Civil Aeronautics Board.

ACTION: Request for comments on final rule.

SUMMARY: By PR-196, issued today, the CAB is amending its rules of practice in enforcement proceedings to provide for the assessment of civil penalties for violations of the Federal Aviation Act and of the CAB's regulations and orders. In this proceeding, the CAB invites comments on the rule adopted, with a view to issuing a revised rule later if necessary.

DATE: Comments by April 30, 1979. Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

ADDRESSES: Twenty copies of comments should be sent to Docket 34794, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT:

M. Candace Fowler, Bureau of Consumer Protection, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, 202-673-5158.

(Secs. 204, 901, 1001, Federal Aviation Act of 1958, as amended by Pub. L. 95-504; 72 Stat. 742, 783, 788, 92 Stat. 1705; (49 U.S.C. 1324, 1471, 1481).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-5949 Filed 2-27-79; 8:45 am]

[6320-01-M]

[Reg. PR-197, Amdt. No. 1]

PART 322—AUTOMATIC MARKET ENTRY PROCEDURES

Notice of Approval by the General Accounting Office

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

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This final rule gives notice that the General Accounting Office has approved provisions for applications and protective notices in a regulation concerning the Board's automatic entry program under which an air carrier may apply to the Board for one new route each year for the next three years. This approval is required under the Federal Reports Act, and was transmitted to the Civil Aeronautics Board by letter dated February 13, 1979.

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

FOR FURTHER INFORMATION CONTACT:

Clifford M. Rand, Office of Economic Analysis, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, 202-673-6044.

Accordingly, the Civil Aeronautics Board amends Part 322 of its Procedural Regulations (14 CFR Part 322) by adding the following note at the end of Part 322:

NOTE.—The application requirements contained in sections 322.2 and 322.3 and the reporting requirement contained in § 322.6 have been approved by the U.S. General Accounting Office under B-180226 (RO580).

This amendment is issued by the undersigned pursuant to the delegation of authority from the Board to the Secretary in 14 CFR sec. 385.24(b).

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

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-5947 Filed 2-27-79; 8:45 am]

[6320-01-M]

SUBCHAPTER E—ORGANIZATIONAL REGULATION

[Reg. OR-146, Amdt. No. 13]

PART 384—STATEMENT OF ORGANIZATION, DELEGATION OF AUTHORITY, AND AVAILABILITY OF RECORDS AND INFORMATION

Transfer of Functions to Bureau of Carrier Accounts and Audits, Office of Economic Analysis and Office of the Comptroller

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., February 15, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB amends its statement of organization to reflect a transfer of functions from the former Bureau of Accounts and Statistics as follows: (1) Accounting and auditing functions to a new Bureau of Carrier Accounts and Audits; (2) information reporting and data analysis to the Office of Economic Analysis; and (3) information processing and automatic data processing to the Office of the Comptroller. Specific delegations of authority are amended in OR-147 which is being issued simultaneously with the rule.

DATES: Effective: February 15, 1979. Adopted: February 15, 1979.

FOR FURTHER INFORMATION CONTACT:

Raymond Kurlander, Director, Bureau of Carrier Accounts and Audits, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 202-673-5270.

SUPPLEMENTARY INFORMATION: The Board recently redesignated its Bureau of Accounts and Statistics (BAS) as the Bureau of Carrier Accounts and Audits (BCAA). The accounting and auditing functions that had been under BAS stay with BCAA. The information reporting and data analysis functions were transferred to the Office of Economic Analysis (OEA) and the information processing and automatic data processing functions were transferred to the Office of the Comptroller (OC).

Under this revised structure, OEA will be responsible for determining the Board's need for economic, financial, and statistical information including identifying reports no longer needed. OEA will administer the carrier reporting requirements program formerly assigned to BAS. This Office will advise the Board on the new tools and data bases needed to carry out the regulatory policies and procedures designed to create more competition, reduce regulatory delays, and provide less expensive and more widely available services to the consumer.

BCAA will serve as the principal accounting policy and program advisor to the Board on all substantive and procedural matters related to air carrier audits, internal audits and industry accounting transactions and systems. This will include the authority to issue the necessary rules to conform the Board's accounting systems with regulatory as well as accounting principles generally accepted in the industry.

OC will be charged with the design, development, implementation and evaluation of information processing and resource management systems. Responsibility for administering and operating the Board's automatic data processing facilities will also be in this Office.

The principal reasons for these shifts in resources come from the significant changes in the Board's policy direction and the Airline Deregulation Act of 1978, Pub. L. 95-504. In particular, the changes in policy have of necessity forced us to examine the utility of our existing analytical tools and capabilities, and our information systems in determining the extent to which these policies can be applied, and, to examine the reaction of the market, over time, to our new policies.

Specific delegations of authority in Part 385 are being amended in OR-147. Changes to Bureau and Office references in all other parts of the Board's regulations, as appropriate, will be made in the near future.

Since these amendments are administrative in nature, affecting rules of agency organization and procedure, we find that notice and public procedure are unnecessary and that the rules may be effective immediately.

Accordingly, the Civil Aeronautics Board amends Part 384 of its Organization Regulations, *Statement of Organization, Delegation of Authority, and Availability of Records and Information* (14 CFR Part 384) as follows:

In § 384.7, paragraphs (a)(3), (e), and (j) are amended to read:

§ 384.7 Organization and delegation of authority.

* * * Generally speaking, the Board's staff comprises:

(a) The Office of the Managing Director * * *

(3) The Office of the Comptroller, which administers the Board's financial management system, including participation in the fundamental aspects of program development, execution, review and evaluation; performs fiscal and administrative accounting activities, including those relating to

the budget and the payroll; administers subsidy payment functions; administers and operates the Board's automatic data processing facilities; controls the receipt of data submitted to the Board; and designs, develops, implements, and evaluates the Board's information processing and resource management systems.

* * * * *

(e) The Bureau of Carrier Accounts and Audits, which is responsible for serving as the principal accounting policy and program advisor to the Board on all substantive and procedural matters related to air carrier audits, internal audits and industry accounting transactions and systems. This Bureau develops and administers the Board's industry accounting systems; conducts industry audits and examinations of air carrier accounts and records; provides internal audit coverage and control over all funds, property and other assets for which the Board is responsible; performs technical staff work in analyzing financial reports or documents used in proceedings requiring expertise in accounting or auditing matters; and provides advice on accounting and auditing aspects relevant to monitoring compliance with continuing fitness requirements.

* * * * *

(j) The Office of Economic Analysis, which is responsible for studying demands for air transportation under various conditions of price and service, and forecasting future demand; advising the Board and staff on the economic impact of Board actions, and on the financial structure and conditions of individual air carriers and the industry in general; providing economic counsel, analysis and testimony in Board proceeding; assisting in the development of economic recommendations about U.S. international aviation relations and general regulatory policy; working with other agencies and departments on economic matters related to airline deregulation; establishing the need for economic, financial, and statistical information in support of regulatory analysis and decision-making; and prescribing the Board's reporting requirements.

(Secs. 204(a), 407, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 766, as amended (49 U.S.C. 1324(a) 1377) Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989; (49 U.S.C. 1324 (note)).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-5944 Filed 2-27-79; 8:45 am]

[6320-01-M]

[Reg. OR-147; Amdt. No. 80]

PART 385—DELEGATIONS AND REVIEW OF ACTION UNDER DELEGATION; NONHEARING MATTERS

Delegations of Authority to the Director, Bureau of Carrier Accounts and Audits, Director, Office of Economic Analysis, and the Comptroller

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., February 15, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This rule amends the CAB's delegations of authority to reflect a transfer of functions from the former Bureau of Accounts and Statistics to a new Bureau of Carrier Accounts and Audits, to the Office of Economic Analysis, and to the Office of the Comptroller.

DATES: Adopted: February 15, 1979. Effective: February 15, 1979.

FOR FURTHER INFORMATION CONTACT:

Raymond Kurlander, Director, Bureau of Carrier Accounts and Audits, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, 202-673-5270.

SUPPLEMENTARY INFORMATION: For the reasons discussed in OR-146, which is being issued simultaneously with this rule, we are amending the delegations of authority that appear in Part 385 of the Organization Regulations.

The Board recently redesignated its Bureau of Accounts and Statistics (BAS) as the Bureau of Carrier Accounts and Audits (BCAA). The accounting and auditing functions that had been under BAS stay with BCAA. The information reporting and data analysis functions were transferred to the Office of Economic Analysis (OEA) and the information processing and automatic data processing functions were transferred to the Office of the Comptroller (OC).

This amendment revises the delegations of authority in Part 385 of the Board's Organization Regulations to reflect these transfers of functional responsibilities. Essentially, all of the delegations formerly held by BAS are redistributed among BCAA, OEA and OC, and new authority is delegated to the Director, Office of Economic Analysis to issue proposed and final amendments of the Board's reporting requirements. This authority will allow the staff to issue reporting rules where no issues of substance are involved or where policy standards are well defined. Parties affected by these actions will have an opportunity to petition for Board review of the staff actions. Also, interested parties will have an opportunity to comment on proposed rules, and if substantial objections are received to a proposal, the final rule will be submitted to the Board for decision.

The Board is establishing this new delegation so that it can be relieved from having to consider a number of routine reporting changes that will occur each year, and thus allow the Board to devote its time to more important matters. This delegation is similar to that formerly held by BAS, and now being transferred to BCAA, which allows the Director to amend the Board's accounting systems by incorporating the latest industry accounting standards.

In addition, the Comptroller will have a new delegation to grant or deny requests by air carriers for extensions of filing dates.

Former § 385.17(g) delegated to the Director of BAS, the authority to require certain special reports from air carriers or foreign air carriers. In a petition for rulemaking filed on January 15, 1979, several foreign air carriers asked that the words "or any foreign air carrier" be deleted, arguing that the Board has no legal authority to require such reports from foreign carriers. The Board is reviewing its authority in this area in order to respond to the petition. Until that response is ready, the delegation will continue in its broader form. It is being transferred, however, to the Director of OEA, and now appears in § 385.27(d).

Since this amendment is administrative in nature, affecting a rule of agency organization and procedure, the Board finds that notice and public procedure are unnecessary, and that the rule may become effective immediately.

Accordingly, the Civil Aeronautics Board amends Part 385 of its Organization Regulations, *Delegations and Review of Actions Under Delegation; Nonhearing Matters* (14 CFR 385) as follows:

1. The Table of Contents, Subpart B, is amended by redesignating §§ 385.17 and 385.18, deleting § 385.18a, and adding new §§ 385.27 and 385.28, to read:

Supart B—Delegation of Functions to Staff Members

Sec.

* * * * *

385.17 Delegation to the Director, Bureau of Carrier Accounts and Audits

Sec.

385.18 Delegation to the Chief, Accounting Standards Division, Bureau of Carrier Accounts and Audits

385.18a [Deleted]

* * * * *

385.27 Delegation to the Director, Office of Economic Analysis

385.28 Delegation to the Comptroller

2. Sections 385.17 and 385.18 are redesignated and amended to read:

§ 385.17 Delegation to the Director, Bureau of Carrier Accounts and Audits.

The Board delegates to the Director, Bureau of Carrier Accounts and Audits, the authority to:

(a) Propose and issue amendments to accounting regulations to conform with generally accepted accounting principles, with the concurrence of the Director, Office of Economic Analysis, the General Counsel and other concerned bureaus, when no person having a substantial interest expresses an objection to the change. A thirty-day period for comments will be allowed.

(b) Propose and issue amendments to incorporate accounting interpretations into the Board's regulations, with the concurrence of the Director, Office of Economic Analysis, the General Counsel and other concerned bureaus, when no person having a substantial interest expresses an objection to the change. A thirty-day period for comments will be allowed.

(c) Propose and issue amendments of an editorial or technical nature that prescribe the content of the account structure to be maintained for the Board's uniform accounting system, with the concurrence of the Director, Office of Economic Analysis, the General Counsel and other concerned bureaus, when no person having a substantial interest expresses an objection to the change.

(d) Interpret the Board's accounting requirements. This authority may not be redelegated.

(e) Except as authority is otherwise specifically delegated, waive any of the accounting requirements, after coordinating with the Director, Office of Economic Analysis and other concerned bureaus, upon a showing of the existence of such facts, circumstances or other grounds, and subject to such limitations or conditions, as may be prescribed for waivers in the applicable regulations.

(f) Dismiss petitions for Board action with respect to accounting matters when such dismissal is requested or consented to by the petitioner.

(g) Require special reports, including documentation, from any air carrier regarding audits and other examinations of carrier facilities, operations, and accounting and statistical records.

(h)(1) Make findings, in connection with audits and examinations of accounting and statistical records and supporting documents, regarding the reasonable necessity for the application of the Board's authority to obtain access to lands, buildings, and equipment and to make notes and copies of accounts, records, memoranda, documents, papers, and correspondence of persons having control over, or affiliated with, any person subject to Board regulation; (2) authorize staff to conduct audits and examinations in accordance with those findings.

§ 385.18 Delegation to the Chief, Accounting Standards Division, Bureau of Carrier Accounts and Audits.

The Board delegates to the Chief, Accounting Standards Division, Bureau of Carrier Accounts and Audits, the authority to require submission by carriers of special statements necessary to an explanation of any carrier accounting practice.

§ 385.18a [Revoked]

3. Section 385.18a is revoked.

4. New §§ 385.27 and 385.28 are added, to read:

§ 385.27 Delegation to the Director, Office of Economic Analysis.

The Board delegates to the Director, Office of Economic Analysis, the authority to:

(a) Propose and issue amendments to the Board's reporting requirements, with the concurrence of the General Counsel, the Director, Bureau of Carrier Accounts and Audits, and other concerned bureaus, when no person having a substantial interest expresses an objection to the change.

(b) Interpret the Board's reporting requirements. This authority may not be redelegated.

(c) Except as authority is otherwise specifically delegated, waive any of the reporting requirements upon a showing of the existence of such facts, circumstances or other grounds, and subject to such limitations or conditions, as may be prescribed for waivers in the applicable regulations.

(d) Require special reports or documentation from any air carrier or any foreign air carrier under circumstances where he finds that such reports or documentation are necessary to meet temporary information needs, assist in an evaluation of continued financial fitness, or comply with special information requests by Congress, the Board, or another agency or component of the Federal Government.

(e) Dismiss petitions for Board action with respect to reporting matters when such dismissal is requested or consented to by the petitioner.

(f) Prescribe, in specific instances, different passenger weight standards to approximate variations in actual experience, for reporting passenger ton-miles and available ton-miles.

(g) Establish record-retention practices required to achieve conformance with regulations promulgated by the Board.

(h) Interpret the Board's record-retention requirements.

(i) Waive any of the record-retention requirements as warranted, consistent with the provisions of Part 249 of this chapter.

(j) Grant or deny requests for data reported by commuter air carriers on Schedule T-1 of CAB Form 298-C in accordance with the limitations on the availability of these data contained in § 298.62 of this chapter, after coordinating with the Office of the Comptroller.

(k) Grant or deny requests for use of international service segment data in accordance with the limitations on the availability of these data contained in section 19-6 of Part 241 of this chapter, after coordinating with the Office of the Comptroller.

(l) Grant or deny requests for use of international origin and destination statistics in accordance with Board policy as set forth in § 399.100 of this chapter, after coordinating with the Office of the Comptroller.

§ 385.28 Delegation to the Comptroller.

The Board delegates to the Comptroller the authority to:

(a) Grant or deny requests by air carriers for substitution of their own forms or adaptation of Board forms to meet special needs where Board approval of such form is required by the Economic Regulations, after coordinating with the Director, Office of Economic Analysis.

(b) Grant or deny requests by air carriers for extension of filing dates for reports as specified in the Economic Regulations, after coordinating with the Director, Office of Economic Analysis.

(c) Grant or deny requests for confidential treatment of preliminary year-end financial reports, after coordinating with the Director, Office of Economic Analysis.

(Secs. 204(a), 407, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 766, as amended (49 U.S.C. 1324(a) and 1377) Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989; (49 U.S.C. 1324 (note)).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-5945 Filed 2-27-79; 8:45 am]

[1505-01-M]

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-6019, IC-10569, IA-665]

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

Corrections

In FR Doc. 79-3905 appearing at page 7864 in the issue for Wednesday, February 7, 1979, make the following corrections:

1. On page 7868, second column, fourth line, "213" should read "3."; and the line before (a) of § 274.11a-1 should read *"Item 9 Brokerage Allocation"*. Also, in the third column, the paragraph lettered "(b)" should read "(d)".

2. On page 7869, second column, subparagraph (ii) should not be set out as a paragraph but should follow immediately after the semicolon at the end of subparagraph (i)(C).

[4810-22-M]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

[T.D. 79-71]

PART 159—LIQUIDATION OF DUTIES

Countervailing Duties; Oleoresins From Spain

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Final countervailing duty determination.

SUMMARY: This notice is to advise the public that a countervailing duty investigation has resulted in a final determination that the Government of Spain grants to producers and exporters of oleoresins benefits which constitute bounties or grants within the meaning of the countervailing duty law. Deposited countervailing duties in the amount of these benefits will be required at the time of entry in addition to duties normally collected on dutiable shipments of the merchandise.

EFFECTIVE DATE: February 28, 1979.

FOR FURTHER INFORMATION CONTACT:

Mary S. Clapp, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229 (202-566-5492).

SUPPLEMENTARY INFORMATION: On September 5, 1978, a notice of "Preliminary Countervailing Duty Determination" was published in the FEDERAL REGISTER (43 FR 39466). The notice stated that it had been preliminarily determined that benefits bestowed by the Government of Spain upon the manufacture, production, or exportation of oleoresins constitute the payment of a bounty or grant within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303) (hereinafter referred to as the "Act"). The benefits are received in the form of an overrebate upon export of the Spanish indirect tax, the "Desgravacion Fiscal". The overrebate consists of two elements: (1) the rebate of taxes on services and noncomponent inputs which are not physically incorporated in the product and (2) a credit for a tax assessed on transactions between manufacturers and wholesalers which in fact is not assessed on export sales.

The submission of comments by interested parties has been invited, but no additional data has been received. After consideration of the available information, it is hereby determined that exports of oleoresins from Spain benefit from bounties or grants within the meaning of section 303, Tariff Act of 1930, as amended. The amount of the overrebate has been determined pursuant to the revised method for calculation of a bounty or grant published in the FEDERAL REGISTER on January 17, 1979 (44 FR 3478). The oleoresins subject to this determination are classifiable under item 450.20 Tariff Schedules of the United States (TSUS).

Accordingly, notice is hereby given that oleoresins which are imported directly or indirectly from Spain, if entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the FEDERAL REGISTER, will be subject to the payment of countervailing duties equal to the net amount of any bounty or grant determined or estimated to have been paid or bestowed.

In accordance with section 303 of the Act and until further notice, the net amount of such bounties or grants has been ascertained and determined to be 3.37 percent of the f.o.b. value of the merchandise.

Effective on or after the publication date of this notice (February 28, 1979), and until further notice, upon the entry, or withdrawal from warehouse, for consumption of such oleoresins imported directly or indirectly from Spain, which benefit from these bounties or grants, there shall be collected, in addition to any other duties estimated or determined to be due, countervailing duties in the amount ascertained in accordance with the above declaration. To the extent that it can be established to the satisfaction of the Commissioner of Customs that imports of oleoresins from Spain are benefiting from a bounty or grant smaller than the amount which otherwise would be applicable under the above declaration, the smaller amount so established shall be assessed and collected.

Any merchandise subject to the terms of this order shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be credited or bestowed, directly or indirectly, upon the manufacture, production or exportation of oleoresins from Spain.

§ 159.47 [Amended]

The table in § 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting after the last entry for "Spain", the word "oleoresins" in the column headed "Commodity", the number of this Treasury Decision in the column headed "Treasury Decision" and the words "Bounty Declared-Rate" in the column headed "Action".

(R.S. 251, as amended, secs. 303, as amended, 624, 46 Stat. 687, as amended, 759 (19 U.S.C. 66, 1303, 1624).)

This final determination is published pursuant to section 303(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190 (Revision 15) March 16, 1978, the provisions of Treasury Department Order No. 165, Revised, November 2, 1954, and § 154.47 of the Customs Regulations (19 CFR 159.47), insofar as they pertain to the issuance of a final countervailing duty determination by the Commissioner of Customs, are hereby waived.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

FEBRUARY 22, 1979.

[FR Doc. 79-5901 Filed 2-27-79; 8:45 am]

[4810-25-M]

Title 31—Money and Finance: Treasury

CHAPTER 1—MONETARY OFFICES, DEPARTMENT OF THE TREASURY

PART 123—REGISTRATION OF REPRESENTATIVE OFFICES OF FOREIGN BANKS

AGENCY: Department of the Treasury.

ACTION: Final regulation.

SUMMARY: Section 10 of the International Banking Act of 1978, Pub. L. No. 95-369, requires that foreign banks register their representative offices in the United States with the Secretary of the Treasury. This Part specifies the information to be supplied and the steps to be followed in registering such offices.

EFFECTIVE DATE: This Part is effective February 28, 1979.

FOR FURTHER INFORMATION CONTACT:

David W. Heleniak, Assistant General Counsel (Domestic Finance), Department of the Treasury, Washington, D.C. 20220, (202) 566-8625.

SUPPLEMENTARY INFORMATION: This Part implements the provisions of Section 10 of the International Banking Act of 1978, Pub. L. No. 95-369. The regulation establishes registration requirements with respect to representative offices of foreign banks consistent with the requirements of the Act and its legislative history.

Because the sole purpose of this Part is to implement recently enacted legislation by establishing a simple registration process to facilitate data collection concerning certain activities of foreign banks in the United States, the Secretary for good cause finds that the procedures prescribed by 5 U.S.C. 553 relating to notice, public procedure and delayed effective date are unnecessary. Nevertheless, interested persons may submit written comments to the Assistant General Counsel (Domestic Finance), Department of the Treasury, Washington, D.C. 20220. Comments will be reviewed and acted upon in the same manner as if this Part were in proposed form, but the Part shall remain in effect until further amendments, if any, are proposed. This Part does not meet Treasury criteria for a significant regulation.

DRAFTING INFORMATION: The principal drafter of this part is Larry A. Mallinger, Attorney, Office of the Comptroller of the Currency, Washington, D.C. 20219. However, personnel from other offices of the Treasury Department participated in developing the regulation, both on matters of substance and style.

Accordingly, the Secretary amends 31 CFR by adopting Part 123 to read as follows:

PART 123—REGISTRATION OF REPRESENTATIVE OFFICES OF FOREIGN BANKS

Sec.
123.1 Scope of regulation.
123.2 Definitions.
123.3 Information required to be filed.
123.4 Subsequent changes in information.
123.5 Time of registration.
123.6 Effect of State law.
123.7 Additional information.

AUTHORITY: The provisions of this Part 123 are issued pursuant to Section 10, International Banking Act of 1978, Pub. L. No. 95-369 (the "Act").

§ 123.1 Scope of regulation.

This regulation requires that foreign banks with representative offices in any State of the United States or in the District of Columbia register with the Secretary of the Treasury and report the information called for in §§ 123.3, 123.4 and 123.7.

§ 123.2 Definitions.

(a) *Representative Office.* For the purposes of this Part, a representative office shall be defined as an office of a foreign bank which engages in representational functions common to a banking business such as, without limitation, solicitation of new business, loan production, liaison between the bank's head office and correspondent banks in the United States, customer relations, etc. Branches and agencies of foreign banks are not representative offices.

(b) *Foreign Bank.* For the purposes of this Part, a foreign bank shall be defined as any company organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands, which engages in the business of banking, or any subsidiary or affiliate, organized under such laws, or any such company. The term "foreign bank" includes, without limitation, foreign commercial banks, foreign merchant banks and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where such foreign institutions are organized or operating. The term "foreign bank" does not include central banks of foreign countries which are not engaged in a commercial banking business in the United States.

§ 123.3 Information required to be filed.

The information required under this Part must be submitted in letter form by a foreign bank over the signature of an appropriate executive officer of the bank to Secretary of the Treasury, Department of the Treasury, 15th & Pennsylvania Avenue NW., Washington, D.C. 20220, attention: Office of International Banking and Portfolio Investment.

A foreign bank may register more than one representative office in any letter. The information required in each letter shall be:

(a) Name and address of the head office of the foreign bank;

(b) Name(s) and address(es) of its representative office(s) in the United States;

(c) Name of the person(s) in charge of the representative office(s); and

(d) Brief description of the activities of the representative office(s).

§ 123.4 Subsequent changes in information.

Any change in the information supplied under Section 123.3 shall be submitted to the Treasury, at the address noted in Section 3, within 60 days of such change.

§ 123.5 Time of registration.

Foreign banks must register representative offices under this Part by March 17, 1979 or the date on which the office is established, whichever is later.

§ 123.6 Effect of State law.

Neither the Act nor this Part authorizes the establishment of any representative office in any State in contravention of State law.

§ 123.7 Additional information.

Additional information concerning registered representative office(s) shall be furnished from time to time to the Treasury, at the address noted in § 123.3, upon the specific request of the Secretary of the Treasury or his delegates.

W. MICHAEL BLUMENTHAL,
Secretary of the Treasury.

[FR Doc. 79-5839 Filed 2-27-79; 8:45 am]

[3810-70-M]

Title 32—National Defense

CHAPTER I—OFFICE OF THE SECRETARY OF DEFENSE

[DoD Directive 1200.7][1]

PART 44—SCREENING THE READY RESERVE

Policies and Procedures

AGENCY: Office of the Secretary of Defense.

[1]Copies may be obtained, if needed, from the U.S. Naval Publications and Forms

Footnotes continued on next page

ACTION: Final rule.

SUMMARY: This rule establishes Department of Defense policies and procedures in accordance with 10 U.S.C. 271, regarding the screening requirements for the Ready Reserve. The requirements provide for a system of continuous screening of the Ready Reserve to ensure that there will be no significant attrition during a mobilization, and that a proper balance of military skills is maintained.

EFFECTIVE DATE: November 28, 1978.

FOR FURTHER INFORMATION CONTACT:

Major Donald L. McCabe, USAF, telephone: 202-697-4334, Office of the Deputy Assistant Secretary of Defense (Reserve Affairs), The Pentagon, Room 3C980, Washington, D.C. 20301.

SUPPLEMENTARY INFORMATION: In FR DOC. 78-24182 appearing in the FEDERAL REGISTER on August 28, 1978 (43 FR 38430), the Office of the Secretary of Defense published a proposed rule establishing the policies and procedures for screening the Ready Reserve. Three public comments of a general nature were received and resolved. The following significant differences between the proposed and final rules were the result of the Defense Authorization Act for Fiscal Year 1979 (Pub. L. 95-485):

(a) Section 44.3(a)(3) was included to implement 10 U.S.C., section 652, which requires Ready Reservists, who are not members of the Selected Reserve, to provide selected personal information to the secretary of the military department concerned.

(b) Section 44.3(b) (1) and (2) were revised to reflect changes on an individual's eligibility for transfer to the Standby Reserve.

Accordingly, 32 CFR Chapter I, Part 44, as proposed at 43 FR 38430, August 28, 1978, but with the above and other minor editorial changes incorporated, is formally adopted, reading as follows:

PART 44—SCREENING THE READY RESERVE

Sec.
44.1 Purpose.
44.2 Applicability.
44.3 Policies.
44.4 Responsibilities.
44.5 Screening Requirements.
44.6 Definition of Terms.
44.7 Preparation and Periodic Revision of DoD List of Critical Military Skills for Use in Screening the Ready Reserve.

AUTHORITY: Title 10, U.S.C., section 271 and Executive Order 11190.

§ 44.1 Purpose.

(a) This Part:

(1) Is issued to update established policies governing the screening of Ready Reserve personnel.

(2) Provides guidance to the Armed Forces for screening such personnel in accordance with 10 U.S.C. and E.O. 11190 to assure that a Ready Reserve force composed of a proper balance of qualified individuals will be available immediately during any national emergency.

(3) Through the authority delegated to the Federal Emergency Management Agency (FEMA), provides guidance to nonmilitary Federal Departments and Agencies, State, Commonwealth, Territory and local Governments and Defense-supporting industries for determining positions which are key to national defense.

§ 44.2 Applicability.

The provisions of this Part apply to the Office of the Secretary of Defense, the Military Departments, and their Reserve components. The Armed Forces refers to the Army, Navy, Air Force, and Marine Corps.

§ 44.3 Policies.

(a) *Annual screening* (See also § 44.5).

(1) Members of the Selected Reserve and other members of the Ready Reserve who are not on active duty shall be screened at least annually in order to provide a Ready Reserve force composed of individuals who:

(i) Meet Armed Force wartime standards of mental, moral, professional and physical fitness, and possess the required military qualifications in the various ranks, grades, ratings, and specialties.

(ii) Possess a critical military skill for which there is an overriding military requirement.

(iii) Are immediately available for military service during any national emergency.

(2) The development and maintenance of current information pertaining to the mobilization availability or nonavailability of Ready reservists shall be the responsibility of the Armed Force concerned, and shall not be assigned to the individual.

(3) Each member of the Ready Reserve (who is not a member of the Selected Reserve) is obligated to notify the Secretary of the Military Department concerned of any change of address, marital status, number of dependents, civilian employment, and any change of physical condition which would prevent the individual from meeting the physical or mental standards prescribed by the member's Armed Force (10 U.S.C. 652).

(4) Determinations as to mobilization availability or nonavailability shall be made by the Armed Forces on a case-by-case basis consistent with the facts and the policies, guidelines and criteria of this Directive, and not by class or group determinations.

(b) *Transfer of Members of the Ready Reserve.* (1) Members of the Ready Reserve who served on active duty (other than for training) before October 20, 1978, may be eligible for transfer to the Standby Reserve in accordance with 10 U.S.C. 269. Individuals desiring transfer to the Standby Reserve under this authority will submit a written transfer request to the appropriate authority.

(2) All members of the Ready Reserve serving under a statutory military obligation (see § 44.7(1)) and not covered by the provisions of paragraph § 44.3(b)(1) will normally be retained in the Ready Reserve for the entire period of their obligation. Exceptions to this policy are made in this Part or may be made by the Secretaries of the Military Departments (10 U.S.C. 269).

(3) Nonobligors lacking a valid Ready Reserve Service Agreement will be handled under the provisions of subsection II.B or C. of DoD Directive 1200.15 [1] as appropriate.

(4) In accordance with 10 U.S.C. 269(g) a member of the Army National Guard of the United States or the Air National Guard of the United States may be transferred to the Standby Reserve, only with the consent of the Governor or other appropriate authority of the State, Puerto Rico, the District of Columbia, or Virgin Islands, whichever is concerned.

(c) *Retention of Members of the Ready Reserve.* (1) All members of the Ready Reserve will be retained in the Ready Reserve throughout the period of their statutory military obligation except as otherwise defined in this Part. All members who have fulfilled their statutory military obligations (nonobligors) and who desire to remain in the Ready Reserve will execute a Ready Reserve Service Agreement as follows:

(i) Officers will execute a written agreement to be a member of the Ready Reserve for a stated period of time, but not less than 1 year.

(ii) Enlisted personnel will be reenlisted for a specified period of time but not less than 1 year. The following statement will be added to the enlistment contract, DD Form 4,[2] Section 53(a): "I agree to remain a member of the Ready Reserve during the period of the enlistment unless relieved earlier by proper authority." This statement may replace a separate Ready Reserve Service Agreement.

(2) In selecting members of the Ready Reserve to be retained in the

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Footnotes continued from last page

Center, 5801 Tabor Avenue, Philadelphia, PA 19120. Attention: Code 301.

[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.

[2] Copies available through Armed Forces distribution channels.

Ready Reserve, the Armed Force concerned shall accord preference for retention to those who are considered best qualified and possess the highest potential for career service in the Ready Reserve.

(d) *Physical Examinations and Annual Certificates of Physical Condition.* Pursuant to 10 U.S.C. 1004(a), each member of the Ready Reserve who is not on active duty shall be examined as to physical fitness at least once every 4 years, or more often as the Secretary of the Military Department concerned considers necessary, and shall execute and submit annually a certificate of physical condition. In a year that an actual physical examination occurs, the completed physical forms satisfy the requirement for the annual certificate of physical conditions.

(e) *Satisfactory participation.* (1) Members of the Ready Reserve who do not participate satisfactorily will be ordered to active duty, transferred to the Standby Reserve, retired or discharged, as appropriate, in accordance with DoD Directives 1215.13 and 1200.15.[3]

(2) It is the responsibility of the Secretaries of the Military Departments to ensure to the maximum extent practicable, that the members of their Reserve components understand their obligations for satisfactory participation and for active service in the event of mobilization.

(f) *Transfer from Standby Reserve to Ready Reserve.* Pursuant to 10 U.S.C. 272, any member of the Standby Reserve who has not completed an obligated period of military service in the Ready Reserve may be transferred to the Ready Reserve whenever the reason for the individual's transfer to the Standby Reserve no longer exists. Similarly, a nonobligor may be transferred back to the Ready Reserve when the reason for the transfer to the Standby Reserve no longer exists. (See DoD Directive 1200.15).

(g) *Critical Military Skills.* The Secretary of the Military Department concerned may retain those Reserve personnel in a Ready Reserve status who (1) possess a critical military skill as shown on the current DoD List of Critical Military Skills,[4] or (2) are essential to the support of contingency or war plans even though under the provisions of this Directive they normally would be screened and transferred to the Standby Reserve.

(h) *Notification of civilian employer.* It is the responsibility of every Ready reservist to inform his employer of his Reserve obligations.

(i) *Civilian employment.* No deferment from mobilization will be granted members of the Ready Reserve by virtue of their civilian employment. However, it is the responsibility of the Secretary concerned to establish adequate procedures for publicizing the obligations of the Ready Reserve in event of mobilization. This publicity should be directed toward Ready reservists and their civilian employers and would be limited only by the internal capability of the Armed Forces. Publicity of this nature should emphasize the following areas:

(1) Members of the Selected Reserve are immediately available for mobilization in a national emergency in accordance with DoD Directive 1235.10[5] or when otherwise authorized by law.

(2) Members of the Ready Reserve may be called into active military service in event of a national emergency.

(3) Members of the Ready Reserve are not exempt from mobilization by virtue of their civilian employment.

§ 44.4 Responsibilities.

(a) *The Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)* shall:

(1) Manage/control the overall program as delegated by Executive Order 11190.

(2) Publish the DoD List of Critical Military Skills.

This report is used primarily as an information tool for monitoring critical skills in the Reserve components. It is updated annually from Armed Forces input submitted under Reports Control Symbol DD-M(A)579. Specific procedures for submission of the report may be found at § 44.8.

(3) Provide to the nonmilitary Federal Departments and Federal Agencies (in coordination with the FEMA) a listing of all Federal employees who are also members of the Ready Reserve. It is intended this listing will support the responsibilities of the organizations defined in § 44.4(b). Responses from Federal Departments and Agencies should be reported under Interagency Reports Clearance Number 0912-DoD-AN.

(b) *Federal Emergency Management Agency (FEMA).* The responsibility of the FEMA in the screening of the Ready Reserve (DoD and OEP Statement of Understanding, is summarized as follows:

(1) The FEMA will provide to the nonmilitary Federal Departments, Federal Agencies, State, Commonwealth, Territory and local Governments and Defense-supporting industries the policy and procedures required for screening their employees filling key positions who are in the Ready Reserve.

(2) The FEMA will resolve conflicts arising between military and essential civilian manpower needs.

(c) *Federal departments and agencies* (including the Armed Forces), States, Commonwealth, Territory and local Governments and Defense supporting industries (OEP Statement of Understanding and FPB-3), shall:

(1) Identify key positions as defined in § 44.7.

(2) Ensure that a member of the Ready Reserve is not hired into or transferred to a key position unless simultaneously reported to the appropriate Armed Force for a screening determination. This action should be initiated at the time of the individual's assignment to a key position.

(3) Identify Ready reservists who are currently holding key positions and either transfer them from their key positions or report them to the appropriate Armed Force for a screening determination.

(4) Ensure that actions defined in paragraphs § 44.4(c)(1) through (3) are initiated before mobilization. Upon mobilization, screening procedures cease and all members of the Ready Reserve are subject to recall.

(5) See § 44.9 and § 44.10 for a suggested letter format and Armed Forces mailing addresses used for screening determinations.

§ 44.5 Screening requirements.

The policies, guidelines and procedures set forth herein will be used by the Armed Forces in screening the Ready Reserve:

(a) *General.* The Armed Forces shall:

(1) Conduct the screening for key positions as required by § 44.4(c).

(2) Screen (on an annual basis) all unmobilized Ready Reserve members under their jurisdiction to assure their immediate availability for military service during an emergency (for reasons other than defined under subsection § 44.4(c)). Reports of this action shall be submitted semiannually in accordance with DoD Directive 7730.16[6] and RCS DD-M(SA)604.

(3) Ensure that personnel records systems incorporate information which would negatively impact on the mobilization availability of a Ready reservist.

(b) *Key positions (Except Federal Government Officials).*

(1) The Armed Forces will process individuals identified by their civilian employers as filling key positions as follows (10 U.S.C. 269(f)).

(i) Individuals who possess military skills for which there is an overriding

[3] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pa. 19120. Attention: Code 301.

[4] Copies available through Armed Forces distribution channels.

[5] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120. Attention: Code 301

[6] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120. Attention: Code 301

requirement will be retained in the Ready Reserve until completion of their statutory or other military obligation, at which time they will be transferred to the Standby Reserve, the Retired Reserve, or discharged, as appropriate.

(ii) Individuals who have completed their statutory obligation, but who are obligated to participate in the Ready Reserve under an enlistment contract or other written agreement, will be transferred to the Standby Reserve, the Retired Reserve or discharged as appropriate, provided they do not possess a military skill for which there is an overriding requirement.

(iii) Individuals who have not completed their statutory obligation and do not possess a critical military skill normally will be retained in the Ready Reserve until completion of such obligation. However, upon application an individual in this category may be transferred to the Standby Reserve or discharged as considered appropriate on the approval of the Secretary of the Military Department concerned, provided (A) military skill is excess to the requirements of the Reserve component concerned (paragraph § 44.5(e)(4)), and (B) the individual was identified as filling a key position by the employer.

(iv) Before transferring any member of the Ready Reserve to the Standby Reserve by reason of the individual's identification as filling a key position, the Secretary concerned will inform the member of the right to apply for transfer to the Standby Reserve Active Status List and allow a reasonable period of time for the member to make such application in accordance with DoD Directive 1215.6.[7] Members who do not so apply will be transferred to the Standby Reserve Inactive Status List.

(2) After the screening decision is made, the Armed Forces will:

(i) Transmit to each reservist's employer and the reservist concerned the results of their screening determination by completing the action endorsement specified on the suggested format at § 44.9.

(ii) Periodically (at least annually) verify the continuing necessity for removal of an individual from the Ready Reserve by reason of the individual's designation as a key employee.

(c) *Federal Government Officials.* The Armed Forces shall screen Government officials as follows:

(1) The Vice President of the United States, or any of those specified in the order of Presidential succession as set forth in 3 U.S.C. 19 who are members of the Ready Reserve, will be transferred to the Standby Reserve, the Retired Reserve, or discharged, as appropriate.

(2) Elected members of the Legislative and judicial branches of the Government and appointed officials, who are members of the Ready Reserve will be transferred to the Standby Reserve, the Retired Reserve, or discharged, as appropriate. Pursuant to *Palmore* v. *United States*, 411 U.S. 389, 93 S. Ct. 1670 (1973), the Superior Courts of the District of Columbia and the District of Columbia Court of Appeals are to be considered State courts.

(3) Federal officials and employees of the executive branch who (i) have completed their statutory Ready Reserve obligation, and (ii) are filling key positions, will be transferred to the Standby Reserve, the Retired Reserve, or discharged, as appropriate. Persons filling key positions who have not completed their statutory Ready Reserve obligation normally will be retained in the Ready Reserve until the completion of such obligation. However, such obligated members may be transferred to the Standby Reserve, or discharged under the provisions of subparagraph § 44.5(b)(1)(iii).

(4) Members defined in § 44.5(c) (2) and (3) may apply for transfer to the Standby Reserve Active Status List for their tenure or for the period they are designated in a key position. Members desiring transfer will apply to the Armed Force concerned through the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics).

(d) *Extreme hardship.* The Armed Forces shall screen extreme hardship cases (10 U.S.C. 271(5)), as follows:

(1) Nonobligated members of the Ready Reserve whose immediate recall to active duty in an emergency would create an extreme personal or community hardship, as defined in § 44.7, and determined/approved by the Secretary of the Military Department concerned, will be transferred to the Standby Reserve, the Retired Reserve, or discharged, as appropriate.

(2) Obligated members of the Ready Reserve whose immediate recall to active duty in an emergency would create an extreme personal or community hardship, as defined in § 44.7, and determined/approved by the Secretary concerned, may, upon their individual request, be discharged, if disqualified for further Reserve service or transferred to the Standby Reserve.

(e) *Miscellaneous screening requirements.* Ready reservists identified in the following categories will be screened as specified:

(1) *Health professions graduate study.* Individuals who are enrolled in a course of graduate study in one of the health professions will be screened in accordance with DoD Directive 1200.14.[8]

(2) *Mobilization augmentee/designees.* Members of the Ready Reserve who are also DoD civilian employees may not hold a mobilization assignment within the same general organizational or operational area of the Department or Agency in which the member is employed. Individuals in this situation will be reassigned or transferred, as appropriate. Guard/Reserve unit technicians as members of units are excluded from this provision.

(3) *Theological students.* Members of the Ready Reserve who are preparing for the ministry in a recognized theological or divinity school may participate voluntarily in inactive duty training and active duty training. Such members who do not wish to participate in training duty will be transferred to the Standby Reserve, since these individuals may not be required to serve on active duty or participate in inactive duty training under 10 U.S.C. 685. Once such a member terminates his training at the theological or divinity school, he may be transferred back to the Ready Reserve under the provisions of § 44.3(f).

(4) *Excess personnel.* Members of the Ready Reserve who are in excess of mobilization requirements will be transferred to the Standby Reserve, retired or discharged, as appropriate, as follows:

(i) Individuals who have completed their Ready Reserve obligation and who possess military skills in excess of requirements to maintain a proper balance of such skills in the Ready Reserve.

(ii) Individuals who have completed their Ready Reserve obligation for reasons not otherwise specified herein, as determined by the Secretary concerned.

(iii) Individuals who have completed 20 years of satisfactory service and are eligible for retirement with pay in accordance with 10 U.S.C. 1331.

(iv) Before action is taken in conjunction with this paragraph § 44.5(e)(4), due consideration should be given to maintaining a proper distribution within the grade, rank, and skill structure of the Ready Reserve.

(5) *Standards of fitness.* Members of the Ready Reserve who do not meet age limitation requirements or standards of fitness prescribed for active duty assignments by the Armed Forces shall, unless otherwise prohibited by law:

(i) Be transferred to the Standby Reserve, or

(ii) Upon application, be placed in the Retired Reserve if qualified, or

(iii) Be discharged, as appropriate.

§ 44.6 Definition of terms.

(a) *Ready Reserve.* Units and individual reservists liable for active duty as

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[8] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120. Attention: Code 301.

outlined in 10 U.S.C. 672 and 673 Title 10, U.S.C. 268 provides for an authorized strength of 2,900,000 in the Ready Reserve which includes members of the Reserve components on active duty.

(b) *Selected Reserve.* Part of the Ready Reserve of each Reserve component consisting of units and individuals who actively participate in drills or training periods each year and serve on active duty for training of not less than 14 days (exclusive of travel time) each year.

(c) *Standby Reserve.* Units or members, or both, of the Reserve components other than those in the Ready Reserve or Retired Reserve, who are liable for active duty as provided in 10 U.S.C. 672 or 674.

(d) *Key position.* A direct hire or statutory civilian position which requires a minimum of 90 days of specialized training or experience in a Federal, State, Commonwealth, Territory or local Government agency or Defense-supporting industry having a current shortage of qualified personnel and which position is:

(1) Necessary to the mobilization or emergency functions of such agency or industry, or

(2) Essential to the continuity of operations or the leadership of such agency or industry.

(e) *Key employee.* Any civilian employee of a Federal, State, Commonwealth, Territory or local Government agency or Defense-supporting industry who occupies a key position for whom no qualified and immediate replacement exists and whose duties cannot be reassigned to other employees, or has a civilian mobilization assignment, and whose immediate recall to military active duty during an emergency would seriously impair the effective functioning and continuity of such agency or industry with regard to:

(1) Production and research vital to the national defense effort; or

(2) Activities necessary to the maintenance of the national health, safety or interest.

(f) *Critical Military Skill.* A skill which is on the "DoD List of Critical Military Skills for Use in Screening the Ready Reserve" published by the Department of Defense. This List is subject to periodic revision by the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) pursuant to the procedures outlined in § 44.8.

(g) *Government agency.* The Head of any Department, Agency or Office of the Federal Government. Requests for a Ready Reserve Screening Determination (§ 44.9) must be signed by this individual or a designated representative.

(h) *State, Commonwealth, Territory And Local Governments.* The Head of any Department, Agency, or office of a State Commonwealth, Territory or local Government. Requests for a Ready Reserve Screening Determination (§ 44.9) must be signed by this individual or a designated representative.

(i) *Defense-supporting industry.* The Chief Personnel Officer of any business or corporation determined by FEMA to be Defense-supporting. Requests for a Ready Reserve Screening Determination must be signed by this individual or representative designated by the individual.

(j) *Extreme community hardship.* A situation which would result from the recall to active duty of a reservist in an emergency, in that the individual's withdrawal from a particular community would have a substantially adverse effect on the health, safety, or welfare of that community. (Any request for a determination of such hardship will be initiated by the reservist, and must be supported by documentary evidence as deemed necessary by the Secretary of the Military Department concerned.)

(k) *Extreme Personal Hardship.* A situation in which, through the reservist's recall to active duty in an emergency, the reservist's dependents, because of the reservist's absence, would suffer extreme hardship, substantially greater than any hardship other reservist's dependents under similar circumstances can be expected to experience. (Any request for a determination of such hardship will be initiated by the reservist, and must be supported by documentary evidence as considered necessary by the Secretary of the Military Department concerned. In order to ensure a uniform standard, the criteria for such evidence should conform generally to the current Service regulations on determining cases of extreme hardship.)

(l) *Statutory military obligation (Obligor).* All persons who become members of an Armed Force before their twenty-sixth birthday shall serve in the Armed Forces for a total of 6 years unless they are discharged earlier because of personal hardship by an appropriate authority. Any part of such service that is not active duty or active duty for training shall be performed in a Reserve component.

§ 44.7 Preparation and periodic revision of DoD. list of critical military skills for use in screening the Ready Reserve.

(a) *Preparation of Critical Military Skills Lists.*

(1) Each Armed Force will update and revise as necessary its List of Military Skills annually, as of September 30, using the following criteria:

(i) The military skill must be indispensable to the success of the Ready Reserve mobilization mission; and

(ii) A long period of mobilization-accelerated training in the reservist's individual military specialty to include prerequisite specialty training (totaling at least 6 months) must be needed to develop the degree of skill required; and

(iii) An appreciable shortage (at least 10% of Ready Reserve requirements) of available personnel with the skill exists or is anticipated.

(2) Newly developed military specialties which meet all three of the above DoD criteria for designation as critical skills, shall be added to the Military Service's List of Critical Military Skills. Previously designated critical specialties which no longer meet the DoD criteria shall be deleted from the Service list.

(3) Each Service's complete list as revised should be compiled in accordance with Formats A and B and two copies thereof transmitted to arrive in the office of the Deputy Assistant Secretary of Defense (Reserve Affairs) no later than November 30 of each year.

(4) The updated and revised Service lists will be reviewed and consolidated by the Deputy Assistant Secretary of Defense (Reserve Affairs) and issued as the current "DoD List of Critical Military Skills for Use in Screening the Ready Reserve."

(b) *Report control symbol.*

The revision of DoD List of Critical Military Skills Report is assigned Report Control Symbol DD-M(A)579.

FORMAT A.—*Service List of Critical Military Skills*

[Civilian-Type]

[List Officer and Enlisted Skills Separately in Alphabetical Order of Skill Code]

Military Service ———— For period ending ————

Total Ready Res Personnel	Total Res Personnel Requirements	Career Subdivision Title	Specialty MOS, AFS, or ES Rating	Service Occupational Code Number	Relatable Civilian Job (DOT)		Months Required to Produce the Specialty by Mobilization Accelerated Training
					Title	DOT Code	

FORMAT B.—*Service List of Critical Military Skills*

[No Civilian Counterpart]

[List Officer and Enlisted Skills Separately in Alphabetical Order of Skill Code]

Military Service ———— For period ending ————

Total Ready Reserve Personnel	Total Ready Reserve Personnel	Career Field Subdivision Title	Specialty Title (MOS, AFS, or ES Rating)	Service Occupational Code Number	Months Required to Produce the Specialty by Mobilization Accelerated Training

SUGGESTED FORMAT FOR REQUESTING A SCREENING DETERMINATION

(Date) ————

From: (Agency or Firm, name and address, include Zip Code)
To: (Appropriate Military Center—see enclosure (4))
Subject: Request for a Screening Determination
Reference: (a) DoD Directive 1200.7; Subject: Screening the Ready Reserve

1. This is to certify that the employee identified below occupies a key position requiring a minimum of 90 days of specialized training or experience and which: (a) is necessary to the mobilization or emergency functions of this agency or firm; or (b) is essential to the continuity of operations or the leadership of this agency or firm. There is a current shortage of qualified personnel within this agency or firm to the extent that no adequate replacement exists for this employee and the individual's duties cannot be reassigned to other employees. It is therefore recommended that this individual be considered not available for active military duty in a national emergency under the provisions pertaining to key employees as contained in 10 U.S.C. (reference (b)).

2. Pertinent data as to the employee is as follows:

Name of employee: (Last, first, middle)
Military grade and component:
Social Security Number:
Current home address: (Include Zip Code)
Military unit to which assigned: (Include address and Zip Code)
Title of employee's civilian position:
Grade or salary level of civilian position:
Date hired or assigned to position:

(Signature) ————

Typed name and title of Head of Department, Agency, or office or Chief Personnel Officer of Defense-Supporting Industry (or Designated Representative)

ACTION ENDORSEMENT BY SERVICE

(Date) ————

1. As a result of the screening of Ready reservists, as required by this Part, the above-named individual has been:

(Removed from) (Retained in) the Ready Reserve.

————

Typed named and title of authorized official

Copy to:

Reservist-Employee
(Home address, include Zip Code)

INSTRUCTIONS FOR PREPARATION

1. The employer should prepare and submit the basic letter to the appropriate Military Center as listed in this Part.

2. The applicable Service will screen and complete the action endorsement. One copy should be sent to the employer, one copy to the reservist-employee, and the original retained for personnel files and future screenings.

LIST OF MILITARY CENTERS TO WHICH RESERVE SCREENING DETERMINATION REQUESTS SHOULD BE FORWARDED

U.S. ARMY

Headquarters	Area covered		
(1) *U.S. Army Reserve Units:*			
Commanding General, First U.S. Army, Fort George G. Meade, Maryland 20755.	Alabama Florida Maryland New Jersey Pennsylvania Tennessee West Virginia District of Columbia	Connecticut Georgia Massachusetts New York Rhode Island Vermont Puerto Rico	Delaware Maine Mississippi North Carolina South Carolina Virginia New Hampshire
Commanding General, Fifth U.S. Army, Fort Sam Houston, Texas 78234.	Arkansas Iowa Michigan Ohio Wisconsin	Illinois Kentucky Minnesota Oklahoma	Indiana Louisiana Missouri Texas
Commanding General, Sixth U.S. Army, Presidio of San Francisco, California 94129.	Arizona Idaho Nebraska North Dakota Utah	California Kansas Nevada Oregon Washington	Colorado Montana New Mexico South Dakota Wyoming
Commanding General, U.S. Army Forces Command, Fort McPherson, Georgia 30330.	Alaska	Hawaii	
(2) *Army National Guard Units:* Submit requests to the State Adjutant General for the appropriate State, Puerto Rico, Virgin Islands, or the District of Columbia..			

All other Army Reservists (not in units)

Commander, U.S. Army Reserve Components Personnel and Administration Center, 9700 Page Boulevard, St. Louis, Missouri 63132.

U.S. Navy (all Ready Reservists)

Officers: Chief of Naval Personnel (Attn: Pers R-61) Navy Department, Washington, D.C. 20370.
Enlisted: Commanding Officer, Naval Reserve Personnel Center, New Orleans, La. 70149.

U.S. Marine Corps

Officer in Charge, Marine Corps Reserve Forces Administrative Activity, 1500 East Bannister Road, Kansas City, Missouri 64131.

U.S. Air Force (all Ready Reservists)

U.S. Air Force Reserve: Commander, Air Reserve Personnel Center, 7300 East First Avenue, Denver, Colorado 80280.
Air National Guard Units: Submit requests to the State Adjutant General of the appropriate State, Puerto Rico, or the District of Columbia.

U.S. Coast Guard (all Ready reservists)

Commandant, (GRA/82), United States Coast Guard, 400 7th Street, SW., Washington, D.C. 20590.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

FEBRUARY 23, 1979.

[FR Doc. 79-5867 Filed 2-27-79; 8:45 am]

[3810-70-M]

[DOD Directive 1000.20]

PART 47—DETERMINATIONS OF ACTIVE MILITARY SERVICE AND DISCHARGE

Civilian or Contractual Personnel

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule.

SUMMARY: This final rule establishes Department of Defense (DOD)

policies and procedures for the operation of a civilian/military service review board and other measures to implement the provisions of section 401 of Pub. L. 95-202, the G.I. Bill Improvement Act of 1977. The Act directs the Secretary of Defense to determine if civilian employment or contractual service rendered by groups to the Armed Forces of the United States shall be considered active military service, and, if so finding, to issue each member of such group a discharge under honorable conditions where the service of such member so warrants.

EFFECTIVE DATE: January 24, 1979.

FOR FURTHER INFORMATION CONTACT:

Captain Mary C. Pruitt, USAF, telephone: 694-5204 or 694-5074, Office of the Secretary of the Air Force (Personnel Council), (SAF/MIPC), The Pentagon, Washington, D.C. 20330.

SUPPLEMENTARY INFORMATION: On September 13, 1978, the Office of the Secretary of Defense published a proposed rule (43 FR 40884) to establish Department of Defense (DOD) policy and procedure for the operation of a civilian/military service review board to implement the provisions of section 401 of Pub. L. 95-202. Some nine written comments were received in response to the proposed rule, many of which contained substantially identical suggestions for changes. Some changes, as noted below, have been adopted. Others, as noted below, have not.

DISCUSSION OF MAJOR COMMENTS

CONDUCT OPEN MEETINGS OF THE BOARD

Comments were received that objected to the Board's meetings in closed executive sessions claiming that such meetings would violate the Government in the Sunshine Act, Pub. L. 94-469 (5 U.S.C. 552b). Some comments were based on the broad assertion that the Sunshine Act requires all meetings of Government agencies to be open to the public. The Sunshine Act only applies to an agency "* * * headed by a collegial body composed of two or more individual members, a majority of whom are appointed *to such positions* by the President with the advice and consent of the Senate * * *" (5 U.S.C. 552b(a)(1) (emphasis supplied). The DOD and its constitutent military departments do not fit this statutory definition of an "agency." Accordingly, the service review board as a subdivision entity of the DOD is not subject to the provisions of the Sunshine Act. DOD does not believe it necessary or useful to the process to conduct the board's functions in open meetings. The board was not created because it is essential to the Secretary's responsibility to make group determinations, but because it is an efficient in-house administrative procedure to allow the Secretary to discharge his responsibility more effectively.

CONDUCT OPEN HEARINGS

Some comments urged that the board conduct open hearings wherein spokespersons for groups could present the evidence and arguments for group recognition as having performed active military service and be available for questioning. In view of the broad evidentiary latitude that will be permitted in applications for group recognition, the DOD does not believe it is necessary or useful to the process to conduct open hearings. Evidence and arguments may be provided in the written applications for group recognition which should be sufficient for the board to fulfill its function; the Board can request additional information from the group.

One group contended a "precedent" for open hearings was established by the Congressional hearings held respecting proposed legislation to confer VA benefits upon the WASPs. Congressional committee hearings on proposed legislation are not unusual and serve entirely different purposes than the purposes for the service review board.

LIMITATIONS ON EVIDENCE

Many comments pointed out that limiting evidence to be considered by the board to written submissions which could be supported solely by official documents was overly restrictive and unfair. The comments urged a wide latitude in accepting relevant evidence including opportunity to present oral testimony before the board. We agree that the remarks published in the supplementary information to the proposed rule were overly restrictive in regard to the type evidence which would be accepted respecting the claims of groups seeking a finding that members performed active military service with the Armed Forces, as well as in support of individual applications for discharges. The provision for supporting documentation permits documentation by official records or other available evidence. On this point, the directive does not limit the type of evidence that may be provided with the written submission seeking group recognition, and provides that the Secretary concerned will consider whatever evidence an individual applicant for discharge may submit. To further expand the directive in this respect does not appear necessary.

Further, as noted above, the DOD does not believe that it would be useful to the process to permit oral presentations by a spokesperson(s) on behalf of groups in that such would have no more bearing than written documentation sent by applicants or researched by the advisory panel.

COMMENTS ON BOARD'S RECOMMENDATION PRIOR TO SECRETARIAL DETERMINATION

Comments received suggested that the procedure should provide that the recommendation of the board should be communicated to the applicant before submission to the Secretary and that the applicant should be given the opportunity to submit a timely response/rebuttal to the Secretary. DOD does not agree with this viewpoint. Since the Board will not be bound by formal rules of evidence, the applicant will have the opportunity to submit all the evidence he/she can gather in support of the application; the report of the advisory panel will contain the available historical information. Also, the directive specifies that the board will consider "any other relevant information available." These submissions and the total review should crystallize the issues involved. Additionally, it would be expected that all evidence in support of a group's application would be submitted/presented initially and be available for the board's review and consideration prior to preparing its recommendation.

APPEAL PROCEDURE

Some comments requested for an appeal procedure where a group is denied an active military service determination by the decision of the Secretary. Section 401 of Pub. L. 95-202 does not provide an appeal from a decision of the Secretary. It seems clear that the intent of the legislation is to provide for a final determination by the Secretary.

EXPAND BOARD AND ADVISORY PANEL TO INCLUDE MEMBERS OUTSIDE DOD

Comments were made that the constitutent membership of the service review board should include representatives from agencies outside the Department of Defense and that at least fifty percent of the board consist of civilians. These comments rest primarily on the view that some agencies outside the DOD have particular knowledge or expertise concerning the activity of certain groups, e.g., the Department of Commerce respecting the Merchant Marine. However, the judgment on whether the service of a particular type group should be equated to active military service would not appear to be within the particular competence of agencies outside the DOD. The probability of instances where assistance of historians or historical data from departments or from specific agencies/organizations outside the Department of Defense might be desirable is recognized, as is the fact that the research on various groups who apply for an active military service determination cannot and should not be unnecessarily limited. The individuals designated as Advisory Panel members will explore to the fullest extent possible all available sources of information, to include agencies and organizations outside the DOD which maintain records pertaining to certain groups' applications. Accordingly, it is not deemed necessary or useful to the process to expand the membership of the board to any agency outside the DOD. Within the DOD membership of the board there may be civilian representation as the military departments may determine, but no need for a fixed percentage of civilian membership is deemed necessary.

REASONS FOR SECRETARIAL DETERMINATION

Comments received suggested that the Secretary set forth the reasons granting or denying active military service determination for a group. The regulation has been clarified to indicate that if the Secretary does not concur in the recommendation or rationale of the board, the Secretarial decision and reasons shall be stated in writing. If the Secretary agrees with the recommendation and rationale of the board, no need appears for him to restate the basis for his action.

DETERMINATION ON ACTIVE MILITARY SERVICE

The law directs the Secretary of Defense to determine whether the service involved shall be considered active military service. The proposed rule, throughout, reflected determinations to be made on active duty. Within Title 38 the definition of active military service is more inclusive than that of active duty. In the final rule, recognizing that there could conceivably be situations in which the distinction between the two terms would be significant, and the intent in the choice of the term by the drafters of the law, the use of "actice military service" has been used vice "active duty."

STANDARD FOR CHARACTERIZATION OF DISCHARGE

Comments pointed out that the proposed rule, with respect to the issuance of discharges, failed to include reference to the specific criteria of "nature and duration of service" prescribed by the law for the purposes of determining whether a discharge will be issued. While it is correct that the law specifies "nature and duration" of service as necessary considerations, the duration of service actually has no relevance whatever to the type discharge issued. The certificate of service will show inclusive dates as far as can be determined because this information does have relevance to benefits. Qualified group members will be processed exactly the same way as military personnel are presently processed. Doubts with respect to the quality of an individual's service will be resolved in an individual's favor. This is the policy now applied to discharges and which shall apply to applicants qualifying under this law.

DOD SHOULD SEARCH THE RECORDS TO IDENTIFY INDIVIDUAL GROUP MEMBERS WHERE A GROUP RECEIVES AN ACTIVE MILITARY SERVICE DETERMINATION

Comments recommended that as soon as an affirmative determination is made with respect to any group, the Secretary concerned should be required to conduct a search of all records in control of the United States Government to identify members of the group. The DOD does not agree with this recommendation at this time. The administrative difficulty of locating all members of any group cannot be anticipated at this time. Further, it would appear to be the responsibility of the individual in a group to apply for a discharge if his/her group receives a determination of having performed active military service. In addition to the Secretary notifying in writing the person or persons who made the request for active military service determination, announcement of the group determination will also be made in the FEDERAL REGISTER and in press releases.

ADDITIONAL ITEMS INCLUDED IN FINAL RULE NOT CONTAINED IN PROPOSED RULE

The directive has been revised to include a statement that individual applications on behalf of individuals who are deceased or incompetent must be accompanied by legal proof of death or incompetency. Additionally, the directive includes a statement that the Department of Defense will not provide legal representation or defray the cost of such respecting any matters covered by the final rule. The above two statements were previously included in the supplementary information printed in the FEDERAL REGISTER on September 13, 1978, but not in the proposed rule.

INCOMPLETE APPLICATIONS

The Supplementary Information to the proposed rule indicated that if information submitted on behalf of a group was deemed incomplete, the application would be returned without prejudicing later board consideration. On reconsideration, the DOD will not adopt this procedure. Since application for a determination of active service is in the form of a claim against the government, the burden of proof is on the applicant. A review of the historical records of the appropriate service department and the material supplied in the application will form

the basis for a determination. Should additional substantive information become available, reapplication will be considered.

COMMENTS BEYOND SCOPE

CREDIT FOR RETIREMENT PURPOSES

A comment received emphasized the need for the rule to state that service rendered by groups determined to have performed active military service also be credited as service for retirement purposes. The rule now published implements Pub. L. 95-202 which authorizes recognition of previous civilian service as military service solely for purposes of entitlement to VA benefits.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

February 23, 1979.

Accordingly, 32 CFR Chapter I is amended by adding a new Part 47, reading as follows:

PART 47—DETERMINATION OF ACTIVE MILITARY SERVICE AND DISCHARGE

Sec.
47.1 Purpose.
47.2 Applicability.
47.3 Policy and Criteria.
47.4 Authorities.
47.5 Responsibilities.
47.6 Department of Defense Civilian/Military Service Review Board.
47.7 Procedures.

AUTHORITY: Section 401, Pub. L. 95-202.

§ 47.1 Purpose.

This Part: (a) Implements the provisions of Pub L. 95-202, Section 401 which directs the Secretary of Defense to determine if civilian employment or contractual service rendered by groups [1] to the Armed Forces of the United States shall be considered active military service Title 38, U.S.C. 101(24) and, if finding that it shall, to issue each member of such group an honorable discharge or a discharge under honorable conditions, as appropriate, if the service of such member so warrants;

(b) Establishes the Department of Defense Civilian/Military Service Review Board;

(c) Delegates authority vested in the Secretary of Defense by reference (a);

(d) Sets forth policy and assigns responsibilities.

[1] As defined in this rule an organization which was similarly situated to the Women's Airforces Service Pilots, and whose members rendered service to the Armed Forces of the United States in a capacity considered civilian employment or contractual service at the time such service was rendered.

§ 47.2 Applicability.

The provisions of this Part apply to the Office of the Secretary of Defense, the Military Departments, and, by agreement with the Secretary of Transportation, the U.S. Coast Guard.

§ 47.3 Policy and criteria.

(a) The Department of Defense will not provide counsel representation or defray the cost of such respecting any matters covered by this Directive.

(b) Determinations of the active military service of a group shall be made considering judicial and other appropriate precedent and may take into consideration "the extent to which (1) such group received military training and acquired a military capability or the service performed by such group was critical to the success of a military mission, (2) the members of such group were subject to military justice, discipline, and control, (3) the members of such group were permitted to resign, (4) the members of such group were susceptible to assignment for duty in a combat zone, and (5) the members of such group had reasonable expectations that their service would be considered to be active military service" (see Pub. L. 95-202, Section 401).

§ 47.4 Authorities.

The Secretary of Defense hereby delegates:

(a) To the Secretary of the Air Force the authority to determine if the service of a group constituted active military service;

(b) To the Military Department Secretaries concerned and to the Secretary of Transportation the authority to issue discharges to individuals who were members of such groups.

§ 47.5 Responsibilities.

(a) The *Secretary of the Air Force* shall:

(1) Establish the Department of Defense Civilian/Military Service Review Board.

(2) Appoint a chairperson and a member and alternate from members/employees of the Air Force in grade GS-15 or O-6 or higher.

(3) If groups claim Coast Guard active military service, ask the Secretary of Transportation to appoint one member and one alternate member in the grade of GS-15 or O-6 or higher from the Coast Guard to be an additional voting member of the Board when the Board is considering the claims of such groups.

(4) Provide a recorder, maintain the records of the Board, and provide the Board with nonvoting legal advisors as requested by the chairperson.

(b) The *Secretaries of the Army and Navy, and the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) (ASD/MRA&L)* shall appoint a member and alternate from members/employees of their organization in grade GS-15 or O-6 or higher.

§ 47.6 Department of Defense Civilian/Military Service Review Board.

(a) *Composition.* The Board shall consist of a chairperson and one representative each from the Office of the Secretary of Defense and the Departments of the Army, Navy and Air Force, and the Department of Transportation when cases involve groups claiming active Coast Guard service. Each member shall have one vote except that the chairperson shall vote only in the event of a tie vote. The chairperson and two voting members shall constitute a quorum.

(b) *Advisory Panel.* The chairperson may request historical data or the assistance of historians. For that purpose, the Secretaries of the Military Departments, and, if required, the Secretary of Transportation, shall designate a historian or an alternate as a member of the Advisory Panel. The respective departments will ensure the Advisory Panel designee is provided with the necessary administrative and legal support.

§ 47.7 Procedures.

(a) The Board will meet in executive session and will limit its reviews to:

(1) Written submissions submitted by an applicant on behalf of a group;

(2) A written report prepared by the appropriate member or members of the Advisory Panel;

(3) Any other relevant information available and the criteria established by law.

(b) The Board shall make a written recommendation to the Secretary of the Air Force, together with the reasons for the recommendation:

(1) That the service of the group be considered active military service in one of the Armed Forces of the United States; or

(2) That the service of a group not be considered active military service in one of the Armed Forces of the United States.

(c) The Secretary of the Air Force shall consider the recommendations of the Board and determine whether the service rendered by a group shall be considered active military service for the purpose of all laws administered by the Veterans Administration. If the Secretary does not concur with the recommendation or rationale of the Board, the Secretarial decision and reasons shall be stated in writing. The Secretary shall notify in writing:

(1) The person or persons who made the request for the active military service determination;

(2) The Administrator of Veterans' Affairs;

(3) The Secretaries of the Army and Navy;

(4) The ASD (MRA&L);

(5) The Secretary of Transportation when a group claimed Coast Guard service.

(d) Following a determination by the Secretary of the Air Force that the service of a group constituted active military service, individuals who were members of that group may submit an application for discharge to the appropriate Military Department.

(e) The Secretary concerned shall determine whether the applicant was a member of the group after considering the individual's evidence of membership. If the applicant is determined to have been a member of the group, the Secretary concerned will issue a certificate of service and an honorable discharge or a discharge under honorable conditions, as appropriate, consistent with the provisions of DoD Instruction 1336.1 (32 CFR 45), DoD Directive 1332.14 (32 CFR 41), and the implementing directives of the appropriate statutes of the Services concerned. In the event that the applicant challenges the characterization of a discharge issued by a Military Department, the applicant may appeal the characterization through the channels established by the Military Department's regulation, and by law.

(f) *Applications:* Applications for group determinations should be submitted to the Secretary of the Air Force (SAF/MIPC), The Pentagon, Washington, D.C. 20330.

Individual members of groups whose employment was determined to have been active military service may submit applications for discharge to the appropriate Military Department. The application may be prepared using DD Form 2168 (enclosure) or in narrative form. Applications on behalf of individuals who are deceased or incompetent must be accompanied by legal proof of death or incompetency.

[FR Doc. 79-5887 Filed 2-27-79; 8:45 am]

Enclosure

APPLICATION FOR DISCHARGE OF MEMBER OR SURVIVOR OF MEMBER OF GROUP CERTIFIED TO HAVE PERFORMED ACTIVE DUTY WITH THE ARMED FORCES OF THE UNITED STATES

(THIS FORM IS SUBJECT TO THE PRIVACY ACT OF 1974)

OMB APPROVAL NO. 22-R0400

AUTHORITY: Public Law 95-202, Sec 401, The G. I. Bill Improvement Act, and EO 9397.
PURPOSE: To assist the secretary of a military department in determining if applicant was member of a group which has been found to have performed active military service and, after an affirmative finding as to the applicant, to assist the secretary in issuing an appropriate certificate of service.
ROUTINE USE: To establish an individual personnel record.
DISCLOSURE IS VOLUNTARY: If information is not furnished, application may be returned to applicant. The use of SSN is to assure proper identification of individual and records.

(READ INSTRUCTIONS ON REVERSE BEFORE COMPLETING)

I. GROUP MEMBER PERSONAL DATA

1. MEMBER'S NAME *(Last, First, Middle) (Maiden, if any)(List alias(es))*.	2. PRESENT ADDRESS *(Include ZIP Code)*	3. SOCIAL SECURITY NO 4. DATE OF BIRTH *(Year, Month, Day)*

II. SERVICE GROUP DATA TO SUPPORT CLAIM

5. GROUP SERVED WITH	6. IDENTIFICATION NO.	7. HIGHEST GRADE/RANK/ RATING HELD	8. HIGHEST PAY GRADE *(or actual pay)*

9. DATE AND PLACE OF ENTRY INTO SERVICE	10. ACTUAL MILITARY SERVICE BEFORE OR AFTER THIS SERVICE *(Dates and departments)*
11. HOME OF RECORD AT TIME OF ENTRY	12. GRADE/RANK/RATING AT TIME OF ENTRY
13. PLACE ORDERED TO REPORT	14. SPECIALTY OR JOB TITLE(S)

15. MILITARY EDUCATION AND TRAINING

COURSE TITLE	LOCATION	DATE COMPLETED

16. DECORATIONS, MEDALS, BADGES, COMMENDATIONS, CAMPAIGN RIBBONS AWARDED OR AUTHORIZED

17. TERMINATION OF GROUP SERVICE *(Separation, discharge, resignation, etc.)*

TYPE OF TERMINATION	REASON	STATION, BASE OR LOCATION	SERVICE COMMAND AFFILIATION	DATE SVC TERMINATED *(Yr, Mo, Day)*

Applicant must sign in the space provided. If the record in question is that of a person who is deceased or incompetent, legal proof of death or incompetency must accompany this application. If the application is signed by the spouse, widow, widower, next of kin or legal representative, give relationship or status in the appropriate box below.

☐ Spouse ☐ Widower ☐ Legal Representative
☐ Widow ☐ Next of Kin ☐ Other *(Specify)*

I MAKE THE FOREGOING STATEMENTS, AS PART OF MY CLAIM, WITH FULL KNOWLEDGE OF THE PENALTIES INVOLVED FOR WILLFULLY MAKING A FALSE STATEMENT OR CLAIM. (U.S.Code, Title 18, Sec 287, 1001, provides a penalty of not more than $10,000 fine or not more than 5 years imprisonment or both.)

NAME OF APPLICANT *(Last, First, Middle)*	SOCIAL SECURITY NUMBER
MAILING ADDRESS *(Include ZIP Code. Keep Board notified of changes)*	TELEPHONE NO. *(Include area code)*
DATE / SIGNATURE OF APPLICANT	

REMARKS *(Continue on separate sheet of paper. Be sure to state member's name and social security number on each sheet.)*

DD FORM 1 NOV 78 2168

INSTRUCTIONS

1. Use typewriter or print information when completing this form. Submit in original copy only. Complete all items. If the question is not appropriate, write "NONE." Attach all documentation available to support information you enter on the form.

2. If space is insufficient, use "Remarks" section or attach additional sheet if necessary. Type or print member's name and social security number on each sheet.

3. List all attachments or inclosures.

4. Include any supporting documents which support your claim. Supporting material may include, but is not limited to, separation discharge certificates, mission orders, identification cards, contracts or personnel action forms, employment record, education certificates, diplomas, pay vouchers, certificates of awards, casualty information and any other supporting evidence of membership and character of service performed.

5. The appropriate service will not provide counsel representation for applicant nor will it defray cost of such under any circumstances.

6. In the event the service decides information provided by the applicant is incomplete, the application will be returned without prejudicing later consideration.

MAIL COMPLETED APPLICATION TO THE APPROPRIATE ADDRESS BELOW

ARMY----------COMMANDER
US ARMY RESERVE COMPONENTS
PERSONNEL & ADMINISTRATIVE CENTER (ATTN. PSD)
9700 Page Boulevard
St Louis MO 63132

NAVY----------BUREAU OF NAVAL PERSONNEL (PERS-3)
Wash DC 20370

MARINE CORPS----------COMMANDANT OF THE MARINE CORPS (Code: MCRB)
HEADQUARTERS MARINE CORPS
Wash DC 20380

AIR FORCE----------HQ AFMPC/MPCDOA1
Randolph AFB TX 78148

COAST GUARD----------OFFICE OF PERSONNEL, US COAST GUARD
400 7th ST, SW
Wash DC 20590

[FR Doc. 79-5887 Filed 2-27-79; 8:45 am]

[3810-70-M]

SUBCHAPTER R—CHARTERS

[DoD Directive 5136.1] [1]

PART 367—ASSISTANT SECRETARY OF DEFENSE (HEALTH AFFAIRS)

Delegation of Authority

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule.

SUMMARY: The Secretary of Defense has assigned functions and responsibilities to the Assistant Secretary of Defense (Health Affairs), and has delegated specific authorities. This Directive serves as the instrument that authorizes the Assistant Secretary of Defense (Health Affairs) to carry out the charter.

EFFECTIVE DATE: January 22, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Arthur H. Ehlers, Director for Organizational and Management Planning, Office of the Deputy Assistant Secretary of Defense (Administration), Washington, D.C. 20301, 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 367, reading as follows:

PART 367—ASSISTANT SECRETARY OF DEFENSE (HEALTH AFFAIRS)

Sec.
367.1 Purpose.
367.2 Responsibilities.
367.3 Functions.
367.4 Relationships.
367.5 Authorities.

AUTHORITY: The provisions of this Part 367 are issued under 10 U.S.C., Section 136, as amended.

§ 367.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense under the provisions of title 10, United States Code, section 136, as amended, one of the positions of Assistant Secretary of Defense is designated as the Assistant Secretary of Defense (Health Affairs) (hereinafter "the ASD(HA)"), with responsibilities, functions and authorities as prescribed herein.

[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.

§ 367.2 Responsibilities.

The ASD(HA) is the principal staff assistant for all Department of Defense (DoD) health matters and, as such, shall:

(a) Develop policies, provide advice, make recommendations, and issue guidance on DoD plans and programs.

(b) Develop systems, standards, and procedures for the administration and management of approved plans and programs.

(c) Initiate programs, actions, and tasking to ensure (1) adherence to DoD policies and National health objectives; and (2) that programs are designed to accommodate operational requirements.

(d) Review and evaluate programs for carrying out approved policies and standards.

(e) Participate in those planning, programing, and budgeting activities which relate to ASD(HA) responsibilities.

(f) Promote coordination, cooperation, and mutual understanding within the Department of Defense and between the DoD and other Federal agencies and the civilian community.

(g) Serve on boards, committees, and other groups pertaining to assigned functional areas. Also represent the Secretary of Defense on HA matters outside the Department of Defense.

(h) Establish requirements for DoD research and development programs in medical fields, and keep abreast of technical developments to provide for their orderly transition to operational status.

(i) Establish requirements and standards for medical facilities and material acquisition programs.

(j) Execute such other responsibilities as may be prescribed.

§ 367.3 Functions.

The ASD(HA) shall:

(a) Carry out the responsibilities described in section B for the following functional areas:

(1) Preventive medicine and health care delivery, including dental affairs.

(2) Drug abuse.

(3) Alcohol abuse.

(4) Procurement, professional development and retention of medical and dental personnel, and related health care specialists.

(b) Perform such other functions as may be assigned.

§ 367.4 Relationships.

(a) In the performance of assigned duties, the ASD(HA) shall:

(1) Report to the Secretary of Defense through the ASD (Manpower, Reserve Affairs, and Logistics) on all matters that have significant manpower and logistics resource implications.

(2) Report directly to the Secretary of Defense on all other matters, including recommendations of disability or fitness of particular members of the Armed Forces.

(b) Notwithstanding anything in paragraph 1, the ASD(HA) shall enjoy direct access to the Secretary or Deputy Secretary of Defense, as appropriate.

(c) The ASD(HA) shall provide policy guidance to, and exercise direction, authority, and control over the Office of Civilian Health and Medical Program of the Uniformed Services consistent with title 10, United States, Code, Chapter 55, and DoD Directive 5105.46[1], "Civilian Health and Medical Program of the Uniformed Services," December 4, 1974.

(d) The ASD(HA) shall provide policy guidance to, and exercise direction, control and authority over the Office of the Tri-Service Medical Information System (OTRIMIS).

(e) All DoD organzations shall coordinate all matters concerning the functions cited in § 367.3 with the ASD(HA).

§ 367.5 Authorities.

(a) The ASD(HA) is hereby delegated authority to:

(1) Issue DoD Instructions and one-time directive-type memoranda, consistent with the provisions of DoD Directive 5025.1[1], Department of Defense Directives Systems," November 18, 1977, which carry out policies approved by the Secretary of Defense in assigned fields of responsibility. Instructions to the Military Departments will be issued through the Secretaries of those Departments, or their designees. Instructions to Unified or Specified Commands will be issued through the Joint Chiefs of Staff.

(2) Obtain such reports, information, advice, and assistance, consistent with the policies, and criteria of DoD Directive 5000.19[1], "Policies for the Management and Control of Information Requirements," March 12, 1976.

(3) Communicate directly with 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 Unified and Specified Commands.

(4) Make determinations with respect to the uniform implementation of laws relating to separation from the Military Departments by reason of physical disability as prescribed in DoD Directive 1332.18[1], "Uniform Interpretation of Laws Relating to Separation from the Military Service by Reason of Physical Disability," September 9, 1968.

(5) Develop, issue, and maintain regulations, with the coordination of the Military Departments, as necessary and appropriate to fulfill the Secre-

tary of Defense responsibility to administer title 10, United States Code, Chapter 55.

C. W. DUNCAN, Jr.,
Deputy Secretary of Defense.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

FEBRUARY 20, 1979.

[FR Doc. 79-5975 Filed 2-27-79; 8:45 am]

[7710-12-M]

Title 39—Postal Service

CHAPTER I—UNITED STATES POSTAL SERVICE

PART 111—GENERAL INFORMATION ON POSTAL SERVICES

Parcel Post Classification Matters

AGENCY: Postal Service.

ACTION: Interim regulations with comments invited for consideration in final rulemaking.

SUMMARY: As announced in the FEDERAL REGISTER on February 15, 1979 (44 FR 9819), and corrected on February 23, 1979 (44 FR 10803), the Postal Service will implement a restructured bulk parcel post classification on February 25, 1979 on a temporary basis. Implementing regulations for this restructured subclass have been developed and are set forth below. Although they are to take effect on February 25, 1979, comments on these regulations are solicited, and will be considered in drafting regulations for a permanent classification change if the Postal Service proposal is approved.

EFFECTIVE DATE: February 25, 1979, and until final regulations are issued. Comment Date: Written comments should be received on or before May 1, 1979.

ADDRESS: Written comments should be directed to the Director, Office of Mail Classification, Rates and Classification Department, U.S. Postal Service, Room 1610, 475 L'Enfant Plaza SW., Washington, D.C. 20260. Copies of all written comments received will be available for public inspection and photocopying between 9 a.m. and 4 p.m. Monday through Friday in the Office of Mail Classification, Room 1610, at the above address.

FOR FURTHER INFORMATION CONTACT:

Ernest Collins, (202) 245-4749.

SUPPLEMENTARY INFORMATION: Classification schedule provisions on bulk rate parcel post in effect prior to this temporary classification change do not reflect the actual costs of processing volume shipments of parcel post. This temporary classification change recognizes that when bulk parcel post is entered in large shipments in containers approved by the Postal Service at facilities with properly equipped acceptance operations and with direct transportation to Bulk Mail Centers, the Postal Service's costs are lowered because of reduced acceptance and handling costs and increased processing that can be done automatically in Bulk Mail Centers and associated facilities. These cost reductions, in turn, may be shared with customers through lower rates and a simplified rate structure that better tracks cost incurrence. To implement this temporary classification change, acceptance and verification procedures considered necessary by the Postal Service must be included. These regulations, which are summarized below, must be in effect if the restructured bulk rate parcel post subclass is to be implemented on February 25, 1979.

SUMMARY OF ELIGIBILITY REQUIREMENTS—FOURTH-CLASS PARCEL POST BULK RATE MAIL

1. A mailing must consist of at least 50 pieces.

2. Mailings at Fourth-Class parcel post bulk rates may be deposited only in designated facilities and at times specified by the Postal Service. Matter mailed at Fourth-Class Parcel Post Bulk Rates will be accepted only at postal facilities having both the capability for bulk acceptance, including weighing and postage computation, and direct transportation to a BMC or ASF serving that facility. Fourth-Class parcel post bulk rate mail will be accepted at the acceptance unit of all BMC's, ASF's, and SCF's, during all hours when the bulk mail acceptance unit is open for business. In addition, mailers may contact their local post office to identify any other postal facilities which have been designated as acceptance points for Fourth-Class Parcel Post Bulk Rate Mailings. Postmasters will contact their Management Sectional Center (MSC) to determine available acceptance facilities.

3. Identical and non-identical pieces may be mailed in the same mailing.

4. The pieces must meet the machinability guidelines as published in the December 7, 1978 Postal Bulletin No. 21167. Outside or irregular parcels do not qualify for the Fourth-Class Bulk Parcel Post subclass. Note that items weighing as little as 8 ounces may qualify.

5. The per piece postage charge must be paid by meter stamps. The per pound postage charges may be paid from a trust account.

6. Both the per piece and the per pound postage charges may be paid by meter stamps. If both the per piece and per pound postage charges are paid by meter stamps, the mailer must complete Form 3602-PC, Statement of Mailing Bulk Rates.

7. If the per pound postage is paid from an advance deposit trust account, the mailer must complete Form 3605, Statement of Mailing—Bulk Zone Rates.

8. The mailer must indicate on the mailing statements the total number of pieces mailed to destinations within the origin BMC/ASF area, and the number of pieces mailed to destinations outside the BMC/ASF area.

9. Except for pieces mailed to destinations within the BMC/ASF area, the current zone system is applicable for determining parcel post zones.

10. Parcels bearing only the per piece charge must be separated by rate area (i.e., within either a BMC or an ASF area or by zones for pieces mailed to destinations outside the area served by the BMC or ASF of mailing).

11. Parcels must be placed in appropriately labeled containers approved by the local MSC Manager.

If the mailer sacks the machinable parcels, the sack label must be prepared as follows:

CLEVELAND OH 44101	...CITY, STATE, 5-DIGIT ZIP CODE
4C MACH PP ZONE 4	...CLASS, CONTENTS, PARCEL POST ZONE NO.
FR J COMPANY BOSTON MA	...MAILER, MAILER LOCATION

12. Permit Imprint postage will be recorded in AIC 132, Permit Imprint, All Other.

The per piece and per pound postage rates for this temporary classification change are based on whether parcels are mailed to destinations (1) within the origin Bulk Mail Center (BMC) service area, not including ASF's, (2) within the origin Auxiliary Service Facility (ASF) service area destinations,

or (3) between BMC/ASF service areas.

For purposes of Fourth-Class Parcel Post Bulk Rate Matter mailed in Alaska, only pieces originating and destinating within Alaska will qualify for the BMC/ASF area rate. The Honolulu, Hawaii, and San Juan, Puerto Rico, SCF's will be considered BMC's for purposes of Fourth-Class Parcel Post Bulk Rates so that only parcels originating and destinating within those SCF areas, respectively, will qualify for the BMC/ASF area rate.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service ordinarily invites comments from the public whenever it proposes new or amended regulations, such as these, which might have a substantial effect on the public. In this case, however, publishing these rules as proposals, with a comment period of 30 days, would delay implementation of this restructured subclass to the disadvantage of mailers who might otherwise utilize the subclass.

Accordingly, the Postal Service finds it unnecessary and contrary to the public interest to follow its customary practice of publishing these rules as proposed rules for comment before they become effective. See 5 U.S.C. 553(d). However, we reiterate that comments are welcomed on the published rules, and that any proposed changes will be considered and acted upon as appropriate.

In view of the considerations discussed above, the Postal Service hereby adopts the following revisions of the Postal Service Manual:

PART 135—FOURTH CLASS

1. In Part 135, amend the Exception in .111; amend .112, .21, .22, .42, .82, and add new .43 to read as follows:

135.11 FOURTH-CLASS (PARCEL POST) ZONE RATES

135.111 Single Piece Zone Rates

* * * * *

Exceptions:

a. Parcels weighing less than 15 pounds, and measuring over 84 inches but not exceeding 100 inches in length and girth combined, are chargeable with a minimum rate equal to that for a 15 pound parcel for the zone to which addressed. See 135.3 for size and weight restrictions.

b. Parcels which are not machinable because of their weight, shape or contents (see Part 128 for definition of non-machinability) are subject to a surcharge of $1.50 per piece.

.112 Fourth-Class Parcel Post Bulk Rates

Rate Area	Per Piece Charge	Additional Per Pound Charge
BMC/ASF Area [1]	$1.05	$0.035
Outside BMC/ASF Area: [2]		
Zones 1 and 2	1.26	.033
Zone 3	1.26	.053
Zone 4	1.26	.078
Zone 5	1.26	.119
Zone 6	1.26	.171
Zone 7	1.26	.219
Zone 8	1.26	.342

[1] For mail to destinations within the origin BMC (or within the origin ASF) service area.

[2] For mail to destinations outside the origin BMC (or outside the origin ASF) service area.

The applicable per-pound charge is added to the applicable per-piece charge to determine the full postage charge for the piece. Mailers have the option of affixing only the postage for the per-piece charge to the parcel, and having the Postal Service compute the per-pound charge. Postage will be rounded up to the next cent when affixed to parcels and the per-pound postage charge amount will be rounded up to the next cent for each rate area when the per-pound postage is charged against an advance deposit trust account.

135.2 CLASSIFICATION

.21 FOURTH CLASS MAIL

Fourth-Class mail consists of mailable matter:

a. Not mailed or required to be mailed as First-Class Mail;

b. Weighing sixteen ounces or more, except for Fourth-Class Parcel Post Bulk Rate Mail, each piece of which must weigh eight ounces or more; and

c. Not entered as Second-Class mail (except as specifically provided for transient matter).

.22 FOURTH-CLASS PARCEL POST BULK RATE MAIL

.221 Requirements. Mailings of 50 or more machinable parcels (as defined in Part 128) may be mailed at the Fourth-Class parcel post bulk rates. Parcels need not be of identical size or weight. Mailings must be submitted in a container or containers authorized by the local MSC manager.

.222 Separation. The mailer must separate mailing pieces for delivery within the origin BMC/ASF area from pieces for delivery outside the origin BMC/ASF area. In addition, when postage is paid by permit imprint, pieces for destinations outside the origin BMC/ASF area must be sorted by zones so that the per pound postage may be calculated and/or verified. This requirement may be waived by the Postal Service under the provisions of 145.8 and 145.9.

.223 Special Services. The insurance and COD services may be used on mailings sent at Fourth-Class Parcel Post Bulk Rates. However, special services may not be used selectively for individual parcels mailed at these rates. Selective special services may be used in conjunction with postage payment verification systems approved under 145.8 and 145.9.

.224 Markings Required. The words "Parcel Post Bulk Rate" or "Parcel Post Blk. Rt." must be incorporated as part of the permit imprint or be printed or rubber stamped above the address and to the left or below the permit imprint or meter stamps when all postage is paid by postage meter stamps or through an advance deposit trust account. If only the pound rate is paid by permit, the endorsement must read, "Parcel Post Bulk Rate Pound Rate Postage Paid."

135.4 PAYMENT OF POSTAGE

* * * * *

.42 BULK RATE MAILINGS

.421 All Fourth-Class Matter. Mailers of Fourth-Class matter bulk rates must pay postage by permit imprint or meter stamps and shall complete and submit Form 3602, Form 3602-PC, or Form 3605 as appropriate, with each mailing.

.422 Parcel Post Bulk Rate Mail. The per piece postage for matter mailed at the Fourth-Class parcel post bulk rates must be paid by meter stamps. Mailers may pay the per piece and per pound postage by meter stamps or pay the per pound postage from an advance deposit trust account (permit imprint) unless authorized under 145.8 and 145.9.

.43 FOURTH-CLASS PARCEL POST BULK RATE MAILINGS

.431 Acceptance and Verification

The accepting employee must:

a. Examine materials presented for mailing, to determine that they qualify for the rate.

b. Selectively determine that mail has proper postage affixed, meets separation requirements and other requirements. (See 135.44 for reasons for disqualification.)

c. If the pound rate is paid through a trust account, weigh the mail being sent to each zone to verify the mailer's mailing statement. If the mailer chose not to complete weight and postage portions of the Form 3605, complete the form and note on the mailing statement, "USPS weights and calculations" and initial the note.

d. The piece count need only be verified if it is apparent that the mailing does not meet the 50 piece minimum requirement.

e. Fill out the back of the mailing statement, Form 3602-PC or Form 3605 and at the same time, by carbon, prepare Form 3607. If the mailer requests a receipt, he must present a duplicate copy of the mailing statement which will be delivered to him after the back is filled out.

f. Send mail, accompained by Form 3607, to clearing point for processing.

.432 Non-qualified Mailings

a. A mailing may be refused for any of the following reasons:

(1) Failure to meet minimum quantity.

(2) Mailing contains non-machinable pieces.

(3) Improper postage affixed or reported on the mailing statement.

(4) Improper separation by zones, if postage paid through a trust account.

(5) Improper or missing ZIP Code on pieces.

(6) Improper or missing postal endorsements.

(7) Insufficient advance deposits.

(8) Contains matter which is not qualified to be mailed at Fourth-Class rates.

(9) Failure to submit mailing in acceptable containers.

b. Mailers are to be contacted when a mailing cannot be accepted. The mailer shall always be given the opportunity to either:

(1) Take the mail back for correction of the discrepancies.

(2) Pay the postage for the mailing at a rate for which the mailing qualifies. The mailer need not change the endorsement on the mailer's first mailing that has been refused and which is resubmitted at a different rate.

135.8 PLACE OF MAILING

135.82 Mailings at bulk or presort rates may be deposited only in designated facilities and at times specified by the Postal Service. Fourth-Class parcel post bulk rate mail will be accepted only at post offices having both the capability for bulk acceptance, including weighing, postage computation capability, and direct transportation to a parent BMC or ASF. Fourth-Class parcel post bulk rate mail will be accepted at the acceptance unit of all BMC's, ASF's, and SCF's. Mailers may contact their local post office to determine where Parcel Post bulk rate mailings may be entered. Postmasters may contact their MSC to identify authorized acceptance facilities.

PART 145—PERMIT IMPRINTS

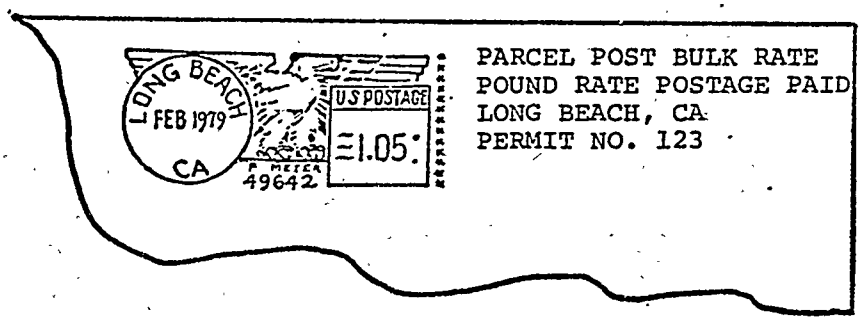
2. In part 145, redesignate .4e and .4f as .4f and .4g respectively; redesignate .51f and .51g as .51g and .51h respectively; revise .51d and e, and add new .4e and .51f to read as follows:

145.4 FORM OF PERMIT IMPRINTS

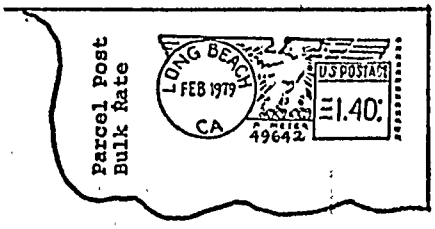
* * * * *

e. Fourth-Class Bulk Parcel Post Mail

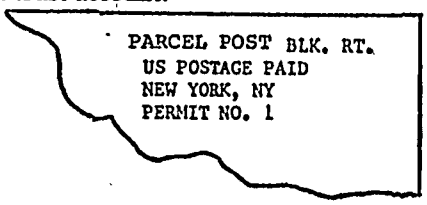
(1) When piece charge is paid by meter stamp and pound rate charges paid through a trust account:



(2) When all postage is paid by meter stamp:



(3) When all postage is paid through a trust account:



145.5 Mailings With Permit Imprints

.51 Minimum Quantities

* * * * *

d. Fourth-Class Mail, except parcel post bulk rate mailings and bound printed matter, two-hundred and fifty pieces of identical matter.

e. Fourth-Class Bound Printed matter, three-hundred or more identical pieces.

f. Fourth-Class Parcel Post Bulk Rate Mail, fifty pieces.

[7710-12-C]

FOR ZONE RATED MAIL USE PS FORM 3605.

U.S. POSTAL SERVICE STATEMENT OF MAILING BULK RATES	MAILER: Complete all items by typewriter, pen or indelible pencil. Prepare in duplicate if receipt is desired. Check for instructions from your postmaster regarding box labelled "RCA Offices".	PERMIT NO. 3400

POST OFFICE	DATE	RECEIPT NO.	NUMBER OF SACKS	TRAYS	OTHER CONTAINERS
Washington, D.C.	3/6/79	10-79	20		

☐ *1st–Letters, written matter, post cards, at presort discount rate.* ☐ *3rd–Circulars and other printed matter.* ☐ *3rd–Merchandise less than 16 ozs.* ☐ *3rd–Books or catalogs of 24 pages or more, seeds, etc., less than 16 ozs.* 4th-Bulk Zone Rates (Parcel Post)

RCA Offices:

NAME AND ADDRESS OF PERMIT HOLDER *(Include ZIP Code)*: ABC Company, 555 Main Street, City, MD 20015

TELEPHONE NO.: 245-XXXX

☐ Check if non-profit under 134.5, PSM*

Postage is being paid by: (Check one) ☐ *Pre-canceled Stamps* ☒ *Meter Stamps*

Number of pieces in mailing: 50 Within BMC, 100 Outside BMC *Weight of a single piece.* ozs.

Postage chargeable per piece: Total postage $183.55

NAME AND ADDRESS OF INDIVIDUAL OR ORGANIZATION FOR WHICH MAILING IS PREPARED *(If other than permit holder)*

☐ CHECK HERE, if mailing is not eligible for discount and mailer elects to pay the full rate.

PRESORT DISCOUNT IF APPLICABLE

PRESORTED PIECES	NO. PIECES	AT	AMOUNT $
RESIDUAL PIECES	NO. PIECES	AMT DUE *(Residual Pieces X 2¢ if full postage is not affixed)*	$

* The signature of a nonprofit mailer certifies that: (1) The mailing does not violate section 134.57, PSM; and (2) Only the mailer's matter is being mailed; and (3) This is not a cooperative mailing with other persons or organizations that are not entitled to special bulk mailing privileges; and (4) This mailing has not been undertaken by the mailer on behalf of or produced for another person or organization that is not entitled to special bulk mailing privileges.

SIGNATURE OF PERMIT HOLDER OR AGENT *(Both principal and agent are liable for any postage deficiency incurred)*: Wendell Pugh

TELEPHONE NO.: 245-XXXX

PS Form 3602-PC Oct 1978 *Willful Entry of false, fictitious or fraudulent statements or representations hereon punishable by fine up to $10,000 or imprisonment up to 5 years, or both (18 USC 1001).*

FOR USE OF POSTAL SERVICE ONLY

WEIGHING SECTION—COMPLETE APPLICABLE PART BELOW

STATION OR UNIT: Washington, D.C.

PERMIT NO.: 3400

FINANCE NO.: 0 0 0 0 0 0

ZIP CODE: 2 0 0 1 3

NAME OF PERMIT HOLDER: ABC Company

RECEIVED AND WEIGHED — DATE: 0 3 0 6 7 9 TIME: 2 A.M.

☐ LETTER MAIL – *All mail normally processed through letter cases.*
☐ FLATS – *All mail normally processed through flat cases.*
☒ OTHER MAIL – *Not normally distributed in letter or flat cases.*

RCA OFFICES ONLY

NUMBER OF SACKS	TRAYS	OTHER CONTAINERS	CLASS	WEIGHT OF A SINGLE PIECE	POSTAGE CHARGEABLE PER PIECE	TOTAL PIECES IN MAILING	NO. OF DISCOUNT PIECES
20			4th	N/A	N/A	N/A	N/A

NO. OF RESIDUAL PIECES	AT	AMOUNT $
		N/A

Weighing is necessary only if sufficient quantity to qualify for bulk rate is in question or not readily identifiable.	FOR TOTAL MAILING	Weight of a single piece (oz.)	Total weight of mailing (lbs.)	Less TARE (lbs.)	Net total weight of mailing (lbs.)	Total number of pieces in mailing

I CERTIFY that this mailing has been inspected to verify that it qualifies for the rate of postage being paid, and that it is properly prepared (and presorted where required) and that the statement of mailing on the reverse of this form has been verified and the necessary annual fee has been paid.

Bob Hurwitz
(Signature of Weigher)

☆U. S. Government Printing Office: 1978—650-371

FINANCIAL DOCUMENT—FORWARD TO FINANCE OFFICE

U.S. POSTAL SERVICE

STATEMENT OF MAILING – BULK ZONE RATES

POST OFFICE	SIGNATURE OF PERMIT HOLDER OR AGENT & TELEPHONE NO. (Certified true and correct)	DATE OF MAILING	PERMIT NO.
Long Beach, CA	Dave Neal 945-5273	2-14-79	1972

NAME AND ADDRESS OF PERMIT HOLDER	NAME AND ADDRESS OF PERSON OR FIRM FOR WHICH MAILING IS PREPARED (If other than permit holder)	WEIGHT OF A SINGLE PIECE	NUMBER OF SACKS	TRAYS	OTHER CONTAINERS
Neals Bookstore 1900 Maple Los Alamitos, CA 90720		N/A lbs. ozs.			12

MAILER: Complete all items by typewriter, pen or indelible pencil. Prepare in duplicate if receipt is desired.

1. ZONES	2. NUMBER OF PIECES	3. PIECE RATE BPM	3. PIECE RATE P.P.[1]	4. TOTAL PIECE RATE CHARGE (2 x 3)	5. NUMBER OF POUNDS	6. POUND RATE BPM	6. POUND RATE	7. TOTAL POUND RATE CHARGE (5 x 6)	8. POSTAGE CHARGEABLE (CAT = Columns 4 + 7) (P.P. = Column 4)
LOCAL BMC	900	35¢			4483	.1¢	3.5	156.91	
1 and 2		46¢			2196	.9¢	3.3	71.58	
3		46¢			1969	2.1¢	5.3	104.36	
4		46¢		N/A		4.1¢	7.8		N/A
5		46¢				7.5¢	11.9		
6		46¢				11.4¢	17.1		
7		46¢				16.8¢	21.9		
Inter BMC	800	46¢		piece rate		18.7¢	34.2		
TOTALS	1700			paid by meter	8621			332.85	

PS Form 3605 May 1978

[1] Write in the Rates for Parcel Post or Bulk Parcel Post as appropriate, based on the average weight of a single piece rounded up to the nearest pound.

☆ USGPO 1978 750-163/1918 Region 5-1

FOR USE OF POSTAL SERVICE ONLY

WEIGHING SECTION—COMPLETE APPLICABLE PART BELOW

STATION OR UNIT	PERMIT NO.
Main Office	1972 ☐ (Check here if company permit)

FINANCE NO.	ZIP CODE	NAME OF PERMIT HOLDER
0 5 4 4 8 2	9 0 8 0 1	Neals Bookstore

RECEIVED AND WEIGHED		
DATE	TIME	
0 2 1 4 7 9	2 A.M. P.M.	☐ LETTER MAIL—All mail normally processed through letter cases. ☐ FLATS—All mail normally processed through flat cases. ☒ OTHER MAIL—Not normally distributed in letter or flat cases.

RCA OFFICES ONLY

NUMBER OF SACKS	TRAYS	OTHER CONTAINERS	CLASS	WEIGHT OF A SINGLE PIECE	NUMBER OF PIECES IN A POUND	TOTAL PIECES	TOTAL POUNDS
		12	4th	N/A	N/A	N/A	8621

	LOCAL	1 and 2	3	4	5	6	7	8	TOTALS
1. LBS. NET (1-2)	4483	2169	1969						8621
2. LBS. TARE	2160	1080	1080						4320
1. LBS. INCL. TARE	6643	3249	3049						12941

TOTAL POSTAGE $ 332.85

Pound Rate Postage Only

I CERTIFY that this mailing has been weighed, the mailer's statement of mailing verified, and the mailing examined to verify that it is properly prepared and any required presort has been properly made.

Rocky Jones
(Signature of Weigher)

FINANCIAL DOCUMENT – FORWARD TO FINANCE OFFICER

[7710-12-M]

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the Postal Service proposal on the restructured bulk parcel post subclass is approved.

(39 U.S.C. 401, 403, 404, 3621, 3623, 3641)

LOUIS A. COX,
General Counsel.

[FR Doc. 79-5904 Filed 2-23-79; 3:29 pm]

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 1014-3]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart O—Illinois

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: These final rules are revisions to the Illinois State Implementation Plan (SIP) submitted by the Illinois Environmental Protection Agency (IEPA) under section 110 of the Clean Air Act. These revisions pertain to emission limitations for particulate matter from grain handling and grain drying operations. The objectives of these regulations, as viewed by U.S. Environmental Protection Agency (EPA), are to control particulate emissions from such operations and to maintain satisfactory air quality.

EFFECTIVE DATE: March 30, 1979.

FOR FURTHER INFORMATION CONTACT:

Daniel R. Adams, Illinois State Specialist, Air Programs Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 353-2205.

SUPPLEMENTARY INFORMATION: The Illinois SIP does not currently contain a specific regulation for controlling particulate emissions generated from grain handling and drying operations. However, the Illinois SIP does control particulate emissions from grain handling and drying operations through a general process weight emission standard which the IEPA has found to be inadequate in controlling emissions from this category of sources. This revision to the Illinois SIP is a supplement to Rule 203 of the Illinois Air Pollution Control Regulations. It provides for control strategies on grain handling operations depending on the grain throughput capacity of the operation.

On November 6, 1972, the IEPA proposed amendments (R72-18) to Chapter 2 of the Air Pollution Regulations for the purpose of altering particulate regulations and operating permit requirements for grain handling and drying operations. The Illinois Pollution Control Board (IPCB) held three public hearings on the IEPA proposal: on March 14, 1973, in Urbana; April 23, 1973, in Peoria; and May 16, 1973, in Galesburg. As a result of these hearings a joint IEPA-Industry Task Force was organized to develop revisions to the proposed regulations.

On April 22, 1974, the IEPA submitted the proposed amendments to the IPCB. Public hearings on these proposals were held: on June 18, 1974, Mount Vernon; June 24, 1974, Decatur; July 9, 1974, Galesburg; July 17, 1974, La Salle-Peru; and August 5, 1974, Chicago. Relevant testimony and documents submitted during the 1973 public hearings for Regulation R72-18 were included as a part of this proceeding.

On June 13, 1975, the IPCB adopted Air Pollution Regulations R72-18. This amendment to the Illinois Air Pollution Control Regulations allows certain existing grain handling facilities the option of complying with the particulate limiting regulations that generally apply to all other facilities (Rules 202(b), 203(a), 203(b), 203(c), and 203(f)(2)), in lieu of complying with the provisions under Rule 203(d)(9) with the exception of the Housekeeping Practices in Rules 203(d)(9)(A) and 203(d)(9)(K). The amendment also establishes a permit system under which existing grain handling operations with an annual grain throughput of 300,000 bushels or more, and existing grain drying operations with a total grain drying capacity in excess of 750 bushels per hour for 5 percent moisture extraction, shall apply for an operating permit by December 31, 1975. All grain handling and drying operations, regardless of size, must implement and use specific housekeeping practices. With regard to grain handling facilities having a grain throughput exceeding two million bushels per year and located within designated major population areas, air pollutants collected must be ducted through air pollution control equipment which has a removal efficiency of 98 percent by weight prior to release into the atmosphere.

On June 30, 1975, the IPCB promulgated the air pollution control regulations for grain handling and drying operations. This regulatory change was submitted to the U.S. EPA as a proposed revision to the Illinois SIP on November 29, 1977.

On April 21, 1978 (43 FR 17004), the U.S. EPA proposed to approve this SIP revision. The State of Illinois was the only commenter on this proposal. Illinois clarified the point that the actual effect of Rule 203(d)(9)(K) is to allow certain existing grain handling facilities the option of complying with particulate regulations that generally apply to all other facilities in lieu of complying with the specific regulations for grain handling and drying operations under Rule 203(d)(9) with the exception of the Housekeeping Practices in Rules 203(d)(9)(A) and 203(d)(9)(K). The proposed revision is consistent with current U.S. Environmental Protection Agency policies and goals set forth in the requirements of section 110(a)(2)(A)-(K) of the Clean Air Act and 40 CFR Part 51.

On August 5, 1977 (42 FR 39664), the EPA approved a revised emergency episode regulation for Illinois. However, the submittal date, which will be codified at 40 CFR 52.720(c)(12), was incorrectly printed as June 22, 1976, instead of July 22, 1976. This submittal date is being corrected today and does not affect in any way the finality of the August 5 approval action.

Part 52 of Chapter 1, Title 40, Code of Federal Regulations, is amended as follows:

Subpart O—Illinois

1. Section 52.720 is amended by correcting paragraph (c)(12) and adding new paragraph (c)(13) as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(12) On July 22, 1976, the Director of the Illinois Environmental Protection Agency submitted revised emergency episode regulations.

(13) On November 29, 1977, the Director of the Illinois Environmental Protection Agency submitted grain handling and drying emission limitations as revisions to Rule 203.

(42 U.S.C. 7410)

Dated: February 23, 1979.

DOUGLAS M. COSTLE,
Administrator.

[FR Doc. 79-5959 Filed 2-27-79; 8:45am]

[7035-01-M]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

PART 1033—CAR SERVICE

DECISION

[Service Order No. 1359]

American Rail Heritage, Ltd. d/b/a Crab Orchard and Egyptian Railroad Authorized to Operate Over Tracks Formerly Operated by Illinois Central Gulf Railroad Company

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order, Service Order No. 1359.

SUMMARY: Service Order No. 1359 authorizes American Rail Heritage, Ltd., d/b/a Crab Orchard and Egyptian Railroad (CO&E) to operate over Illinois Central Gulf Railroad Company (ICG) tracks between Ordill and Mande, Illinois. The ICG Railroad has filed for abandonment of this portion of their lines and has placed an embargo against all traffic to and from all stations on the Mande District. Operation by the CO&E over these ICG tracks is necessary to provide rail service to shippers located adjacent to this line.

DATES: Effective 4:00 p.m., February 16, 1979. Expires 11:59 p.m., June 15, 1979.

FOR FURTHER INFORMATION CONTACT:

J. Kenneth Carter, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, Telephone (202) 275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION: The order is printed in full below.

Decided February 16, 1979.

The Illinois Central Gulf Railroad Company is unable to operate over its Mande District between Seely Jct., Illinois, milepost 93.5 and Mande, Illinois, milepost 108.00 because of track conditions between Seely Jct., and Ordill, Illinois, milepost 99.47. The American Rail Heritage, Ltd. d/b/a Crab Orchard and Egyptian Railroad (CO&E) in Finance Docket No. 28360, has requested authority to acquire and operate that portion of the line between Ordill and Mande and is willing to perform operations in order to provide essential rail service to shippers located in that area. Traffic handled by the CO&E will be routed via the Missouri Pacific through an interchange at Mande. The necessary rates and routes have been published by the Missouri Pacific in its tariffs. If service over this line is not provided by the CO&E, numerous shippers on the line will be left without essential railroad service. In the opinion of the Commission, operation by the CO&E over these tracks of the ICG is necessary in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure herein are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, That:

§ 1033.1359 Service Order No. 1359.

(a) *American Rail Heritage, Ltd. d/b/a Crab Orchard and Egyptian Railroad authorized to operate over tracks formerly operated by Illinois Central Gulf Railroad Company.* American Rail Heritage, Ltd. d/b/a Crab Orchard and Egyptian Railroad (CO&E) is hereby authorized to operate over Illinois Central Gulf Railroad Company tracks between milepost 99.47 near Ordill, Illinois, and milepost 108.00 near Mande, Illinois, pending disposition of the application of American Rail Heritage, Ltd. for permanent authority.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign traffic.

(c) *Rates applicable.* Traffic originating or terminating on the CO&E will be handled through the newly established interchange with the Missouri Pacific Railroad Company at Marion, Illinois, and at rates in tariffs lawfully filed with the Commission.

(d) *Effective date.* This order shall become effective at 4:00 p.m., February 16, 1979.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., June 15, 1979, unless otherwise modified, changed or suspended by order of this Commission.

(49 U.S.C. 10304-10305 and 11121-11126.)

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-5827 Filed 2-27-79; 8:45 am]

[7035-01-M]

[S. O. No. 1357]

PART 1033—CAR SERVICE

Chicago, Milwaukee, St. Paul and Pacific Railroad Company Authorized to Operate Over Tracks Abandoned by Chicago and North Western Transportation Company

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order, Service Order No. 1357.

SUMMARY: Service Order No. 1357 authorizes the Chicago, Milwaukee, St. Paul and Pacific Railroad Company to operate over approximately 2,431 feet of track authorized to be abandoned by the Chicago and North Western Transportation Company at Hawarden, Iowa. Service by the MILW over these tracks will provide continued rail service to shippers located adjacent to these tracks in Hawarden.

DATES: Effective 12:01 a.m., February 21, 1979. Expires 11:59 p.m., August 15, 1979.

FOR FURTHER INFORMATION CONTACT:

J. Kenneth Carter, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C., 20423, Telephone (202) 275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION: Decided February 16, 1979.

In Docket AB-1 (Sub-No. 9) the Chicago and North Western Transportation Company (CNW) was authorized to abandon its line between Hawarden, Iowa, and Salem, South Dakota.

CNW has sold approximately one-and-one-half miles of the line in Hawarden, Iowa, to the City of Hawarden. The Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW) is willing to operate over this line at Hawarden in order to provide continued rail service to shippers at Hawarden.

MILW must operate over approximately 2,431 feet of track abandoned by CNW to gain access to this industrial track in Hawarden. CNW has consented to use of this track by the MILW.

Operation by MILW over these tracks abandoned by the CNW is nece-

sary in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure herein are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, that

§ 1033.1357 Service Order No. 1357.

(a) *Chicago, Milwaukee, St. Paul and Pacific Railroad Company authorized to operate over tracks abandoned by Chicago and North Western Transportation Company.* The Chicago, Milwaukee, St. Paul and Pacific Railroad Company (MILW) is authorized to operate over tracks abandoned by the Chicago and North Western Transportation Company (CNW) at or near Hawarden, Iowa, covering the westerly 278.5 feet of CHW track No. 71 and from CHW valuation station 12882 plus 16.7 to valuation station 12858 plus 38 and valuation station 1616 plus 90 to valuation station 1616 plus 37, a distance of approximately 2,431.7 feet, for the purpose of serving shippers at Hawarden, Iowa.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign traffic.

(c) *Effective date.* This order shall become effective at 12:01 a.m., February 21, 1979.

(d) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., August 15, 1979, unless otherwise modified, changed or suspended by order of this Commission.

(49 U.S.C. 10304-10305 and 11121-11126.)

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael. Member John R. Michael not participating.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-5912 Filed 2-27-79; 8:45 am]

[7035-01-M]

[S.O. No. 1358]

PART 1033—CAR SERVICE

Substitution of Refrigerator Cars for Boxcars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order Service Order No. 1358.

SUMMARY: There is a substantial shortage of boxcars on the Atchison, Topeka and Santa Fe Railway for shipments of grain. The ATSF has an available supply of certain refrigerator cars that may be substituted for this traffic at the ratio of two refrigerator cars for each boxcar. Service Order No. 1358 authorizes ATSF, with consent of the shipper, to substitute two refrigerator cars for each boxcar ordered for shipments of grain from any station on ATSF for interchange to Mexican Railroads.

DATES: Effective 12:01 a.m., February 23, 1979. Expires 11:59 p.m., June 15, 1979.

FOR FURTHER INFORMATION CONTACT:

J. Kenneth Carter, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C., 20423, Telephone (202) 275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION: The order is printed in full below.

Supplementary Information:
Decided February 20, 1979.

An acute shortage of boxcars for transporting shipments of grain exists on The Atchison, Topeka and Santa Fe Railway Company (ATSF) at stations on its lines. The ATSF has an available supply of certain refrigerator cars that may be substituted for this traffic at the ratio of two refrigerator cars for each boxcar, and use of these refrigator cars for the transportation of grain is precluded by certain tariff provisions, thus curtailing shipments of grain. There is a need for the use of these refrigerator cars to supplement the supplies of plain boxcars for transporting shipments of grain. It is the opinion of the Commission that an emergency exists requiring immediate action to promote car service in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure herein are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered,

§ 1033.1358 Substitution of refrigerator cars for boxcars.

(a) Each common carrier by railroad subject to the Interstate Commerce Act shall observe, enforce, and obey the following rules, regulations, and practices with respect to its car service:

(1) *Substitution of cars.* The Atchison, Topeka and Santa Fe Railway Company (ATSF) may substitute two refrigerator cars for each boxcar ordered for shipments of grain from any station on the ATSF and destined to any other station on the ATSF, for interchange to Mexican Railroads, subject to the conditions provided in paragraphs (2) through (5) of this order.

(2) *Concurrence of shipper required.* The concurrence of the shipper must be obtained before two refrigerator cars are substituted for each boxcar ordered.

(3) *Exclusive ATSF movement required.* Shipments of grain for which two refrigerator cars are substituted for one boxcar must originate at stations on the ATSF and must not be routed over any other carrier, and these loaded cars will be interchanged to Mexican Railroads.

(4) *Minimum weights.* The minimum weight per shipment of grain for which two refrigerator cars have been substituted ofr one boxcar shall be that specified in the applicable tariff for the car ordered.

(5) *Endorsement of Billing.* Bills of lading and waybills covering movements authorized by this order shall contain a notation that shipment is moving under authority of Service Order No. 1358.

(b) *Rules and regulations suspended.* The operation of tariffs or other rules and regulations, insofar as they conflict with the provisions of this order, is hereby suspended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate and foreign commerce.

(d) *Effective date.* This order shall become effective at 12:01 a.m., February 23, 1979.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., June 15, 1979, unless otherwise modified, changed or suspended by order of this Commission.

(49 U.S.C. 10304-10305 and 11121-11126).

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-5911 Filed 2-27-79; 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.

[3410-02-M]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 1135]

[Docket No. AO-380]

MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

Notice of Extension of Time for Filing Briefs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing briefs.

SUMMARY: This notice extends the date for filing briefs on the hearing held December 5-8, 1978, at Boise, Idaho, concerning a proposed federal marketing order for milk marketed in Southernwestern Idaho and Eastern Oregon. An interested party requested the additional time to complete an analysis of the record.

DATE: Briefs now are due on or before March 23, 1979.

ADDRESS: Briefs (four copies) should be filed with the Hearing Clerk, Room 1077 South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT:

Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-7183.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of hearing: Issued October 19, 1978, published October 24, 1978 (43 FR 49704).

Notice is hereby given that the time for filing briefs, proposed findings, and conclusions on the record of the public hearing held December 5-8, 1978, at Boise, Idaho, with respect to a proposed milk order to regulate the handling of milk in an area tentatively designated as the Southwestern Idaho-Eastern Oregon marketing area pursuant to the above listed notice is hereby extended to March 23, 1979.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Signed at Washington, D.C., on: February 23, 1979.

WILLIAM T. MANLEY,
Deputy Administrator,
Marketing Program Operations.

[FR Doc. 79-5922 Filed 2-27-79; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

[10 CFR Chapter 1]

ALTERNATIVE SITES FOR NUCLEAR GENERATING STATIONS

Public Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The Office of Nuclear Reactor Regulation, in conjunction with the Office of Standards Development, will conduct a workshop to provide invited representatives from industry, State and Federal government, public interest groups, and others the opportunity to scrutinize and comment upon the NRC staff's most recent thinking on the issue of alternative sites. Comments and feedback received from the workshop participants as well as from the public will be considered in the development of a proposed rule on alternative sites. The staff report on "General Considerations and Issues of Significance on the Evaluation of Alternative Sites for Nuclear Generating Stations Under the National Environmental Policy Act" (NUREG-0499, Supplement No. 1), which was noticed in the FEDERAL REGISTER on December 19, 1978 (43 FR 59091), identifies the key issues to be addressed by the workshop.

DATES: The workshop will be conducted March 14, 1979 through March 16, 1979.

ADDRESS: The workshop will be conducted at Mitre Corporation, 1820 Dolley Madison Boulevard, McLean, Virginia, 22101.

FOR FURTHER INFORMATION CONTACT:

Malcolm L. Ernst (301) 492-8016.

SUPPLEMENTARY INFORMATION: Observers to the workshop are welcomed, but should register prior to the workshop with Mr. Roberto Pagano of Mitre Corporation at (703) 827-7127.

The opportunity for observers to comment will be provided periodically during the workshop.

The agenda for the workshop follows:

WEDNESDAY, MARCH 14, 1979

8:45—Opening Remarks, Robert B. Minogue, Director Office of Standards Development.
9:00—Conduct of Workshop, Malcolm L. Ernst, Assistant Director for Environmental Technology.
9:15—Legal Considerations, Martin G. Malsch, Chief Regulation Counsel, Office of Executive Legal Director.
9:45—Technical and Public Interest Considerations, Jerry R. Kline, Division of Site Safety and Environmental Analysis.
10:30—Discussion of Draft Rule, Malcolm L. Ernst.
11:10—Keynote Address, Peter A. Bradford, Commissioner Nuclear Regulatory Commission.
11:30—Questions by Participants and Observers, Malcolm L. Ernst (moderator).
12:00—Lunch.
1:15—Convene Workshop.
1:30—Initial comments by Participants (5 minute opening statements).
3:30—Topic 1—Role of the NRC and Others.
4:15—Topic 2—Information Requirements.
5:00—Open Meeting to Receive Comments of Observers.
5:30—Recess Workshop.

THURSDAY, MARCH 15, 1979

8:30—Reconvene Workshop—Topic 3—Timing of NRC's Review.
9:15—Topic 4—Region of Interest, Resource Areas.
10:30—Topic 5—Selection of Candidate Sites.
11:30—Open Meeting to Receive Comments of Observers.
12:00—Lunch.
1:15—Reconvene Workshop—Further Consideration of Topics 4 and 5.
2:00—Topic 6—NRC Approval/Rejection of the Proposed Site.
3:15—Topic 7—Reopening of the Alternative Site Decision After ESR or CP Decision.
4:00—Open Meeting to Receive Comments of Observers.
4:30—Discussion of Outstanding Issues.
5:30—Recess Workshop.

FRIDAY, MARCH 16, 1979

8:30—Reconvene Workshop.
8:45—Review Draft Summary Prepared by MITRE.
9:15—Discuss Modifications to Topics 1-3.
10:15—Discuss Modifications to Topics 4-7.
11:45—Summary and Final Instructions to Participants.
12:00—Adjourn.

Dated at Bethesda, Maryland, this 23rd day of February 1979.

For the Nuclear Regulatory Commision.

H. DENTON,
Director, Office of Nuclear Reactor Regulation.

[FR Doc. 79-6064 Filed 2-27-79; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[10 CFR Part 212]

[Docket No. ERA-R-79-8]

MANDATORY PETROLEUM PRICE REGULATIONS

Retailers—Deletion of DOE Octane Posting Requirements

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Proposed Rulemaking and Public Hearing.

SUMMARY: The Economic Regulatory Administration of the Department of Energy hereby gives notice of a proposal to amend its petroleum price regulations concerning the posting of octane numbers by retail gasoline dealers. Under this proposed amendment the ERA would delete its current octane posting requirements to avoid duplication with the more comprehensive Federal Trade Commission regulations regarding octane posting, which will be issued early in 1979 pursuant to the Petroleum Marketing Practices Act. Comments are also requested on whether the maximum lawful price posting requirements of the present rule should be eliminated or changed to make them more effective in protecting consumers. The effective date of this amendment would be the effective date of the Federal Trade Commission regulations.

DATES: Written comments by April 25, 1979, 4:30 p.m.; Requests to speak by March 9, 1979, 4:30 p.m.; Public Hearing: March 21, 1979, 9:30 a.m.

ADDRESSES: All comments to: Office of Public Hearings Management, Economic Regulatory Administration, Docket No. ERA-R-79-8, Room 2313, 2000 M Street, NW., Washington, D.C. 20461. Requests to speak: Public Hearing Management, Docket No. ERA-R-79-8, Department of Energy, Room 2313, 2000 M Street, NW., Washington, D.C. 20461. Hearing Location: Room 2105, 2000 M Street, NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Hearing Procedures), Economic Regulatory Administration, 2000 M Street, NW., Room 2214-B, Washington, D.C. 20461, (202) 254-5021.

William Webb (Office of Public Information), Economic Regulatory Administration, 2000 M Street, NW., Room B-110, Washington, D.C. 20461, (202) 634-2170.

Lloyd Costley (Office of regulations and Emergency Planning), Economic Regulatory Administration, 2000 M Street, NW., Room 2314, Washington, D.C. 20461, (202) 254-8034.

Jeffrey C. Conrad (Office of General Counsel), Department of Energy, 1000 Independence Avenue, SW., Room 6A-127, Washington, D.C. 20585, (202) 252-6754.

SUPPLEMENTARY INFORMATION:

I. *Background*
II. *Proposed Amendments*
III. *Comment Procedures*
IV. *Additional Matters*

I. BACKGROUND

Section 212.129(b) of the Department of Energy's (DOE's) Mandatory Petroleum Price Regulations provides in part that each retail seller of gasoline

> * * * shall post and maintain in legible form, in numbers of conspicuous size (not less than one-half (½) inch high) and in a prominent place on each face of each pump used to dispense gasoline * * * the octane number or numbers of the gasoline dispensed from that pump.

The rule also expressly provides that an alternative form for posting gasoline octane numbers that may be used, in lieu of the octane posting otherwise required by the rule, is the form prescribed by the Federal Trade Commission ("FTC") in 16 CFR 422.1. However, this has not been a realistic alternative because the FTC rule, which was issued in December 1971, was challenged in court shortly after it was promulgated and has never become effective.

Section 212.129(b) also requires the posting of maximum lawful selling prices. This rulemaking does not propose to delete or modify the price posting requirement.

On June 19, 1978, the Petroleum Marketing Practices Act (PMPA, Pub. L. 95-297) was enacted. Title II of the PMPA, entitled "Octane Disclosure," requires in part that the FTC issue regulations which provide "uniform methods for the certification and posting of octance ratings by industry members." On September 19, 1978, the FTC issued its Notice of Proposed Rulemaking and Public Hearing concerning the certification and posting of octane ratings (43 FR 43028, September 22, 1978).

II. PROPOSED AMENDMENTS

We have reviewed the FTC proposed octane certification and posting regulations and have found them to cover fully the subject matter sought to be covered by the DOE regulation. Therefore, in order to avoid inadvertent conflict and unnecessary duplication in Federal octane posting requirements, we propose to amend § 212.129(b) by eliminating the octane posting requirements. The effective date of this amendment would be the effective date of the FTC octane posting regulations.

Under the proposed regulatory language, those provisions in § 212.129(b) which require the posting of maximum lawful selling prices would continue to be retained. However, comments are specifically requested on whether this requirement continues to be necessary and appropriate under current market conditions and, if so, whether the requirement should be modified to make compliance less burdensome and more effective. Commenters are also requested to provide such information as they may have on the extent of compliance with the present maximum lawful price posting requirements and whether such posting has been effective in providing consumers with useful information in making gasoline purchase decisions. If we determine, after reviewing the public comments, that the price posting requirements of § 212.129(b) should be eliminated or made more effective, appropriate changes will be made in the language of the final rule.

III. COMMENT PROCEDURES

A. WRITTEN COMMENTS

You are invited to participate in this rulemaking by submitting views, data or arguments with respect to the proposal set forth in this Notice. Comments should be submitted to the address indicated in the "ADDRESSES" section of this Notice and should be identified on the outside envelope and on documents submitted with the designation "Amendments to Petroleum Price Regulations Applicable to Retailers-Deletion of Octane Posting Requirements, Docket Number ERA-R-79- 8." Fifteen copies should be submitted. All comments received will be available for public inspection in the ERA Office of Public Information, Room B-110, 2000 M Street NW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Comments should be received by April 25, 1979, 4:30 p.m. in order to be considered.

Any information or data you consider to be confidential must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of the information or data and to treat it according to our determination.

B. PUBLIC HEARINGS

1. *Requesting Opportunity for Oral statement.* The time and place for the hearing are indicated in the "DATES" and "ADDRESSES" sections of this Notice. If necessary to present all testimony, the hearing will be continued to 9:30 a.m. of the next business day following the first day of the hearing.

Any person may make a written request for an opportunity to make an oral presentation at the hearing. You should provide a phone number where you may be contacted through the day before the hearing.

If you are selected to be heard, you will be so notified by the DOE before 4:30 p.m., March 14, 1979. You must submit 100 copies of your statement before 4:30 p.m., March 20, 1979 to the address given above for requests to speak.

2. *Conduct of the Hearing.* We reserve the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An ERA official will be designated to preside at the hearing, which will not be judicial in nature. Questions may be asked only by those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

You may submit questions to be asked of any person making a statement at the hearing. Such questions should be submitted to the address indicated above for requests to speak before 4:30 p.m. on the day prior to the hearing. If at the hearing you decide that you would like to ask a question of a witness, you may submit the question, in writing, to the presiding officer. In any case, the presiding officer will determine whether time limitations permit it to be presented for a response.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

Transcripts of the hearing will be made and the entire record of the hearing, including the transcripts, will be retained and made available for inspection at the ERA Office of Public Information, Room B110, 2000 M Street, NW., Washington, D.C. between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

In the event that it becomes necessary for us to cancel the hearing, we will make every effort to publish advance notice in the FEDERAL REGISTER of such cancellation. Moreover, we will give actual notice to all persons scheduled to testify at the hearing. However, it is not possible to give actual notice of cancellations or changes to persons not identified to us as participants. Accordingly, persons desiring to attend the hearing are advised to contact DOE on the last working day preceding the date of the hearing to confirm that it will be held as scheduled.

IV. ADDITIONAL MATTERS

As required by section 7(c)(2) of the Federal Energy Administration Act of 1974 (Pub. L. 93-275), a copy of this Notice has been submitted to the Administrator of the Environmental Protection Agency for his comments concerning the impact of this proposal on the quality of the environment. The Administrator had no comments on this proposal.

We have determined that this proposal will not have a major impact as that term is defined in Section VI of the proposed DOE Directive issued April 25, 1978 (43 FR 18634, May 1, 1978) to implement Executive Order No. 12044 on Improving Government Regulations (43 FR 12661, March 24, 1978). Therefore, no regulatory analysis pursuant to that Executive Order is required.

Pursuant to the requirements of Section 404(a) of the Department of Energy Organization Act ("DOE Act," Pub. L. 95-91), this proposed rule has been referred, concurrently with the issuance hereof, to the Federal Energy Regulatory Commission for a determination as to whether the proposed rule might significantly affect a function within the Commission's jurisdiction under sections 402(a)(1), (b) and (c)(1) of the DOE Act. The Commission will have until April 25, 1979, the scheduled close of public comment period on the proposal, to make such determination.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Policy and Conservation Act, Pub. L. 94-163 as amended, Pub. L. 94-385, and Pub. L. 95-70; Department of Energy Organization Act, Pub. L. 95-91; E.O. 12009, 42 FR 46267)

In consideration of the foregoing, Part 212 of Chapter II, Title 10 of the Code of Federal Regulations, is proposed to be amended as set forth below.

Issued in Washington, D.C., on February 16, 1979.

DAVID J. BARDIN,
Administrator, Economic Regulatory Administration.

Section 212.129 is amended by revising paragraph (b) to read as follows:

§ 212.129 Price Information and Posting.

* * * * *

(b) Each retail seller of gasoline shall post and maintain in legible form, in numbers of a conspicuous size (not less than one-half (½) inch high), and in a prominent place on each face of each pump used to dispense gasoline in retail sales, the maximum permissible price allowed to be charged pursuant to Subparts E or F of this part for such product. Whenever an adjustment is made to the maximum permissible price, each seller must post the new adjusted maximum permissible price, and remove the prior posted price.

[FR Doc. 79-5882 Filed 2-23-79; 2:12 pm]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[EDR-264B; Docket 26509; Dated: February 15, 1979]

[14 CFR Part 212]

CHARTER TRIPS BY FOREIGN AIR CARRIERS

Termination of Rulemaking

AGENCY: Civil Aeronautics Board.

ACTION: Termination of Rulemaking and Proceeding in Docket 26509; EDR-264; Order to Show Cause 74-3-71.

SUMMARY: This notice terminates the rulemaking proceeding that considered amendments to Part 212 of the Board's Regulations (governing charters by foreign scheduled carriers) to include restrictions on Fifth Freedom charter operations, impose an uplift ratio, and abolish the distinction between on and off route charters. The action is taken by reason of changes in the Board's charter regulatory policy and the lack of necessity for the proposed rule changes at the present time.

FOR FURTHER INFORMATION CONTACT:

Peter B. Schwarzkopf, Assistant General Counsel, International Affairs and Special Projects, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428 (202) 673-5928.

SUPPLEMENTAL INFORMATION: By order 74-3-71 (39 FR 10645, March 21, 1974) and the contemporaneously issued EDR-264 (39 FR 10599, March 21, 1974), the Board directed interest-

ed persons to show cause why it should not, subject to the approval of the President, adopt proposed amendments to Part 212 of its Economic Regulations (14 CFR Part 212) applicable to charter services of foreign scheduled air carriers.[1] The proposed amendments would have limited authorized charter operations by foreign scheduled air carriers to those performed between their homeland and the United States (*i.e.*, Fifth Freedom Charters would not be permitted). Provision was made for a waiver of the prohibition in accordance with the provisions of a charter bilateral agreement between the United States and the country of which the carrier was a national, or on the basis of a demonstration of the existence of Fifth Freedom charter reciprocity in fact. In addition, foreign scheduled carriers' charter operations would have been made subject to the uplift ratio provision which is currently a condition of many foreign charter carrier permits. The requirement for prior Board approval of "off-route" charters would have been eliminated. The rule was opposed in part by several foreign air carriers and certain foreign governments, and generally supported by U.S. scheduled and charter carriers.

The Board has concluded that this rulemaking proceeding should be terminated. The Board's current policy with respect to charters as well as scheduled service is to expand competitive opportunities, with emphasis on the availability of competitive service to the traveling public. The general imposition of the proposed restrictions on Fifth Freedom charter operations of foreign scheduled carriers at this time would not enhance that policy. This is not to say that the Board must not be prepared, to the extent necessary for implementation of a liberal charter policy, to limit the Fifth Freedom charter authority of a particular foreign scheduled air carrier under circumstances where that carrier's government denies reciprocity through restrictions imposed upon U.S. carrier Fifth Freedom charter operations. However, the Board has ample authority under the current provisions of section 212.4 to impose restrictions upon a foreign scheduled carrier's on and off route charter operations, to the extent that the establishment of reciprocity and implementation of the Board's liberal charter policy should require such action. Similarly, we do not consider the impostion of an uplift ratio conditon upon foreign scheduled carrier's charter operations is necessary or in the public interest at the present time.

The proposed rules would also have abolished the requirement of Part 212 for prior approval of off-route charters, although under the revised rules only charters between the homeland and off-route points in the United States would have been involved. By Orders 76-10-119, 77-10-120, and 78-12-175, the Board has granted blanket statements of authorization to perform off-route charters, subject to termination on 30 days' notice, for those foreign scheduled carriers whose operations in the past have demonstrated that the Board's standard for grant of off-route charters (including reciprocity) have been met, and where it could be anticipated that individual applications would be routinely granted. In light of this action, the Board finds no need, at the present time, to adopt that portion of the proposed ruled which would have eliminated the requirement for an advance statement of authorization for individual off-route charter flights.[2]

In view of the above, the Board finds that it is in the public interest to formally terminate this proceeding.

Accordingly, the Civil Aeronautics Board terminates the proceeding in Docket 26509; EDR-264.

(Secs. 204(a) and 402 of the Federal Aviation Act of 1978, as amended, 72 Stat. 743, 757; 49 U.S.C. 1324, 1372)).

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-5942 Filed 2-27-79; 8:45 am]

[1]The Board did not consider that the proposed amendements would constitute an amendment to the outstanding foreign air carrier permits held by foreign scheduled carriers, but to the extent such carriers deemed the proposed amendments to constitute an amendment of their outstanding authority, the Board directed such carriers to show cause why their foreign air carrier permits should not be amended to be subject to Part 212 as it was proposed to be amended.

[2]Under the proposed rules the Board had retained power under § 212.4 to require prior approval of individual charter flights.

[3510-25-M]

DEPARTMENT OF COMMERCE

Industry and Trade Administration

[15 CFR Part 377]

SHORT SUPPLY CONTROLS

Need for Validated Licensing of Petroleum Coke Exports

AGENCY: Office of Export Administration, Bureau of Trade Regulation, Industry and Trade Administration, Department of Commerce.

ACTION: Request for public comment.

SUMMARY: The Department is considering removal of validated licensing requirements for exports of calcined and uncalcined petroleum coke and invites public comment on the merits of such action.

DATE: Comments must be received by March 26, 1979.

ADDRESS: Send comments in ten copies to Office of Export Administration, Short Supply Division, P.O. Box 7138, Ben Franklin Station, Washington, D.C. 20044.

FOR FURTHER INFORMATION CONTACT:

Mr. Converse Hettinger or Mr. Robert F. Kan, Office of Export Administration, Short Supply Division, (202) 377-3984 or (202) 377-3795.

SUPPLEMENTARY INFORMATION: By rule published in the FEDERAL REGISTER on October 7, 1976 (41 FR 44155), the Department of Commerce placed validated licensing controls on exports of petroleum coke, both calcined and uncalcined "in order to assure: (a) That exports of this commodity are for non-energy use, or (b) that exports of this commodity do not increase to the extent additional coke manufacture becomes expedient at the expense (i.e. in lieu of the production) of liquid energy materials." Subsequently, this rule was modified by notice in the FEDERAL REGISTER on December 2, 1977 (42 FR 61253), which removed one of the export license documentation requirements established in the original rule which had had the effect of impeding exports of these commodities. The major references in the Export Administration Regulations regarding exports of petroleum coke are at §§ 377.6(d)(8) and 377.6(e)(7).

The Department, in consultation with the Department of Energy, is now considering modifying these regulations so as to remove the validated licensing requirement for exports of petroleum coke, both calcined and uncalcined, and to place them under General License. This action is being considered on the basis of preliminary indications that: (1) Such action would not contribute to a decrease in domestic energy supplies as the use of petroleum coke as a fuel within the United States is limited due to environmental restrictions; (2) it is in the national interest to encourage the expansion of coking facilities in domestic refineries so as to increase their capability to produce lighter petroleum products from heavy domestic crude oils, such as those produced in Alaska and California; and (3) petroleum coke stocks in the United States appear to exceed domestic needs, and refiners should thus not be subject to restrictions which could inhibit their ability to market this product abroad.

To assist the Department in its continuing evaluation of this matter, interested parties are encouraged to

submit written comments, views, or data concerning the accuracy of the tentative conclusions set forth above and desirability of the action under consideration. The Department is especially interested in receiving information bearing on the extent of usage of petroleum coke as a fuel in the United States, the extent to which the manufacture of coke for export could result in decreased production of other petroleum products suitable for use domestically as a fuel, and any other matters which are relevant to the decision under consideration.

The period for submission of comments on the action being considered will end as of the close of business on March 26, 1979. All comments (whether written or oral) received by the Department by close of business on March 26, 1979, will be considered by the Department in its final decision on this matter. All relevant comments on this subject received prior to the publication of this Notice will also be considered. However, no comments received after the close of the comment period will be accepted or considered by the Department.

Written public comments which are accompanied by a request that part or all of the material be treated confidentially because of its proprietary nature or for any other reason will not be accepted. Such comments and materials will be returned to the submitter and will not be considered by the Department in making its decision.

All public comments on this subject to be considered will be made a matter of public record and will be available for public inspection and copying. This procedure shall not, however, apply to communications from agencies of the United States or foreign governments. In the interests of accuracy and completeness, comments in written form are preferred. If oral comments are received, the Department official receiving such comments will prepare a memorandum summarizing the substance of the comments and identifying the individual making the comments as well as the person on whose behalf they purport to be made. All such memoranda will also be a matter of public record and will be available for public review and copying.

The public record concerning this subject will be maintained in the Industry and Trade Administration, Freedom of Information Records Inspection Facility, Room 3012, Main Building, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Mrs. Patricia L. Mann, the Industry and Trade Administration Freedom of Information Officer, at the above address or by calling (202) 377-3031.

The Department intends to reach a final decision on this matter within 60 days of the close of the comment period. This decision and any regulations necessary to implement it, together with a summary of the major comments received, will be published in the FEDERAL REGISTER.

It has been determined that this regulatory change, if adopted, is "not significant" within the meaning of Department of Commerce Administrative Order 218-7 (44 FR 2082 *et seq.*, January 9, 1979), and Industry and Trade Administration Administrative Instructions 1-6 (44 FR 2093 *et seq.*, January 9, 1979), which implement Executive Order 12044 (43 FR 12661 *et seq.*, March 23, 1978), "Improving Government Regulations."

AUTHORITY: Sec. 4, Pub. L. 91-184, 83 Stat. 842 (50 U.S.C. App. 2403), as amended; E.O. 12002, 42 FR 35623 (1977); Sec. 103, Pub. L. 94-163, 89 Stat. 877 (42 U.S.C 6212); E. O. 11912, 41 FR 15825, 3 CFR 1969 Comp.; 10 U.S.C. 7430; Department Organization Order 10-3, dated December 4, 1977, 42 FR 64721 (1977); and Industry and Trade Administration Organization and Function Order 45-1, dated December 4, 1977, 42 FR 64716 (1977).

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

[FR Doc. 79-5835 Filed 2-23-79; 12:07 pm]

[6570-06-M]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

[29 CFR Part 1601]

PROCEDURAL REGULATIONS

706 Agencies; Proposed Designation

AGENCY: Equal Employment Opportunity Commission.

ACTION: Proposed rule.

SUMMARY: The Equal Employment Opportunity Commission proposes to amend its regulations on designation of one State agency so that it may handle employment discrimination charges filed with the Commission. Proposed is a State agency that requested deferral designation as provided under the authority of Title VII of the Civil Rights Act of 1964, as amended. The proposal would authorize the agency listed below to process charges deferred to it by the Commission.

DATES: Comments must be received by March 15, 1979.

ADDRESS: Comments should be sent to: Equal Employment Opportunity Commission, Office of Field Services (State and Local), 2401 E Street, N.W., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT:

Boyce Nolan, Equal Employment Opportunity Commission, Office of Field Services (State and Local), 2401 E Street, N.W., Washington, D.C. 20506, telephone 202/634-6894.

SUPPLEMENTARY INFORMATION: Pursuant to § 1601.71, Title 29, Chapter XIV of the Code of Federal Regulations as revised and published in the FEDERAL REGISTER, 42, FR 55388, October 14, 1977, the Equal Employment Opportunity Commission (hereinafter referred to as the Commission) proposes that the agency listed below be designated as a "706 Agency", § 1601.70(a). The purposes of "706 Agency" designation is as follows: First, that the agency receive charges deferred by the Commission pursuant to Section 706(c) and (d) of Title VII of the Civil Rights Act of 1964, as amended; and second, that the Commission accord "substantial weight" to the final findings and orders of the agency pursuant to Section 706(b) of Title VII of the Civil Rights Act of 1964, as amended. The proposed designation of the agency listed below is hereby published to provide any person or organization not less than 15 days within which to file written comments with the Commission as provided for under § 1601.71(l).

At the expiration of the 15 day period, the Commission may effect designation of the agency by publication of an amendment to § 1601.74(a).

With the limitation set forth in the Footnote below, the proposed "706 Agency" is as follows:

Colorado State Personnel Board [1]

Written comments pursuant to this notice must filed with the Commission on or before March 15, 1979. Signed at Washington, D.C. this 13th day of February, 1979.

For the Commission.

ELEANOR HOLMES NORTON,
Chair, Equal Employment Opportunity Commission.

[FR Doc. 79-5914 Filed 2-27-79; 8:45 am]

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[1] The Colorado State Personnel Board has been proposed as a 706 Agency for only those charges which relate to appointments, promotions, and other personnel actions that take place in the state personnel system. In addition, the Colorado State Personnel Board has been proposed as a 706 Agency for all of the above mentioned charges except charges which allege a violation of Section 704(a) of Title VII. For this type of charge it shall be deemed a "Notice Agency" pursuant to 29 CFR 1601.71(3).

[6820-29-M]

GENERAL SERVICES ADMINISTRATION

Federal Preparedness Agency

[32A Part 106]

HEALTH MANPOWER OCCUPATIONS

Proposed Rule

AGENCY: General Services Administation.

ACTION: Proposed Rule.

SUMMARY: This order identifies skills which would be needed to provide public health and medical services during and immediately after an emergency in which survival of the population is the primary consideration. It is issued with the agreement of the Secretary of Labor and the Secretary of Health, Education, and Welfare.

DATES: Comments must be received on or before April 30, 1979.

ADDRESSES: Comments should be addressed to: General Services Administration (E), Washington, D.C. 20404.

FOR FURTHER INFORMATION CONTACT:

Frederick J. Haase, Federal Preparedness Agency (202-566-0773)

SUPPLEMENTARY INFORMATION: The Director of the Federal Preparedness Agency has determined that there is no need to prepare a regulatory analysis as discussed in Executive Order 12044, Improving Government Regulations. The Director's decision is based on two factors: (1) There is no alternative to issuing this rule because it is required under Section 1102 of Executive Order 11490; and (2) The rule is not expected to have any economic or inflationary impact.

Part 106 of Title 32A is revised as follows:

PART 106—HEALTH MANPOWER OCCUPATIONS (DMO-6A)

1. *Purpose.* The Director of the Federal Preparedness Agency is required to issue this list of health occupations by Section 1102 (2) of Executive Order 11490 (as amended by Executive Order 11921 of June 11, 1976). Section 1103 (1) of Executive Order 11490 requires the Secretary of Health, Education, and Welfare to develop and direct a nationwide program to train people included on this list and to prepare national emergency plans and develop preparedness programs covering them. The list is issued with the agreement of the Secretary of Labor and the Secretary of Health, Education and Welfare.

2. *Cancellation.* This order cancels and supercedes Defense Mobilization Order 6, dated March 18, 1964 (29 FR 3474), as amended on March 30, 1968 (33 FR 4736), and redesignated on June 27, 1975.

3. *Scope and applicability.* This order applies to all officials responsible for providing public health and medical services during and immediately after an emergency in which survival of the population is the preeminent consideration.

4. *Policy.*

(a) *Skills included.* The skills identified on the list are those which would be needed to provide public health and medical services during and immediately after an emergency in which survival of the population is the preeminent consideraton. As health hazards and medical care loads are brought under control, people in these occupations would be released by health officials for use in other essential activities.

(b) *Other skills.* People who directly support occupations on the list would stay on their jobs after an emergency until health hazards and medical care loads are brought under control. This would include hospital, sanitation, and laboratory helpers, as well as engineering, clerical, food service, and custodial personnel.

(c) *List of health manpower occupations.*[1]

OCCUPATIONAL TITLE.—*Dictionary of Occupational Titles/Department of Labor/Fourth Edition,*

	Code No.
Administrator, Hospital	187.117
Admitting Officer (Medical Service)	205.137
Ambulance Attendant (Medical Service)	355.374
Ambulance Driver (Medical Service)	913.683
Audiologist	076.101
Audiometrist	078.362
Bacteriologist	041.061
Bacteriologist, Dairy	041.061
Bacteriologist, Fishery	041.061
Bacteriologist, Food	041.061
Bacteriologist, Medical	041.061
Bacteriologist, Pharmaceutical	041.061
Biochemist	041.061
Birth Attendant	354.377
Chemist, Clinical	041.061
Chemist, Pharmaceutical	041.061
Dentists	072.
Dental Assistant (Medical Service)	079.371
Dental Hygienist	078.361
Emergency Medical Services Coordinator	079.117
Entomologist (Prof. and Kindred)	041.061
Food and Drug Inspector (Government Services)	168.267
Health Officer, Field	168.167
Health Physicist	079.021
Helminthologist	041.061
Histopathologist	041.061
Industrial Health Engineer	012.167
Laboratory Assistant, Blood and Plasma	078.687
Medical Apparatus Model Maker	712.261
Medical Assistant	079.367
Medical Laboratory Assistant	078.381
Medical Record Administrator	079.169
Nurse Aide	355.674
Nurse, Practical	354.374
Nurse, Licensed Practical	079.374
Nurse, Registered	075.
Optician Dispensing	713.361
Optician	716.280
Optometrist	079.101
Orderly (Medical Service)	355.674
Orthopedic Assistant	712.661

OCCUPATIONAL TITLE.—*Dictionary of Occupational Titles/Department of Labor/Fourth Edition,*—Continued

	Code No.
Orthopedic (Medical Service)	079.371
Orthotist	078.261
Osteopathic Physician	071.101
Parasitologist	041.061
Pharmacist	074.
Pharmacologist	041.061
Physicians and Surgeons	070.
Physician Assistant	079.364
Podiatrist	079.101
Prosthetist	078.261
Protozoologist	041.061
Psychiatric Aide	355.377
Psychologist, Clinical	045.107
Public Health Educator (Prof. & Kindred)	079.117
Public Health Microbiologist	041.261
Radiation Monitor	199.167
Sanitarian	079.117
Sanitary Engineer	005.061
Social Worker, Medical	195.107
Social Worker, Psychiatric	195.107
Superintendent, Hospital	187.117
Supervisor, Dental Laboratory	712.131
Technicians:	
Audiometric Technician	078.362
Biomedical Equipment Technician (inst. and app.; medical service)	719.261
Biomedical Equipment Technician (Prof. & Kindred)	019.261
Blood-Bank Technician	078.381
Cytotechnician	078.381
Dental-Laboratory Technician	712.381
Dental Technician	712.381
Dialysis Tchnician	078.362
Electrocardiograph Technician	078.362
Electroencephalographic Technician	078.362
Emergency Medical Technician	079.374
Hematology Technician	078.381
Laboratory Technician, Veterinary	073.361
Medical Technician	078.381
Medical Laboratory Technician	078.381
Orthodontic Technician	712.381
Orthotics-Prosthetics Technician	712.381
Serology Technician	078.381
Surgical Technician	079.374
Tissue Technician	078.381
X-ray Technician	199.361
Technologists:	
Biochemistry Technologist	078.261
Blood-Bank Technologist	078.361
Cytotechnologist	078.281
Hematology Technologist	078.361
Histopathology Technologist	078.361
Medical Technologist	078.361
Mirobiology Technologist	078.261
Nuclear Medical Technologist	078.361
Radiologic Technologist	078.362
Serology Technologist	078.361
Tissue Technologist	078.361
X-ray Technologist	078.362
Therapists:	
Inhalation Therapist	079.361
Occupational Therapist	076.121
Orientation Therapist for Blind	076.221
Physical Therapist	076.121
Respiratory Therapist	079.361
Veterinarians[2]	073.
Virologist	041.061

[1] Includes students, trainees, and interns whose training or education leading to any of the indicated skills is sufficiently advanced to qualify them to contribute to the technical tasks of providing health services.

[2] Though current planning provides that many veterinarians be utilized in casualty care and preventive medicine activities immediately after an emergency, veterinarians will continue to be needed to perform services of a strictly veterinary nature after most of the human casualties have been cared for temporarily. Such veterinary activities will include protection of food animals against diseases and the effects of atomic, biological, and chemical warfare; meat and poultry inspection and supplementing food inspection forces for certain food processing plants, and food storage facilities.

(Defense Production Act of 1950, as amended; EO 11490 of Oct. 28, 1969 (34 FR 17567); EO 11921 of June 11, 1976 (76 FR 17534).)

Dated: February 5, 1979.

JOSEPH A. MITCHELL,
Director,
Federal Preparedness Agency.

[FR Doc. 79-5869 Filed 2/27/79; 8:45 am]

[4310-70-M]

DEPARTMENT OF THE INTERIOR

National Park Service

[36 CFR Parts 1 through 10]

ALASKA NATIONAL MONUMENTS

Notice of Intent to Propose Rulemaking

AGENCY: National Park Service.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: On December 1, 1978, President Carter signed proclamations establishing fifteen new and enlarging two existing national monuments in Alaska. The National Park Service currently administers thirteen of these new monument areas under interim regulatins promulgated on December 26, 1978, which modify, for the special requirements of the Alaska National Monuments, various provisions of the "general regulations" otherwise applicable to areas within the National Park System. With this Notice of Intent, the National Park Service now requests comments on the subject matter and scope of the permanent regulations for the Alaska National Monuments administered by the National Park Service. These comments will assist the National Park Service in the preparation of the proposed regulations for these monuments.

DATE: Comments must be received by March 30, 1979.

ADDRESS: Send written comments to: Alaska Area Director, 540 West 5th Avenue, Anchorage, Alaska 99501. Division of Ranger Activities, National Park Service, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

Mr. John E. Cook, Alaska Area Director, 540 West 5th Avenue, Anchorage, Alaska 99501, Telephone: (907) 276-8166.

Mr. Roger J. Contor, Assistant to the Director for Alaska, 18th and C streets, N.W., Washington, D.C. 20240, Telephone: (202) 343-5193.

SUPPLEMENTARY INFORMATION:

AUTHORITY

Section 2 of the Antiquities Act of 1906 (16 U.S.C. 431) authorizes the President, in his discretion, to declare objects of historic or scientific interest that are situated upon lands owned or controlled by the United States to be national monuments. The same section allows the President to reserve as part of the monument parcels of land necessary for the proper care and management of the objects to be protected.

Pursuant to this authority, President Carter on December 1, 1978, signed proclamations establishing fifteen new national monuments and additions to two existing national monuments in Alaska (43 FR 57009). Fifteen of the proclamations directed the Secretary of the Interior to "issue such regulations as are appropriate" for the management of the monuments. The Secretary, in turn, delegated to the Director of the National Park Service the management of the following thirteen national monument areas: Aniakchak, Bering Land Bridge, Cape Krusenstern, Denali, Gates of the Arctic, 1978 enlargement of Glacier Bay, 1978 enlargement of Katmai, Kenai Fjords, Kobuk Valley, Lake Clark, Noatak, Wrangell-St. Elias, and Yukon-Charley.

Through the internal delegation, the Director of the National Park Service has obtained regulatory authority for these thirteen national monument areas. The legal authorities for the rulemaking on these Alska National Monuments are 16 U.S.C. §§ 1, 1c, 3, 9a, 432 and 462; 245 DM-1 (42 FR 12931); and the Presidential Proclamations establishing the Alaska National Monuments (43 Fed. Reg. 57009).

THE NEED FOR PERMANENT REGULATIONS

Lands managed by the National Park Service are subject to the relevant provisions of Title 16 of the United States Code and Title 36 of the Code of Federal Regulations. The regulations contained in Chapter One of Title 36 of the Code of Federal Regulations prescribe conditions for the proper use, management, and protection of the National Park System. The "general regulations" contained in Parts 1 through 6 and 8 through 10 of Chapter One apply to the federally owned or controlled lands within the Alaska National Monuments by virtue of their becoming part of the Naitonal Park System. Certain general regulations are inconsistent with the requirements of the Presidential Proclamations concerning subsistence activities by local rural residents such a hunting, trapping, fishing, and wood gathering. In addition, certain general regulations appear inappropriate for the special access needs of persons using or traversing monument lands. Therefore, to provide express permission for subsistence uses and general guidance for other acceptable uses, the National Park Service promulgated interim regulations on December 26, 1978 (43 Fed. Reg. 60252) to relax or otherwise modify the applications of the general regulations to the Alaska National Monuments.

The interim regulations have provided initial guidance on use of the Alaska National Monuments pending publication of permanent regulations, By necessity, the National Park Service published the interim regulations without prior notice and opportunity for public comment. Since the National Park Service intended the interim regulations as temporary only, it is now necessary to develop permanent regulations for the Alaska National Monuments.

THE PROCEDURE FOR PERMANENT REGULATIONS

According to the regulatory procedure mandated by Executive Order 12044 and the Department's regulations, an agency must publish a "Notice of Intent to Propose Rules" prior to drafting "significant" regulations. The Department has also recognized the value of a "Notice of Intent" for regulations which do not qualify as "significant". *See* Department's regulations, 43 FR 58292 (December 13, 1978). The Notice of Intent must state the need for, subject matter of, and key issues presented by the anticipated rulemaking so as to focus the public attention on general concepts which will later form the basis for specific regulatory language. The purpose of the "Notice of Intent" is to solicit public participation in the earliest phases of significant rulemaking.

With respect to the permanent rulemaking on the Alaska National Monuments, the National Park Service decided last December to issue a Notice of Intent regardless of the "significance" of the permanent regulations in order to maximize the opportunity for public involvement in the preparation of the regulations. The National Park Service has made a preliminary determination that the anticipated rulemaking on the Alaska National Monuments is not "significant" and does not require a "regulatory analysis" under the criteria of Executive Order No. 12044 and the Department's regulations. The National Park Service will make a final determination of these matters after assessment of the responses generated by this Notice of Intent.

In the present Notice of Intent, the National Park Service identifies, among other things, the subject matter of the anticipated rulemaking and poses questions for public consideration. The National Park Service does not describe the specific content of the anticipated rulemaking.

GUIDANCE FOR COMMENTS

The National Park Service offers the public the following guidance for formulating responses to the questions raised by this Notice of Intent.

First, the public should limit its comments to measures which the National Park Service is able to take under the provisions of applicable law (e.g., National Park Service Organic Act, 16 U.S.C 1 *et seq.*; Mining in the Parks Act, 16 U.S.C. 1901 *et seq.*) and the Executive Branch actions (*e.g.*, Presidential Proclamations, 43 FR 57009 (Dec. 5, 1978); emergency withdrawals under § 204(e) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1701 *et seq.*; "d-1" withdrawals under the Alaska Native Claims Settlement Act (ANCSA), 16 U.S.C. 1601 *et seq.*). In other words, comments which request the National Park Service to do something for which it has no regulatory authority, e.g., open the monuments to further mining location or homesteading, will not help the National Park Service in drafting permanent regulations for the monuments.

Second, the public should address the impact of a regulatory concept not only upon the persons who use the monuments, but also upon the natural resources of the monuments themselves. In this regard, the Presidential Proclamations implicity require the National Park Service to exercise its regulatory discretion so as to enhance the scientific and historic values of the monuments; in addition, the announced policy of the Executive Branch requires the National Park Service to manage the monuments so as to preserve Congress' options on the various Alaska National Interest Lands proposals under its consideration.

Third, to the extent possible, the public should provide the National Park Service with estimates of the anticipated economic impact of the various regulatory approaches so that the National Park Service can reexamine its determination of the "significance" of the anticipated rulemaking.

Fourth, the public should be aware that the United States Fish and Wildlife Service has also published in this issue of the Federal Register a Notice of Intent concerning the permanent rulemaking for the two new National Wildlife Monuments in Alaska, Becharof and Yukon Flats. The questions in the Fish and Wildlife Service's Notice differ in several respects from the National Park Service's questions in this Notice because of the agencies' different statutory and regulatory authorities. Both agencies, however, raise the same questions on the issue of subsistence hunting and fishing and plan to develop this regulatory issue jointly.

DRAFTING INFORMATION

The primary authors of this Notice are Molly N. Ross, Attorney-Advisor, Office of the Solicitor, Department of the Interior and Michael V. Finley, Division of Ranger Activities and Protection, National Park Service, Washington, D.C.

IMPACT ANALYSIS

The National Park Service has made a preliminary determination that the proposed rules are not "significant" and do not require a "regulatory analysis" under Executive Order No. 12044 and the Department's regulations. The National Park Service will make a final determination of these matters after assessing the responses generated by this Notice. An environmental impact statement covering proposed Federal actions in Alaska was prepared in 1974 and supplemented on November 28, 1978, by an analysis covering Alternative Administrative Actions.

DANIEL J. TOBIN, Jr.,
Acting Deputy Director,
National Park Service.

VIEWS REQUESTED

The National Park Service is aware of the fact that any proposal to establish permanent rules for the new or enlarged Alaska National Monuments must consider the unique requirements that exist in Alaska. In view of these unique requirements, and considering the provisions of the Presidential proclamations establishing the new Alaska National Monuments, the National Park Service invites comment on the following questions.

PUBLIC USE AND RECREATION

(1) How should the National Park Service manage the landing and use of aircraft within the new Alaska National Monuments?

(2) Should the National Park Service amend the abandoned property section (36 CFR 2.1) to allow for food or equipment caches? Should the section be strengthened to require the removal of downed or abandoned aircraft by the owner?

(3) The possession and use of firearms, traps and nets is strictly controlled in National Park Service areas in the lower 48 states. Under what circumstances should a firearm, trap, or net be possessed in the new Alaska National Monuments?

(4) How should cabins that were constructed illegally be dealt with? Should the cabins be removed immediately or should the occupants be afforded a permit providing for temporary occupancy?

(5) Should the non-commercial gathering of dead wood on the ground for use as firewood by local residents be permitted?

(6) Should the existing regulations governing the possession of dogs, cats and other pets apply to the new Alaska National Monuments?

SUBSISTENCE

(7) In light of the fact that the State of Alaska has not completed the development of its own subsistence program, should a separate Federal regulatory program based upon the Presidential Proclamations be developed to govern subsistence activities within the new monuments in Alaska administered by the Department of the Interior? Should the State's subsistence program be incorporated in total once it is completed?

(8) If a separate Federal program were to be established by the Department of the Interior, the following concepts would have to be considered in the development of that program:

a. Should the Federal subsistence program be applicable to all of the Federal Land under the jurisdiction of the Department of the Interior or should it be limited to the new national monument areas created by President Carter and administered by the Department of the Interior?

b. The Presidential Proclamations preserved the opportunity for the continuation of subsistence activities by the "local residents" living within or near the national monuments. The subsistence lifestyle varies from area to area. In some areas of Alaska, subsistence users have traditionally traveled great distances to participate in hunts, in other monument areas, the subsistence user has been less migratory. For purposes of allowing subsistence activities to continue within national monuments, how should "local resident" be defined? Should the definition be uniform throughout all of the national monuments created by President Carter or should it vary from monument to monument to reflect variations in the subsistence lifestyle?

c. Since "subsistence uses" are defined broadly in the interim regulations, how should legitimate "subsistence users" be qualified and identified in order to distinguish them from other consumptive users of fish and wildlife, such as sport hunters and fishermen. Are there other qualifying criteria to be considered besides local rural residency, the availability of alternative resources and the customary and direct dependency upon subsistence resources as the mainstay of one's livelihood? What degree of involvement in a cash economy should disqualify a person from the subsistence preference?

d. Should the use of aircraft be allowed in subsistence activities? If so, to what extent?

e. The definition of "subsistence uses" in the emergency interim regulations references the "customary and traditional" uses of wild, renewable resources. How should the concepts of "customary" and "traditional" use be defined? Should the use of subsistence resources be fixed to a specific time period in order to be considered "customary and traditional"? Should the "customary and traditional" test be applied to the method of taking subsistence resources in addition to the use of those resources?

f. The definition of "subsistence uses" also authorizes "customary trade, barter or sharing for personal or family consumption." Should the terms trade and barter be defined to allow for the limited exchange of furs for cash?

MINING

(9) Are the economic and operational problems imposed by short seasons and remote locations substantially different from those experienced by the mining industry in the coterminous United States? If so, to what extent should the existing mining regulations be modified?

(10) Should the National Park Service require a performance bond to insure compliance with applicable mining regulations? What alternate measures, other than bonding, are available to the NPS to guarantee compliance with the reclamation procedures?

[FR Doc. 79-5935 Filed 2-27-79; 8:45 am]

[4310-70-M]

[36 CFR Part 50]

NATIONAL CAPITAL PARKS REGULATIONS

Applicability of Regulations

AGENCY: National Park Service, USDI.

ACTION: Proposed rulemaking.

SUMMARY: We propose to revise § 50.1 of Title 36 of the Code of Federal Regulations to permit certain parks within National Capital Region to utilize the rules and regulations found in Title 36 CFR Parts 1-7 instead of being required to use Title 36 CFR Part 50.

As presently required in § 50.1, all park areas located within the environs of Washington, D.C., are subject to these rules and regulations. Certain parks within these environs encounter operations problems which are not mentioned in Part 50, but are found in Parts 1-7. If the recommended revision is implemented, all parks would be subject to rules and regulations more appropriate to the problems they encounter.

DATE: Comments must be received on or before April 9, 1979.

ADDRESS: Comments to the Regional Director, National Capital Region, 1100 Ohio Drive, S.W., Washington, D.C. 20242.

FOR FURTHER INFORMATION CONTACT:

Edward J. Drotos, Chief, Division of Resource Management and Visitor Protection, Room 105, National Capital Region, 1100 Ohio Drive, S.W., Washington, D.C. 20242 202-472-7996.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to the authority contained in Section 6, 30 Stat. 571, Sections 1-3, 39 Stat. 535, as amended, Section 16, 43 Stat. 1126, as amended, 62 Stat. 81, Sections 1, 2, 67 Stat. 495 D.C. Code 143, 16 U.S.C. 1, 1b, 1c, 2, 3, 40 D.C. Code 613, it is proposed to revise § 50.1 of Title 36 of the Code of Federal Regulations.

Accordingly, § 50.1 would be amended to read as follows:

§ 50.1 Applicability of regulations.

This part applies to: (a) All park areas administered by the National Capital Region, National Park Service, in the District of Columbia, Maryland, and Virginia, except for Prince William Forest Park, Manassas National Battlefield Park, Catoctin Mountain Park, Antietam National Battlefield, portions of Harpers Ferry National Historical Park located in Maryland, and that portion of the Chesapeake and Ohio Canal National Historical Park located in Frederick, Washington, and Allegany Counties, Maryland;

(b) Other Federal reservations in the environs of the District of Columbia policed with the approval or concurrence of the head of the agency having jurisdiction or control over such reservations pursuant to the provisions of the Act of March 17, 1948 (62 Stat. 81).

* * * * *

All written submissions made pursuant to this notice will be made available for public inspection at National Capital Region, Room 105, 1100 Ohio Drive, S.W., Washington, D.C., 20242 during regular hours of business (7:45 a.m. to 4:15 p.m. Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

Comments submitted should bear a reference to the date and page number of this issue of the FEDERAL REGISTER.

Done at Washington, D.C., this 30th day of January 1979.

ROBERT STANTON,
Regional Director,
National Capital Region.

[FR Doc. 79-5932 Filed 2-27-79; 8:45 am]

[3510-16-M]

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[37 CFR Part 1]

ADVISORY OPINIONS ON VALIDITY OF PATENTS

Deferral of Rulemaking Proposal

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Deferral of rulemaking proposal.

SUMMARY: Patent and Trademark Office is deferring its rulemaking proposal concerning advisory opinions on patent validity. The public hearing is postponed until further notice.

DATES: Hearing scheduled for April 11, 1979 is postponed.

ADDRESS: Commissioner of Patents and Trademarks, Building 3, Room 11E10, Washington, D.C. 20231.

FOR FURTHER INFORMATION CONTACT:

Mr. Herbert C. Wamsley by telephone at (703) 557-3071, or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking on advisory opinions on validity of patents was announced in the December 20, 1978 edition of the FEDERAL REGISTER (43 FR 59401). It also appeared in the January 4, 1979 issue of BNA's *Patent, Trademark and Copyright Journal* (410 PTCJ D-1), and in the January 16, 1979 edition of the Patent and Trademark's Office's *Official Gazette* (978 O.G. 152). The date for the public hearing and the deadline for written comments were announced as April 11, 1979.

The Patent and Trademark Office has decided to delay consideration of this proposal. It would appear as though legislation may be introduced in the 96th Congress to establish a statutory procedure for reexamination of issued patents, perhaps including authority for the Office to use fees collected from the public to support the cost of reexamination. Accordingly, the present proposal may be unnecessary and therefore the public hearing is postponed until further notice. While members of the public are free to continue to submit written comments on the proposal, a further specific period for written comments will be set if the public hearing is rescheduled at a later date.

Dated: February 12, 1979.

DONALD W. BANNER,
Commissioner of Patents and Trademarks.

Approved:

Dated: February 16, 1979.

JORDAN J. BARUCH,
Assistant Secretary for Science and Technology.

[FR Doc. 79-5919 Filed 2-27-79; 8:45 am]

[8320-01-M]

VETERANS ADMINISTRATION

[38 CFR Part 1]

PART-TIME CAREER EMPLOYMENT PROGRAM

Proposed Rules

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The Veterans Administration proposes to issue regulations to govern the operation of a part-time career employment program within the agency. The Federal Employees Part-Time Career Employment Act of 1978 requires the head of each agency, by regulation, to establish and maintain a part-time career program within the agency. These proposed regulations will satisfy this requirement of the law.

DATES: Comments must be received on or before March 30, 1979. We propose to makes these regulations effective the date of final approval.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, D.C. 20420.

Comments will be available for inspection at the address shown above during normal business hours until April 9, 1979.

FOR FURTHER INFORMATION CONTACT:

R. W. Hall, Recruitment and Placement Service (054C), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. Telephone (202) 389-2240.

SUPPLEMENTARY INFORMATION: These proposed regulations are concerned primarily with the internal policies and practices of the Veterans Administration. They would normally be exempt, therefore, from prior publication and public comment, as authorized by Executive Order 12044. The Act, however, requires that any proposed regulations to implement an agency's part-time employment program be published in the FEDERAL REGISTER for public comment prior to their adoption. Moreover, it is the desire of the Veterans Administration to provide for public review and comment on its rules and procedures whenever practicable. The Act also refers to providing the opportunity for oral comment wherever possible. We are allowing written comments; however, anyone wishing to provide oral comments may call the person listed.

ADDITIONAL COMMENT INFORMATION

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposal to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, D.C. 20420. All written comments received will be available for public inspection at the above address only between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until April 9, 1979. Any person visiting Central Office for the purpose of inspecting any such comments will be received by the Central Office Veterans Services Unit in room 132. Such visitors to any VA field station will be informed that the records are available for inspection only in Central Office and furnished the address and the above room number.

Approved: February 22, 1979.

By direction of the Administrator,

RUFUS H. WILSON,
Deputy Administrator.

Sections 1.891 through 1.897 and a center title are added to read as follows:

PART-TIME CAREER EMPLOYMENT PROGRAM

Sec.
1.891 Purpose of program.
1.892 Review of positions.
1.893 Establishing and converting part-time positions.
1.894 Annual goals and timetables.
1.895 Review and evaluation.
1.896 Publicizing vacancies.
1.897 Exceptions.

PART-TIME CAREER EMPLOYMENT PROGRAM

§ 1.891 Purpose of program.

Many individuals in society possess great productive potential which goes unrealized because they cannot meet the requirements of a standard workweek. Permanent part-time employment also provides benefits to other individuals in a variety of ways, such as providing older individuals with a gradual transition into retirement, providing employment opportunities to handicapped individuals or others who require a reduced workweek, providing parents opportunities to balance family responsibilities with the need for additional income, and assisting students who must finance their own education or vocational training. In view of this, the Veterans Administration will operate a part-time career employment program, consistent with the needs of its beneficiaries and its responsibilities.

(5 U.S.C. 3391 note)

§ 1.892 Review of positions.

Positions becoming vacant, unless excepted as provided by § 1.897, will be reviewed to determine the feasibility of converting them to part-time. Among the criteria which may be used when conducting this review are:

(a) Mission requirements.

(b) Workload.

(c) Employment ceilings and budgetary considerations.

(d) Availability of qualified applicants willing to work part time.

(e) Other criteria based on local needs and circumstances.

(5 U.S.C. 3392)

§ 1.893 Establishing and converting part-time positions.

Position management and other internal reviews may indicate that positions may be either converted from full-time or initially established as part-time positions. Criteria listed in § 1.892 may be used during these reviews. If a decision is made to convert to or to establish a part-time position, regular position management and classification procedures will be followed.

(5 U.S.C. 3392)

§ 1.894 Annual goals and timetables.

An agencywide plan for promoting part-time employment opportunities will be developed annually. This plan will establish annual goals and set interim and final deadlines for achieving these goals. This plan will be applicable throughout the agency, but may be supplemented by field stations.

(5 U.S.C. 3392)

§ 1.895 Review and evaluation.

The part-time career employment program will be reviewed through semiannual reports submitted by field stations. Regular employment reports will be used to determine levels of part-time employment. This program will also be designated an item of special interest to be reviewed during personnel management reviews.

(5 U.S.C. 3392)

§ 1.896 Publicizing vacancies.

When applicants from outside the Federal service are desired, part-time vacancies may be publicized through various recruiting means, such as:

(a) Federal Job Information Centers.

(b) State Employment offices.

(c) VA Recruiting Bulletins.

(5 U.S.C. 3392)

§ 1.897 Exceptions.

The Administrator of Veterans Affairs, or designees, may except positions from inclusion in this program as necessary to carry out the mission of the agency.

(5 U.S.C. 3392)

[FR Doc. 79-5888 Filed 2-27-79; 8:45 am]

[7710-12-M]

POSTAL SERVICE

[39 CFR Part 111]

THIRD CLASS

Revocation of Special Bulk Third-Class Rate Authorizations for Nonuse

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal would amend existing regulations to add a provision requiring the cancellation of special bulk third-class rate authorizations for nonuse. The proposal would require mail classification centers to revoke an authorization if no mailing is made for two years. A substantial number of the existing third-class rate authorizations pertain to inactive or defunct organizations which have not made mailings for more than two years. These authorizations clutter post office files and unnecessarily add to the administrative burden of file maintenance. The proposed rule, if adopted, would allow post offices to remove inactive authorizations from their files.

To avoid erroneous revocations, the Postal Service will notify by mail the affected organization of the intention to revoke the special rate authorization and the reason for that action.

Revocation of an authorization for nonuse will not preclude an organization from subsequently reapplying for a special rate authorization if the organization decides to resume mailing activities.

DATE: Comments must be received on or before March 30, 1979.

ADDRESS: Written comments should be directed to: Director, Office of Mail Classification, Rates and Classification Department, U.S. Postal Service, Washington, D.C. 20260. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday in Room 1610.

FOR FURTHER INFORMATION CONTACT:

Skip McGill, (202) 245-4749.

SUPPLEMENTARY INFORMATION: The Postal Service, for the purposes described above, is proposing to revise existing section 134.542 and to add a new section 134.563 to the Postal Service Manual, Chapter I of which has been incorporated by reference in FEDERAL REGISTER, see 39 CFR 111.1. Conforming amendments are also being made to 134.543. Although exempt from the requirements of the Administrative Procedure Act (5 U.S.C. 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions of the Postal Service Manual:

PART 134—THIRD CLASS

In 134.5, delete the words "postal services center" wherever they appear in .542 and .543 and insert the words "mail classification center" in lieu thereof, add a new sentence at the end of .542, and add new .563 as follows:

.54 APPLICATION

* * * * *

.542 APPROVAL OR DENIAL

* * * * *

Authorizations to mail at special bulk third-class rates shall be revoked for nonuse if no special mailings occur within a two year period.

* * * * *

.56 REVOCATION

* * * * *

.563 An authorization to mail at the special bulk third-class rates shall be revoked by mail classification centers if no special rate mailings are made by the authorized organization during a two year period of time. The postmaster of the mail classification center who approved the application shall mail a copy of the notice of revocation for nonuse to the affected organization at the address shown on the application prior to the effective date. No administrative appeal is provided for a revocation for nonuse of an authorization.

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposals are adopted.

(39 U.S.C. 401(2).)

W. ALLEN SANDERS,
Acting Deputy General Counsel.

[FR Doc. 79-5902 Filed 2-27-79; 8:45 am]

[3510-15-M]

DEPARTMENT OF COMMERCE

Maritime Administration

[46 CFR Part 251]

CONSTRUCTION-DIFFERENTIAL SUBSIDY

Standard Contract Forms

AGENCY: Maritime Administration, Department of Commerce.

ACTION: Extension of comment period.

SUMMARY: In Doc. No. 79-2073, appearing in the FEDERAL REGISTER on January 19, 1979 (44 FR 3997), Notice of Availability and request for comment on proposed regulation, standard forms for contracts which are subject to approval in awarding construction-differential subsidy, the time for submission of written comments was extended to close of business on March 1, 1979. Upon request made and good cause shown by the Shipbuilders Council of America and the Council of American Flag Ship Operators, the time for submission of comments has been extended to close of business on April 10, 1979.

DATE: Written comments are due on or before April 10, 1979.

ADDRESS: Submit (in triplicate) to Secretary, Maritime Administration, Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT:

Melvin S. Eck, Maritime Administration, Office of General Counsel, Washington, D.C. 20230, Tel. (202) 377-2771.

AUTHORITY: Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); Reorganization Plans No. 21 of 1950 (64 Stat. 1273), and No. 7 of 1961 (74 Stat. 840), as amended by Pub. L. 91-469 (84 Stat. 1036); and Department of Commerce Organization Order 10-8 (38 FR 19707, July 23, 1973).

By order of the Maritime Subsidy Board.

Dated: February 23, 1979.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc. 79-5951 Filed 2-27-78; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 73]

[BC Docket No. 78-364; RM-2936; RM-2968; RM-2988]

FM BROADCAST STATIONS IN GRAND RAPIDS AND HIBBING, MINNESOTA

Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Order extending time.

SUMMARY: Action taken herein extends the time for filing comments and reply comments in a proceeding involving proposed FM channel assignments in Grand Rapids and Hibbing, Minnesota. Petitioner, WKKQ, Inc., states the additional time is needed in order to prepare comments in this matter.

DATES: Comments must be filed on or before February 22, 1979, and reply comments must be filed on or before March 16, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Freda Lippert Thyden, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations (Grand Rapids and Hibbing, Minnesota).

Adopted: February 15, 1979.
Released: February 16, 1979.

By the Chief, Broadcast Bureau:

1. On November 3, 1978, the Commission adopted a *Notice of Proposed Rule Making and Order to Show Cause*, 43 FR 53475, concerning the above-entitled proceeding. The present dates for filing comments and reply comments are February 15, 1979, respectively.

2. On February 13, 1978, counsel for WKKQ, Inc. and Jerry J. Collins, requested an extension of time for filing comments to and including February 22, 1979. Counsel states that due to illness of a member of his staff additional time is needed to prepare comments in this proceeding. Counsel states that the other parties involved in this proceeding have consented to the extension.

3. Section 1.46 of the Rules states that extension requests must be filed seven days in advance but permits late-filed requests in case of last-minute emergencies which could not have been anticipated by the party requesting the extension. We believe that good cause has been shown in this instance, and that justification for an extension has been shown, so we are granting this request.

4. Accordingly, it is ordered, That the dates for filing comments and reply comments in BC Docket No. 78-364 are extended to and including February 22, and March 16, 1979, respectively.

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. 79-5817 Filed 2-27-79; 8:45 am]

[4310-55-M]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 96]

ALASKA NATIONAL WILDLIFE MONUMENTS

Intent to Propose Rules

AGENCY: United States Fish and Wildlife Service, Department of the Interior.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: On December 1, 1978, President Carter signed Presidential Proclamations establishing 17 new National Monument areas in Alaska. Two of these areas, Becharof National Monument and Yukon Flats National Monument (known as the "Alaska National Wildlife Monuments") were placed under the jurisdiction of the United States Fish and Wildlife Service. Because of the immediate change in the administrative status of the lands within these two Monuments, it was necessary to publish on December 26, 1978, emergency interim regulations governing their management pending the development of permanent regulations. (43 FR 60255). The publication of this "Notice of Intent to Propose Rules" is the first step in the preparation of final permanent regulations on the use and management of the Alaska National Wildlife Monuments. This Notice solicits public comment on general managment concepts which will form the basis for subsequent proposed and final rules.

DATE: Comments must be received on or before March 30, 1979. Individual responses will not be provided though the comments will be considerd in preparing draft regulations.

ADDRESS: Send written comments to Donald Barry, Room 6555, Office of the Solicitor, United States Department of the Interior, Washington, D.C. 20240. Public comments generated in Alaska may also be sent to Keith Schreiner, Area Director, United Stated Fish and Wildlife Service, Department of the Interior, 1011 East Tudor Road, Anchorage, Alaska 99507.

FOR FURTHER INFORMATION CONTACT:

Burke Neely, Room 3012, Alaska Native Claims Staff, United States Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240, (202-343-7533). Dave Paterson, Division of Refuges, United States Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503, (907-276-3800).

SUPPLEMENTARY INFORMATION:

AUTHORITY

Section 2 of the Antiquities Act of 1906 (16 U.S.C. 431) authorizes the President, in his discretion, to declare objects of historic or scientific interest that are situated upon lands owned or controlled by the United States to be National Monuments. The same section authorizes the President to include within a monument surrounding parcels of federally owned or controlled lands required for the proper care and management of the objects to be protected.

Pursuant to this authority, President Carter on December 1, 1978, signed seventeen Proclamations establishing new National Monuments and additions to existing National Monuments in Alaska (43 FR 57009). Fifteen of these Proclamations directed the Secretary of the Interior to "issue such regulations as are appropriate" for the management of these areas. The Secretary of the Interior's administrative authority over two of these new National Monument areas (Becharof National Monument and Yukon Flats National Monument), was subsequently delegated to the Director of the United States Fish and Wildlife Service.

Through this internal delegation, the Director obtained regulatory authority over these two new National Wildlife Monument areas. The authorities for these regulations are 16 U.S.C. 432, 16 U.S.C. 460k-3, 16 U.S.C. 742f and the Proclamations establishing the two National Wildlife Monuments.

THE NEED FOR PERMANENT REGULATIONS

The two National Wildlife Monuments do not become part of the National Wildlife Refuge System as that System is currently defined. Rather, these Wildlife Monuments are to be administered in accordance with the provisions of the Antiquities Act, 16 U.S.C. 431 *et seq.*, the Act of Sept. 28, 1962, 16 U.S.C. 460k-1 *et seq.*, and the Fish and Wildlife Act of 1956, 16 U.S.C. 742a *et seq.* The primary thrust of any regulatory program established under these authorities must be the conservation and protection of the outstanding fish and wildlife resources and their habitats, as noted in the Presidential Proclamations. Since these National Wildlife Monuments do not become part of the National Wildlife Refuge System, the general regulations governing the administration of that System are not applicable to these two areas in Alaska.

In order to provide guidance as to the permissible activities within these Wildlife Monuments, the Fish and Wildlife Service published emergency interim regulations on December 26, 1978. (43 FR 60257). These interim

regulations established temporary protection for the Wildlife Monuments, pending publication of permanent final regulations. Because the interim regulations were published on an emergency basis, they were purposefully prepared to cause the least disruption possible to on-going activities and uses within the Wildlife Monuments. This "minimal" approach resulted in the exclusion of many subject matter areas which need to be dealt with in comprehensive land use management regulations. Thus the interim regulations did not expressly deal with such issues as the forfeiture of abandoned property, the reporting of accidents, the use of fires, or the control of feral animals. It was the intent of the Fish and Wildlife Service to address these issues in a more deliberative process that allowed public comment. Since the interim regulations were only intended to be temporary in nature, permanent comprehensive regulations nust now be developed for the National Wildlife Monuments.

THE PROCEDURE FOR PERMANENT REGULATIONS

Under the new regulatory process established by Executive Order 12044, a "Notice of Intent to Propose Rules" must first be published prior to the actual drafting and proposal of "significant" regulations. A Notice of Intent must state the need for, the subject matter of, and the key issues addressed by the anticipated rulemaking. The public's attention is thus focused on general concepts which will later form the basis for specific regulatory language. The purpose of the "Notice of Intent" is to insure adequate public participation in the earliest phases of significant rulemaking. The Department of the Interior has also recognized the value of publishing a "Notice of Intent" for regulations not meeting the criteria for "significance" under Executive Order 12044. In the context of the National Wildlife Monuments, a policy decision was made last December that, regardless of the significance or insignificance of the permanent management regulations, a Notice of Intent would be published in order to maximize the opportunity for public involvement in the preparation of the regulations.

In the present Notice of Intent, a series of questions are submitted for public comment in five general subject matter areas: General Administration, Public Entry and Use, Subsistence, Nonsubsistence taking of Fish and Wildlife, and Mining. These questions solicit advice on regulatory issues which are common to any comprehensive set of land use regulations. It should be noted that some of the topics in the "General Administration" category of questions will not actually be incorporated into subsequent regulations, but rather will provide guidance to the Fish and Wildlife Service as it establishes internal management objectives for each National Wildlife Monument. An example of this is question No. 3 concerning the construction of all-weather roads and the manipulation of habitat.

In responding to the questions in this Notice of Intent, certain points should be kept in mind. First, many of the impacts on the public's use of the National Wildlife Monuments do not stem from the interim or anticipated permanent management regulations themselves, but rather result from numerous protective land orders and withdrawals designed to preserve the natural values of the Monuments. Beginning with the so-called "d-1" and "d-2" withdrawals of the early 1970's, these "National Interest" lands were removed from further appropriation under most of the public land laws. Furthermore, after passage of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1701 *et seq.*, these areas were protectively managed under the broad new regulatory powers of the Bureau of Land Management. Pursuant to Cooperative Agreements with the Fish and Wildlife Service and the National Park Service, the Bureau of Land Management administered the "d-1" and "d-2" lands within the Administration's legislative proposals so as to avoid disrupting their wilderness values and Congressional options on the Alaska National Interest Lands legislation.

When the 95th Congress was unable to complete its consideration of the d-2 legislation, Secretary Andrus exercised his emergency withdrawal powers under Section 204(e) of FLPMA and withdrew the Becharof and Yukon Flats areas from all forms of appropriation under the public land laws, including the Mining Act of 1872, 30 U.S.C. 22 *et seq.* Subsequently, on December 1, 1978, President Carter declared the two areas as National Monuments and again withdrew them from further appropriation under the public land laws.

Three layers of administrative protection thus cover the National Wildlife Monuments: the d-1 withdrawals, the Section 204(e) emergency withdrawal and the Monument Proclamation withdrawals. Subject to valid existing rights, these withdrawals in combination preclude the appropriation or use of the public lands within the Monuments for purposes such as mining or mineral leasing.

The point to be made is this: in responding to the questions in this Notice of Intent, the public should limit its comments to those subjects where the Fish and Wildlife Service retains regulatory discretion under the terms of the various protective land orders and statutes like the Antiquities Act. Comments on the "Mining" or "Public Entry and Use" questions to the effect that the Wildlife Monuments should be opened up to further mining location or homesteading will be of little value to the Fish and Wildlife Service since the authorization of those activities is beyond the scope of this regulatory exercise. It should also be remembered that the Fish and Wildlife Service must exercise its regulatory discretion so as to enhance the scientific and historic values noted in the Wildlife Monument Proclamations.

Therefore, comments should address the tradeoffs between an anticipated regulation's impact upon the general public versus the Wildlife Monument and its resources. For example, if one were to recommend unlimited aircraft access and use within National Wildlife Monuments, the comment should also discuss the impact of such access upon the natural resources of the Monument. To the maximum extent possible, comments should also include estimates of the anticipated economic impact of one regulatory approach over another so that the significance of the management regulations eventually proposed can be evaluated.

The reader is also advised that the National Park Service has also published in this issue of the FEDERAL REGISTER, a Notice of Intent concerning the development of regulations for the 13 new Park Service National Monument areas created by President Carter. Although the questions in the Park Service's Notice of Intent differ somewhat from those set out in this Notice for the Fish and Wildlife Service, the questions for the two agencies are the same on the issue of subsistence hunting and fishing. This reflects the fact that the subsistence language in the Monument Proclamations was uniform for both Park Service and Fish and Wildlife Service areas. The two agencies, therefore, will jointly develop the subsistence regulatory program for the new Monuments under their jurisdiction. Apart from the issue of subsistence, however, the public should remember that the Notices of Intent for the two agencies are different and should not be confused in the preparation and submission of comments.

Finally, it should be noted that the Fish and Wildlife Service is about to publish an emergency interim rulemaking governing access for mining purposes within a National Wildlife Monument. Under the mining laws and the Monument Proclamations, only persons possessing valid existing mineral rights may continue to develop their claims within the Wildlife Monuments. The interim emergency

regulations will enable the Fish and Wildlife Service to coordinate access for mining purposes in order to minimize its impact upon the Monuments. These interim emergency regulations will only deal with the issue of access and eventually will be replaced with permanent, comprehensive mining regulations on access and development. Therefore, notwithstanding the imminent publication of the emergency mining regulations, this Notice of Intent solicits advice on a number of mining issues which will be addressed in anticipated permanent Monument regulations.

IMPACT ANALYSIS

The Department of the Interior has made a preliminary determination that the anticipated rules will not be significant, nor will they require a regulatory analysis under Executive Order 12044. A final determination will be made after an assessment of the responses generated by this notice. An environmental impact statement covering proposed Federal actions in Alaska was prepared in 1974 and supplemented on November 28, 1978 by an analysis covering alternative Administrative actions.

The primary author of this Notice is Donald Barry, Attorney-Advisor, Office of the Solicitor.

CONCEPTS FOR CONSIDERATION

1. General administration.
2. Public entry and use.
3. Subsistence.
4. Nonsubsistence taking of fish and wildlife.
5. Mining.

GENERAL ADMINISTRATION

1. The Fish and Wildlife Service currently manages national wildlife refuges in accordance with a set of general refuge regulations in 50 Code of Federal Regulations, Part 25 through 35. In developing general management regulations for the Becharof and Yukon Flats National Wildlife Monuments, should the Fish and Wildlife Service:

A. Uniformly adopt and make applicable to the national wildlife monuments the existing general refuge regulations?

B. Retain on a permanent basis the existing emergency interim regulations?

C. Modify and selectively apply the existing general refuge regulations in recognition of the problems and conditions which are unique to Alaska?

2. Under the National Wildlife Refuge System Administration Act of 1966, the Fish and Wildlife Service may permit any activity or use to occur within a wildlife refuge so long as it is compatible with the purposes for which the refuge was established. Should the "compatibility test" be adopted and made applicable to public activities within a national wildlife monument?

3. What should be the primary management objectives for national wildlife monuments? To what extent, if at all, should they differ from those management objectives established for the National Wildlife Refuge System? Should the manipulation of land and water within a wildlife monument be allowed for management purposes (i.e. dikes, dams, etc.)? Should permanent structures such as visitor centers or all-weather roads and trails be constructed?

PUBLIC ENTRY AND USE

4. How should general public access across and within a national wildlife monument be managed? In particular, what provisions should be developed governing the use of motorboats, airplanes, snowmachines and off-road vehicles?

5. What provisions should be developed governing the commercial and non-commercial utilization of natural resources such as timber within a national wildlife monument?

6. What provisions should be developed governing public recreational activities such as camping within national wildlife monuments?

7. What provisions should be developed to protect the plant and animal resources of a national wildlife monument from injury or unauthorized destruction?

8. How should abandoned property and illegally built cabins be dealt with on national wildlife monuments?

9. Should easements and rights-of-way be granted across national wildlife monuments? If so, under what conditions, limitations or environmental safeguards?

SUBSISTENCE

10. In light of the fact that the State of Alaska has not completed the development of its own subsistence program, should a separate Federal regulatory program based upon the Presidential Proclamations be developed to govern subsistence activities within the new National monuments in Alaska administered by the Department of the Interior. Should the State's subsistence program be incorporated in total once it is completed?

11. If a separate Federal subsistence program was to be established by the Department of the Interior, the following issues would have to be considered in the development of that program:

(a) Should the Federal subsistence program be applicable to all of the lands under the jurisdiction of the Department of the Interior or should it be limited to the new National Monument areas created by President Carter?

(b) The Presidential Proclamations preserved the opportunity for the continuation of subsistence activites by the "local residents" living within or near the National Monuments. The subsistence lifestyle varies from areas to area, however. In some areas of Alaska, subsistence users have traditionally traveled great distances to participate in the hunts along the coast; in other Monument areas, the subsistence user has been less migratory. For purposes of allowing subsistence activities to continue within National Monuments, how should "local resident" be defined? Should the definition be uniform throughout all of the National Monuments created by President Carter or should it vary from Monument to Monument to reflect variations in the subsistence lifestyle?

(c) Since "subsistence uses" are defined broadly in the interim regulations, how should legitimate "subsistence users" be qualified and identified in order to distinguish them from other consumptive users of fish and wildlife such as sport hunters or fishermen? Are there other qualifying criteria to be considered besides local rural residency, the availability of alternative resources and the customary and direct dependency upon subsistence resources as the mainstay of one's livelihood? What degree of involvement in a cash economy should disqualify a person from the subsistence preference?

(d) Should the use of aircraft be allowed in subsistence activites? If so, to what extent?

(e) The definition of "subsistence uses" in the emergency interim regulations references the "customary and traditional" use of wild, renewable resources. How should the concepts of "customary" and "traditional" use be defined? Should the use of subsistence resources be fixed to a specific time period in order to be considered "customary and traditional"? Should the "customary and traditional" test be applied to the method of taking subsistence resources in addition to the intended use of those resources?

(f) The defintion of "subsistence uses" also authorizes the "customary trade, barter or sharing [of subsistence resources] for personal or family consumption". Should the terms "trade" and "barter" be defined to allow for the limited exchange of furs for cash?

NONSUBSISTENCE TAKING OF FISH AND WILDLIFE

12. Under the existing general wildlife refuge regulations, the taking of fish and wildlife is allowed if it is determined that such activity is compati-

ble with the principles of sound wildlife management, the purposes for which a refuge was established, and would otherwise be in the public interest. Should this same approach be adopted for nonsubsistence trapping, hunting, and fishing within national wildlife monuments?

MINING

13. The Proclamations establishing the national wildlife monuments withdrew them, subject to valid existing rights, from further location or appropriation under the mining laws. What type of reasonable regulations should be developed to govern access to, and the development of, those valid existing mineral claims? Should a regulatory system be established which is similar to the one governing mining in the National Park System?

Dated: February 16, 1979.

LYNN A. GREENWALT,
Director, United States Fish and Wildlife Service.

[FR Doc. 79-5934 Filed 2-27-79; 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.

[6320-01-M]

CIVIL AERONAUTICS BOARD

[Order 79-2-39; Dockets 33690, 33530, 33591, 33677, 34011/34144, and 34080/34093]

AMERICAN AIRLINES, INC., ET AL.

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 7th day of February, 1979.

In the matter of applications of American Airlines, Inc., Northwest Airlines, Inc., Western Air Lines, Inc., Continental Air Lines, Inc., Delta Airlines, Inc. and Ozark Air Lines, Inc., for certificate and exemption authority.

On October 13, 1978, American Airlines filed an application for nonstop authority between Dallas/Fort Worth (DFW) and the co-terminal points Denver, Portland and Seattle, and moved for a hearing.

In support of its application, American stated that the markets involved are experiencing strong growth, that it will offer needed competitive service, and that it will offer new single-plane service to beyond points.

Continental (Docket 33677), on October 13, 1978, filed for DFW-Denver authority. In support of its application, it submits that the market is experiencing strong growth, and that it will fill service gaps and offer low-price options.[1]

Western Air Lines (Docket 33591), on October 2, 1978, filed for the addition of a Denver-DFW-Atlanta segment to its certificate. In support of its application, it submits that the markets connecting those cities should receive service from more than the current two carriers.[2]

Northwest Airlines, on October 12, 1978, amended its application in Docket 33530 to include the Denver-DFW-Atlanta segment and it moved to consolidated with Western.[3] It filed no supporting data.

Ozark Air Lines (Docket 34080), on November 20, 1978, filed for Denver-DFW-Atlanta authority, and it moved to consolidate with Western.[4] It filed no supporting data.

Delta Air Lines (Docket 34011), on November 13, 1978, and Ozark Air Lines (Docket 34093), on November 22, 1978, filed for DFW-Denver/Portland/Seattle authority and moved to consolidate with American (Docket 33690). Neither carrier filed supporting data.

Delta Air Lines (Docket 34144), on November 30, 1973, filed for an exemption to operate Denver-DFW for two years, or until final action on applications for additional certificate authority in the market.

The Portland Parties[5] filed in support of American's application and petitioned for leave to intervene. The Seattle Parties[6] also filed in support of American.

Frontier and Western answered in opposition to American's application for DFW-Denver/Seattle/Portland authority stating that the markets should be heard in the *Denver-Alaska Service Investigation*. Frontier also claimed that American could offer little in the way of service and price options in the DFW-Denver market, thus that portion of its application should be dismissed.

Braniff, Delta, and Frontier filed in opposition to Western's application, claiming that it did not comply with our Rule 302.908(b).

Frontier filed in opposition to Delta's exemption request, stating that the Denver-DFW market already enjoys a high level of both service and fare competition. It also argued that Delta's exemption request should not be given preference over the certificate applications filed for the same authority.

We tentatively conclude, on the basis of the tentative findings below, that is is consistent with the public convenience and necessary to grant, on a Category II subsidy-ineligible basis, the applications of American, Delta and Ozark for DFW-Denver/Seattle/Portland authority, with a long-haul restriction requiring that all flights over the segment serve Dallas/Fort Worth;[7] the applications of Continental, Northwest, and Western for DFW-Denver authority; and the applications of any other fit, willing and able applicant whose fitness, willingness and ability can be established by officially noticeable data.[8] Further, we tentatively conclude that no oral evidentiary hearing is needed here since there are no material determinative issues of fact requiring such a hearing for their resolution.

Under the Airline Deregulation Act of 1978, we must approve an application for certificate authority unless we find, by a preponderance of the evidence, that approval would not be consistent with the public convenience and necessity (Pub. L. No. 95-504, section 14). The new Act creates a presumption that the grant of all applications is consistent with the public convenience and necessity. It places on any oponents of these applications the burden of proving them inconsistent with the public convenience and necessity (Pub. L. No. 95-504, section 14).

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[1] It later requested that its application receive contemoraneous consideration with American's application in Docket 33690, and American moved to consolidate with Continental.

[2] It moved for consolidation with a Braniff application (Docket 33236) for Atlanta-DFW authority. The portion of Western's application which seeks Atlanta-DFW and Atlanta-Denver authority is being handled in another proceeding. On our own motion, we will consolidate its application, insofar as it seeks DFW-Denver authority, with American's application in Docket 33690.

[3] This application will receive the same treatment as Western's (Docket 33591), as outlined in footnote 2 above.

[4] The Atlanta markets in Ozark's application will receive the same treatment as those markets in Western's application (Docket 33591), as outlined in footnote 2 above. The DFW-Denver portion will be dismissed as being repetitive; Ozark filed a later application seeking DFW-Denver/Seattle-Portland authority (Docket 34093), which will receive consideration here.

[5] City of Portland, Portland Chamber of Commerce, Portland Freight Traffic Association, and the Port of Portland.

[6] Port of Seattle Commission, the City of Seattle, and County of King, the Seattle Chamber of Commerce, and the Puget Sound Traffic Association.

[7] Denver-Seattle/Portland markets are currently at issue in the *Denver-Alaska Service Investigation*. Because these markets are currently at issue in an ongoing formal proceding, we propose that the authority granted should carry a restriction requiring that all flights over the segment serve Dallas/Fort Worth.

[8] Officially noticeable data consist of that material filed under subsection 302.24(m) of our Procedural Regulations. Applicants whose fitness cannot be so established must make a showing of fitness, as well as deal with any questions under sections 408 and 409 of the Act. Should such applications be filed, we will then consider how to deal with them procedurally.

On the basis of officially noticeable data, we find that American, Delta, Ozark, Continental, Northwest and Western are citizens of the United States and are fit, willing and able to perform the air services proposed and to conform to the provisions of the Act and our rules, regulations and requirements.

To give such opponents a reasonable opportunity to meet an admittedly heavy burden of proof, it is our view that applicants must indicate what type of service they would provide if, after receiving authority, they chose to serve the markets at issue. This does not mean that an applicant must show that it will provide service if it receives authority but rather what the nature of its service would be if it decided to serve. We will give all existing and would-be applicants 15 days from the date of service of this order to supply data,[9] in order to give interested persons sufficient information on the nature of the applicant's proposal to assess consistency with the public convenience and necessity. Our tentative findings concerning all applicants that have not filed illustrative service proposals are contingent on such filings:

Upon review of all the facts and pleadings in this case, we have tentatively determined that there is no reason why we should not grant multiple awards. Our tentative conclusions comport with the letter and spirit of the Airline Deregulation Act of 1978, particularly the declaration of policy set forth in section 102 which instructs us to rely to the maximum extent possible, on competitive forces, including potential competition.[10] See our general conclusions about the benefits of multiple authority in *Improved Authority to Wichita Case, et al.*, Order 78-12-106, December 14, 1978. Accordingly, we conclude that it is desirable to award the additional authority sought by the applicants, whether or not services are in fact operated. The existence of additional operating rights in markets now being served by incumbent carriers or authorized to be served will best effect the statute's policy objective of placing maximum reliance on the decisions of the marketplace. This will occur because newly authorized carriers may actually enter the market in order to exploit unmet demand, both in terms of price and service; or because incumbents will be encouraged in the realistic threat of entry to meet that demand. Because demand is dynamic in character and therefore constantly changing, the most effective means to assure that competitive forces will operate quickly and efficiently is to award multiple operating authority to carriers that are fit, willing and able to provide service.[11]

Notwithstanding the foregoing tentative conclusions in support of multiple authority in this proceeding, we wish to make clear that we in no way desire to deter objections that might be asserted under the 1978 Act by air carriers, civic interests or other interested persons. The new statute contains a completely revised declaration of policy in section 102, as well as numerous additional and modified substantive provisions. Some of these statutory changes relate to considerations not expressly covered in the preceding statute. For example, while diversion from existing carriers will not be given decisive weight in rejecting applications for new authority except upon an extraordinary showing of financial jeopardy on the part of one or more existing air carriers, with the consequent loss of essential air service which cannot be immediately replaced, other provisions suggest that the Congress desires us to take into account other factors. These include, but are not limited to satellite airport questions, the degree of concentration within the industry, and safety. Any party in this proceeding may explain in full why the authority that we proposed to grant should not issue. Such explanations should apply specifically to the applications in issue, and should be sufficiently detailed to overcome the statutory presumption of favorable treatment that the Act bestows on applications.

We will deny Delta's application for an exemption to operate Denver-DFW. Despite liberalized exemption criteria, certification remains the norm under the Act and a sufficient immediate public need must be shown to justify the use of our exemption powers. We have been shown none here. Our conclusion is further bolstered by our proposal here to grant the DFW-Denver authority by expeditious show-cause procedures.

Finally, upon review of the environmental evaluation submitted by American, Continental and Western in their applications, to which no answers have been filed, we find that our decision to award them authority does 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, or a major regulatory action under the Energy Policy and Conservation Act of 1975. We reserve judgement on the environmental consequences of other applications, pending submission of environmental data.

We will give interested persons 30 days following the service data of this order to show cause why the tentative findings and conclusions set forth here should not be made final; replies will be due within 10 days thereafter. We expect such persons to direct their objections, if any, to specific markets, and to support such objections with detailed economic analysis. If an evidentiary hearing is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts he would expect to establish through such a proceeding that cannot be established in written pleadings. We will not entertain general, vague, or unsupported objections.

ACCORDINGLY:

1. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated above and amending the certificates of public convenience and necessity of American Airlines, Delta Airlines, and Ozark Airlines so as to add a segment authorizing them to engage in nonstop operations between Dallas/Fort Worth and the co-terminals Denver, Seattle, and Portland, with a long-haul restriction requiring that all flights over this segment serve Dallas/Fort Worth; amending the certificates of public convenience and necessity of Continental Airlines and Western Air Lines so as to authorize nonstop operations between Dallas/Fort Worth and Denver; and amending, to grant any of the authority in issue, the certificates of any other fit, willing and able applicants the fitness of which can be established by officially noticeable material;

2. We direct any interested persons having objections to the issuance of an order making final any of the pro-

[9] They should submit an illustrative schedule of service in the markets at issue, which shows all points that they might choose to serve, the type and capacity of the equipment they would likely use and the elapsed trip time of flights in block hours over the segments. For the markets at issue only, they should also provide an environmental evaluation as required by Part 312 of our Regulations, and an estimate of the gallons of fuel to be consumed in the first year of operations in the markets if they instituted the proposed service, as well as a statement on the availability of the required fuel.

[10] Section 102(a) specifies as being in the public interest, among other things: "The placement of maximum reliance on competitive market forces and on actual and potential competition (a) to provide the needed air transportation system, and (b) to encourage efficient and well-managed carriers to earn adequate profits and to attract capital" and "The encouragement, development, and maintenance of an air transportation system relying on actual and potential competition to provide efficiency, innovation, and low prices, and to determine the variety, quality, and price of air transportation services."

[11] The above recited policy determinations and findings answer the substantive objections brought forward by Frontier in opposition to American's application for Dallas/Ft. Worth-Denver authority. Specifically, what American has proposed in the way of service and price options is not germane to the basis for our policy determinations. As set forth above, the existence of any additional outstanding authority, even if not exercised, will encourage the incumbent carrier or carriers continuously to seek out the best combination of service and price in accordance with the specific demand characteristics of the Dallas/Ft. Worth-Denver market.

posed findings, conclusions or certificate amendments set out here, to file such objections with us and serve them upon all persons listed in paragraph 11, no later than March 22, 1979; replies to objections will be due on April 2, 1979;

3. We will accord full consideration to the matters and issues raised in any timely and properly supported objections before we take further action;[12]

4. In the event no one files objections, we will deem all further procedural steps to have been waived and we may proceed to enter an order consistent with the tentative findings and conclusions set out here;

5. We direct all applicants for authority in the Dallas/Fort Worth-Denver/Seattle/Portland markets, that have not done so, to file the data indicated in footnote 9 no later than March 7, 1979;

6. We grant the motions of Continental (Docket 33677), Delta (Docket 34011), and Ozark (Docket 34093) to consolidate with American's application in Docket 33690;

7. We consolidate on our own motion the Dallas/Fort Worth-Denver portion of Western's application (Docket 33591) and Northwest's application (Docket 33530) with American's application in Docket 33690;

8. We dismiss the Dallas/Fort Worth-Denver portion of Ozark's application (Docket 34080) as repetitive;

9. We grant the petition of the Portland Parties for leave to intervene;

10. We deny Delta's application for exemption (Docket 34144) to operate Denver-Dallas/Fort Worth; and

11. We will serve a copy of this order upon all parties in Dockets 33677, 33699 and 34011.

We will publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[13]
Secretary.

[FR Doc. 79-5930 Filed 2-27-79; 8:45 am]

[12]Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.

[13]All Members concurred except Member O'Melia who did not vote.

[6320-01-M]

[Order 79-2-38; Dockets 33236, 33437, 33460, 33530, 33591, 33598, 33599, and 34080]

BRANIFF AIRWAYS, INC., ET AL.

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 7th day of February 1979.

In the matter of applications of Braniff Airways, Inc., Southern Airways, Inc., American Airlines, Inc., Northwest Airlines, Inc., Western Air Lines, Inc., Allegheny Airlines, Inc., Continental Air Lines, Inc., and Ozark Air Lines, Inc., for certificate authority.

On August 18, 1978, Braniff Airways Inc. filed an application to amend its certificate for Route 9 to add a new segment between Atlanta and Dallas/Fort Worth (DFW),[1] and it moved for hearing.

In support of its application, Braniff contends that the Atlanta-DFW market is large enough to support additional nonstop competition, that it would be able to provide first single-carrier service to a number of points beyond DFW, and that its proposal offers significant new price and service options in the market.

Southern Airways (Docket 33437), on September 15, 1978; American Airlines (Docket 33460), on September 18, 1978; and Northwest Airlines (Docket 33530), on September 25, 1978, filed for Atlanta-DFW authority and moved to consolidate their applications with Braniff's. Allegheny Airlines (Docket 33598) filed for the same authority on October 2, 1978, and moved to consolidate with American's application. No supporting data were filed with any of these applications.

Continental Air Lines (Docket 33599), on October 2, 1978, filed for amendment of its certificate to authorize nonstop operation between Atlanta and the coterminal points DFW and Houston. It moved to consolidate its application with Braniff's.

In support of its application for Atlanta-Houston authority, Continental contends that that market generates almost as much O&D traffic as Atlanta-DFW; that it can provide new single-plane services beyond Houston; and that it will introduce new low-fare options in the market.

Western Air Lines (Docket 33591), on October 2, 1978, filed for the addition of a Denver-DFW-Atlanta segment to its certificate, and it moved to consolidate its application with Braniff's.

In support of its application, Western submits that Denver, DFW and Atlanta are all important connecting hubs; that they are all leading cities in their respective geographic areas; and that the markets connecting these cities should receive service from more than two carriers. It proposes to offer Atlanta-Denver and DFW-Denver nonstop service over the Denver-DFW-Atlanta segment.

Northwest amended its application and motion to consolidate to include the markets applied for by Continental, Western, and Braniff; Southern amended its application and motion to consolidate to include the markets applied for by Braniff and Continental.

Ozark filed (Docket 34080), on November 20, 1978, for Atlanta-DFW/Houston and Denver-DFW-Atlanta authority, and moved to consolidate with Northwest, Braniff, Western and Continental (Docket 33599). No supporting data were filed.

The City of Houston and the Houston Chamber of Commerce answered in support of Continental's motion to consolidate the Atlanta-Houston market for consideration with the Atlanta-DFW market.

Delta answered in opposition to Braniff's motion for hearing, stating that there was adequate service and a wide range of price/service options in the Atlanta-DFW market. Eastern Air Lines answered in opposition to Braniff, citing adequate service levels and reasonable load factors in the market.

Both Braniff and Delta opposed Western's motion to consolidate on the grounds that the Denver markets are not related to the Atlanta-DFW/Houston markets, and should be examined in a separate proceeding. Frontier also claimed that Western's filing did not comply with Rule 908(b).

Eastern answered in opposition to Continental's motion for hearing on the Atlanta-Houston market on the grounds that Continental proposed no significant service benefits in either the local or beyond markets.

We have elected to limit the scope of this proceeding to consideration of new authority in the Atlanta markets, nonstop authority between Atlanta and DFW, Atlanta and Houston, and Atlanta and Denver. The portions of the applications that seek Denver-DFW authority will be dealt with in another order, also issued today.

We tentatively conclude, on the basis of the tentative findings below, that it is consistent with the public convenience and necessity to grant, on a Category II subsidy-ineligible basis, the applications of American, Allegheny, Braniff, Continental, Northwest, Ozark, Southern and Western for the Atlanta-DFW market; of Continental, Northwest, Ozark and Southern for the Atlanta-Houston market; of Northwest, Ozark and Western for the Atlanta-Denver market; and, for any of the authority in issue, of any other fit, willing and able applicant whose fitness, willingness and ability can be established by officially noticeable data.[2] Further, we tentatively conclude

[1]Braniff also applied to modify the restriction on segment 8 of Route 9 which requires that all persons, property, or mail must have a point of origin, destination, stopover, or transit in the State of Hawaii. The question of whether this restriction constitutes an Atlanta-DFW closed-door restriction, in which case the restriction would cease to have effect pursuant to section 401(e)(7)(A) of the Airline Deregulation Act of 1978, is at issue in Docket 33944. We expect to make a determination in that docket shortly.

[2]Officially noticeable data consist of that material filed under subsection 302.24(m) of

Footnotes continued on next page

that no oral evidentiary hearing is needed here since there are no material determinative issues of fact requiring such a hearing for their resolution.

Under the Airline Deregulation Act of 1978, we must approve an application for certificate authority unless we find, by a preponderance of the evidence, that approval would not be consistent with the public convenience and necessity (Pub. L. No. 95-504, section 14). The new Act creates a presumption that the grant of all applications is consistent with the public convenience and necessity. It places on any opponents of these applications the burden of proving them inconsistent with the public convenience and necessity (Pub. L. No. 95-504, section 14). To give such opponents a reasonable opportunity to meet an admittedly heavy burden of proof, it is our view that applicants must indicate what type of service they would provide if, after receiving authority, they chose to serve the markets at issue. This does not mean that an applicant must show that it will provide service if it receives authority but rather what the nature of its service would be if it decided to serve. We will give all existing and further applicants 15 days from the date of service of this order to supply data,[3] in order to give interested persons sufficient information on the nature of the applicant's proposal to assess consistency with the public convenience and necessity. Our tentative findings concerning all applicants that have not filed illustrative service proposals are contingent on such filings.

Upon review of all the facts and pleadings in this case, we have tentatively determined that there is no reason why we should not grant multiple awards. Our tentative conclusions comport with the letter and spirit of the Airline Deregulation Act of 1978, particularly the declaration of policy set forth in section 102 which instructs us to rely, to the maximum extent possible, on competitive forces, including potential competition.[4] See our general conclusions about the benefits of multiple authority in *Improved Authority to Wichita Case, et al.*, Order 78-12-106, December 14, 1978. Accordingly, we conclude that it is desirable to award the additional authority sought by the applicants, whether or not services are in fact operated. The existence of additional operating rights in markets now being served by incumbent carriers or authorized to be served will best effect the statute's policy objective of placing maximum reliance on the decisions of the marketplace. This will occur because newly authorized carriers may actually enter the market in order to exploit unmet demand, both in terms of price and service, or because incumbents will be encouraged by the realistic threat of entry to meet that demand. Because demand is dynamic in character and therefore constantly changing, the most effective means to assure that competitive forces will operate quickly and efficiently is to award multiple operating authority to carriers that are fit, willing and able to provide service.[5]

Notwithstanding the foregoing tentative conclusions in support of multiple authority in this proceeding, we wish to make clear that we in no way desire to deter objections that might be asserted under the 1978 Act by air carriers, civic interests or other interested persons. The new statute contains a completely revised declaration of policy in section 102, as well as numerous additional and modified substantive provisions. Some of these statutory changes relate to considerations not expressly covered in the preceding statute. For example, while diversion from existing carriers will not be given decisive weight in rejecting applications for new authority except upon an extraordinary showing of financial jeopardy on the part of one or more existing air carriers, with the consequent loss of essential air service which cannot be immediately replaced, other provisions suggest that the Congress desires us to take into account other factors. These include, but are not limited to satellite airport questions, the degree of concentration within the industry, and safety. Any party in this proceeding may explain in full why the authority which we propose to grant should not issue. Such explanations should apply specifically to the applications in issue, and should be sufficiently detailed to permit us to overcome the statutory presumption of favorable treatment that the Act bestows on applications.

Finally, upon review of the environmental evaluations submitted by Braniff, Continental, and Western in their applications, to which no answers were filed, we tentatively find that our decision to award them permissive authority in the Atlanta-DFW, Atlanta-Houston and Atlanta-Denver markets, respectively, does 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, or a major regulatory action under the Energy Policy and Conservation Act of 1975. We reserve judgment on the environmental consequences of other applications, pending submission of environmental data.

We will give interested persons 30 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; replies will be due within ten days thereafter. We expect such persons to direct their objections, if any, to specific markets, and to support such objections with detailed economic analysis. If an evidentiary hearing is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts he would expect to establish through such a proceeding that cannot be established in written pleadings. We will not entertain general, vague, or unsupported objections.

ACCORDINGLY:

1. We direct all interested persons to show cause why we should not issue

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Footnotes continued from last page

our Procedural Regulations. Applicants whose fitness cannot be so established must make a showing of fitness, as well as deal with any questions under sections 408 and 409 of the Act. Should such applications be filed, we will then consider how to deal with them procedurally.

On the basis of officially noticeable data, we find that Allegheny, American, Braniff, Continental, Northwest, Ozark, Southern and Western are citizens of the United States and are fit, willing and able to perform the air services proposed and to conform to the provisions of the Act and our rules, regulations and requirements.

[3] They should submit an illustrative schedule of service in the markets at issue, which shows all points that they might choose to serve, the type and capacity of the equipment they would likely use and the elapsed trip time of flights in block hours over the segments. For the markets at issue only, they should also provide an environmental evaluation as required by Part 312 of our Regulations, and an estimate of the gallons of fuel to be consumed in the first year of operations in the markets if they instituted the proposed service, as well as a statement on the availability of the required fuel.

[4] Section 102(a) specifies as being in the public interest, among other things: "The placement of maximum reliance on competitive market forces and on actual and potential competition (A) to provide the needed air transportation system, and (B) to encourage efficient and well-managed carriers to earn adequate profits and to attract capital" and "The encouragement, development, and maintenance of an air transportation system relying on actual and potential competition to provide efficiency, innovation, and low prices, and to determine the variety, quality, and price of air transportation services."

[5] The above recited policy determinations and findings answer the objections brought forward by Delta and Eastern in opposition to Braniff's application and motion for hearing as well as Eastern's objections to Continental's motion for hearing. Specifically, even if true, any failure to demonstrate need for additional service, or to submit innovative proposals that promise to yield "significant public benefits" are not germane to the basis for our policy determinations. As set forth above, the existence of any additional outstanding authority, even if not exercised, will encourage the incumbent carrier or carriers continuously to seek out the best combination of service and price in accordance with the specific demand characteristics of the markets in issue.

an order making final the tentative findings and conclusions stated above and: (a) amending the certificates of American Airlines, Allegheny Airlines, Braniff Airways, Continental Air Lines, Northwest Airlines, Ozark Air Lines, Southern Airways and Western Air Lines to authorize them to engage in nonstop operations between Atlanta and Dallas/Fort Worth; (b) amending the certificates of Continental Air Lines, Northwest Airlines, Ozark Air Lines and Southern Airways to authorize them to engage in nonstop operations between Atlanta and Houston; (c) and amending the certificates of Northwest Airlines, Ozark Air Lines and Western Air Lines to allow them to engage in nonstop operations between Denver and Atlanta; and amending, to grant any of the authority in issue, the certificates of any other fit, willing and able applicants, the fitness of which can be established by officially noticeable material:

2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions or certificate amendments set out here, to file such objections with us and serve them upon all persons listed in paragraph 7, no later than March 22, 1979; replies to objections will be due on April 2, 1979;

3. We will accord full consideration to the matters and issues raised in any timely and properly supported objections before we take further action;[6]

4. In the event no one files objections, we will deem all further procedural steps to have been waived and we may proceed to enter an order consistent with the tentative findings and conclusions set out here;

5. We direct all current and further applicants that have not done so to file the data indicated in footnote 3 no later than March 7, 1979;

6. We grant the motions of Southern (Docket 33437), American (Docket 33460), Northwest (Docket 33530), Western (Docket 33591), Allegheny (Docket 33598), Continental (Docket 33599), and Ozark (Docket 34080) to consolidate these applications with Braniff's in Docket 33263 to the extent they conform to the scope of the proceeding instituted here; and

7. We will serve this order upon all parties in Dockets 33236, 33591 and 33599.

We will publish this order in the Federal Register.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[7]
Secretary.

[FR Doc 79-5929 Filed 2-27-79; 8:45 am]

[6]Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.

[7]All Members concurred except Member O'Melia who did not vote.

[6320-01-M]

[Docket No. 32711]

DALLAS/FORT WORTH-FLORIDA SERVICE INVESTIGATION

Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding will be held commencing March 20, 1979, at 10:00 a.m. (local time) in Room 1003, Hearing Room A, Universal Building North, 1875 Connecticut Avenue, N.W., Washington, D.C., before the undersigned Administrative Law Judge.

For information concerning the issues involved and other details in this proceeding, interested persons are referred to documents in the docket of investigation on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., February 23, 1979.

KATHERINE A. KENT,
Administrative Law Judge.

[FR Doc. 79-5931 Filed 2-27-79; 8:45 am]

[6320-01-M]

[Order No. 79-2-104; Docket No. 25476; Agreement CAB 23157]

AIRLINE TARIFF PUBLISHERS INC.

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on 15th day of February, 1979. Agreement to Reorganize Airline Tariff Publishers Inc. filed pursuant to section 412 of the Federal Aviation Act of 1958, as amended.

The vast majority of domestic airline tariffs and some international tariffs are filed and published by Airline Tariff Publishing Company (ATPCO). Although it and its predecessor, Airline Tariff Publishers, Inc., have operated as an independent tariff agent since 1965,[1] ATPCO is wholly owned by U.S. and Canadian air carriers. ATPCO was reorganized and its operations were expanded in 1973. By Order No. 73-10-26, we approved in most respects the cluster of agreements which accomplished the reorganization.[2] We did impose certain conditions including the following:

"That the Board's action herein does not extend to approval of any discussions by the participants in the agreement of uniform rules, regulations and services in air transportation which affect the fares, rates or charges paid by the consumer."

We also specifically retained jurisdiction in the proceeding "for the purpose of imposing such further terms and conditions as the Board may find to be necessary." By our approval of the ATPCO reorganization, we automatically provided antitrust immunity for the organizational agreements and the activities authorized by the agreements.

We have decided to assert the jurisdiction retained by the Board for the limited purpose of reconsidering our approval of a provision of one of ATPCO's organizational agreements[3] *i.e.*, section 3 of the Tariff Participants' Agreement. This provision allows competing carriers to notify one another about tariff changes before they are filed with the Board. Specifically, it provides:

A Participant which intends to file, or cause to be filed, by ATPCO or otherwise, with any government regulatory body with which any of the tariffs published by ATPCO are filed, *any new tariff or any revision* in any provision of any existing tariff, applicable to the air transportation of passengers and/or property which results in any change in the rates, fares, charges, classifications, rules, regulations, practices, or services applicable to any such transportation, *may elect to furnish to other Participants notice of such new tariff or revision in advance of such filing.* Any such advance notice shall be transmitted in writing to all other Participants simultaneously, and the Participant giving such advance notice shall, at the same time, furnish ATPCO and the Bureau of Economics of the Civil Aeronautics Board a full statement accurately describing the contents of such new tariff or revision; provided, that such requirements shall not apply to a Participant which is a citizen or national of Canada with respect to a tariff or provision applicable wholly within Canada. (Emphasis added.)

In our reconsideration of this provision in the ATPCO Tariff Participants' Agreement, we must, of course, adhere to the standards set forth in section 412 of the Federal Aviation Act of 1958, as amended by the Airline Deregulation Act (the "Act"). That Section provides that:

"The Board may not * * * after periodic review, continue its approval of any * * * agreement * * * which substantially reduces or eliminates competition, unless it finds that the * * * agreement * * * is necessary to meet a serious transportation need or to secure important public benefits and it does not find that * * * such benefits can be secured by reasonably available alternative means having materially less anticompetitive effects." (Section 412(c)(2)(A)(i).)

We tentatively conclude that section 3 of the ATPCO Tariff Participants'

[1]Pursuant to Board approval granted in Order No. E-20925.

[2]We later approved ATPCO's proposed expansion into international tariff publishing. Order No. 78-3-119, issued March 24, 1978.

[3]In addition to an Agreement to Reorganize ATPCO, Order No. 73-10-26 approved ATPCO's Articles of Incorporation, its Bylaws, a standard form of letter agreement to be executed by ATPCO and each tariff participant, and a form of Tariff Participants' Agreement among all participants in the tariffs published by ATPCO.

Agreement is substantially anticompetitive and that it is not necessary to meet a serious transportation need or to secure important public benefits. We have therefore decided to condition our approval of the agreement on the removal of that section.

Section 3 of the agreement allows air carriers routinely to circulate advance warning of proposed price changes among their competitors. This informal procedure provides a simple mechanism by which carriers can easily and quickly adjust to competitors' proposed price changes prior to any formal filing with the Board. Obviously, such a mechanism can be an effective means for circumventing normal competitive market forces. In allowing carriers to adjust quickly to their competitors' proposed price changes, it reduces the incentives for innovative or competitive pricing. In allowing carriers to know in advance how their competitors will react to proposed price changes, it removes normal competitive risks associated with price increases.

The fact that competitors would, in any case, eventually learn of the price changes when they are filed with the Board does not alter the anticompetitive nature of this mechanism for advance exchange of pricing information. Where the carriers' actions are recorded in public tariff filings, their actions are exposed to greater public scrutiny and there is less opportunity for carriers to determine in advance the reactions of competitors to price changes and less flexibility in countering competitors' pricing initiatives. Agreements among competitors which have the purpose or effect of interfering with the competitive pricing mechanism are, of course, objects of special concern under the antitrust laws.[4] Whether an exchange of price or other information is part of an overall scheme to fix or stabilize prices[5] or whether it is the exchange of information itself which lessens price competition[6] the result is unlawful. As we have discussed above, we tentatively conclude that the provision under consideration here does impede price competition.

Under these circumstances, any approval of the agreement would have to be based on a serious transportation need or important public benefits. We see no such justification here. Indeed, other provisions of the Tariff Participants' Agreement itself seem to provide less anticompetitive means for accomplishing any public benefit that might be achieved through section 3. For example, sections 1 and 2 of the agreement allow air carriers to discuss rules, regulations, practices and services and to attempt to make such tariff provisions as nearly uniform as is practicable subject to the right of each individual carrier to determine its own rules. Participants in joint hauls are also permitted to discuss joint rates, fares and charges. However, our prior approval of this agreement expressly provided that the discussions may extend only to rules, regulations, practices or services which do not affect the prices paid by consumers (Order 73-10-26).

We do not intend at this time to disturb our prior approval of the remainder of the ATPCO structure. Reconsideration of the overall ATPCO concept will require a more complex and thorough analysis—a task which we will take up in due course as part of our reconsideration of cooperative arrangements among air carriers. This interim step should reduce the anticompetitive aspects of the ATPCO structure and help ease the transition from regulation to open competition.

In this transition period, monitoring by the Board of the industry's progress to more effective rate competition is particularly important to ensure that the vestiges of previously sanctioned industry practices do not remain after the agreements authorizing them are disapproved. For such monitoring, records and instructions relating to tariffs and manuals previously published by ATPCO may be particularly valuable. Such records and instructions are already largely required to be maintained by ATPCO for at least five years under section 1(c) of the letter agreements between ATPCO and the tariff participants. To insure that such documents continue to be retained, ATPCO is specifically ordered to continue maintaining all records and instructions presently in its possession relating to the tariffs and manuals it publishes or has published and to keep such records and instructions for at least five years after publication of the tariff, tariff revision or manual to which they pertain.

Interested persons will be given 20 days following service of this order to show cause why the tentative findings and conclusions set forth here should not be made final. We expect such persons to support their objections, if any, with detailed answers, specifically setting forth the findings and conclusions to which objection is taken. Such objections should be accompanied by arguments of fact or law and should be supported by legal precedent or detailed economic analysis. If an evidentiary hearing is requested, the objector should state in detail why such a hearing is considered necessary, and what relevant and material facts he would expect to establish through such a hearing. General, vague, or unsupported objections will not be entertained. Replies may be filed with the Board within 7 days of the date on which objections are due.

Accordingly, 1. We direct ATPCO and other interested persons to show cause why the Board should not make final the tentative findings and conclusions set forth here;

2. We direct ATPCO to continue to maintain all records and instructions presently in its possession or received in the future relating to any tariffs, tariff revisions and manuals it publishes or has published and to keep such records and instructions for at least five years after publication of the tariff, tariff revision or manual to which they pertain;

3. We direct any interested person having objections to the issuance of an order making final these tentative findings and conclusions to file with the Board and serve on the persons named in paragraph 7, within 20 days after the date of service of this order, a statement of objections specifying the tentative findings or conclusions objected to and providing evidence to support the statement of objections;

4. Replies to objections shall, within 7 days of the date on which objections are due, be filed with the Board and served upon the persons named in paragraph 7;

5. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised before we take further action: *Provided,* that we may proceed to enter an order in accordance with our tentative findings and conclusions if we determine that there are no factual issues presented that warrant the holding of an evidentiary hearing;

6. In the event no objections are filed, we will deem all further procedural steps to have been waived and we may proceed to enter an order in accordance with the tentative findings and conclusions set forth here; and

7. We will serve this order upon all persons whose names appear on the service list in Docket 25476 and also upon the Department of Justice, the Federal Trade Commission, and the Department of Transportation.

We will publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[7]
Secretary.

[FR Doc 79-5927 Filed 2-27-79; 8:45 am]

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[4] See *United States* v. *Trenton Potteries Co.*, 273 U.S. 392 (1927); *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150 (1940); *Unites States* v. *General Motors Corp.* 384 U.S. 127 (1966); *United States* v. *Container Corp. of America* 393 U.S. 333 (1968).

[5] See, *e.g. United States* v. *American Linseed Oil Co.* 262 U.S. 371 (1923); *American Column & Lumber Co.* v. *United States* 257 U.S. 377 (1921).

[6] *See Container Corp., supra* n. 4.

[6320-01-M]

[Order No. 79-2-94; Docket 34770, et al.]

RENO-CHICAGO PROCEEDING

Final Order and Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 15th day of February, 1979; Reno-Chicago Show-Cause Proceeding, Docket 34770; Applications of American Airlines, Docket 32873, Allegheny Airlines, Docket 33490, Trans World Airlines, Docket 33505, Braniff Airways, Docket 33535, Northwest Airlines, Docket 33585, Ozark Air Lines, Docket 33730, Continental Air Lines, Docket 33738 for Reno-Chicago authority.

On September 20, 1978, we issued Order 78-9-89, in which we directed all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated in that order and amending the certificate of American Airlines for Route 4 to add a new segment authorizing the nonstop scheduled air transportation of persons, property and mail between the terminal point Reno, Nevada, and the terminal point Chicago, Illinois.

Applications and motions to consolidate were filed by Allegheny Airlines, Braniff Airways, Continental Air Lines, Northwest Airlines, Ozark Airlines, and Trans World Airlines. Objections were raised by Allegheny, Braniff[1] Continental, Ozark and TWA.[2] American filed an answer to the motions of Allegheny, Braniff and TWA to consolidate, and an answer to the objections to the issuance of a final order.

Braniff, Continental, Northwest, Ozark and TWA also filed petitions to show cause.

The general tenor of the motions to consolidate and objections was that the carriers had no objection to the grant of the authority at issue to American using show cause procedures if it were also granted to them simultaneously. All of the answering carriers rely, to a greater or lesser degree, upon *Ashbacker Radio Corp.* v. *FCC*, 326 U.S. 327 (1945), and cases flowing out of *Ashbacker*.

We believe that this reliance is misplaced, and therefore conclude that it is consistent with the public convenience and necessity to make final our tentative findings in Order 78-9-89 and grant the application of American Airlines for Reno-Chicago authority. *Ashbacker* and its progeny deal with situations where applications are mutually exclusive, or where the grant of authority to one applicant would tend to prejudice the future grant of authority to other applicants. This is not the case here. In addition to making final the grant of authority to American in the market in issue, we are proposing, as detailed below, to certificate all additional applicants whose fitness can be found on the basis of officially noticeable material. Thus, our decision to confer authority on American in no way prejudices the future grant of authority to the other applicants in this case. The applications are most certainly not mutually exclusive, in the sense that the applications in *Ashbacker* were.

We tentatively conclude, on the basis of the tentative findings below, that it is consistent with the public convenience and necessity to grant, on a Category II subsidy ineligible basis, the applications of Allegheny, Braniff, Continental, Northwest, Ozark and TWA, and any other fit, willing and able applicant whose fitness can be established by officially noticeable data.[3] Further, we tentatively conclude that no oral evidentiary hearing is needed here since there are no material determinative issues of fact requiring such a hearing for their resolution.

Under the Airline Deregulation Act of 1978, we must approve an application for certificate authority unless we find, by a preponderance of the evidence, that approval would not be consistent with the public convenience and necessity (Pub. L. No. 95-504, section 14). The new Act creates a presumption that the grant of all applications is consistent with the public convenience and necessity. It places on any opponents of these applications the burden of proving them inconsistent with the public convenience and necessity (Pub. L. No. 95-504, section 14). To give such opponents a reasonable opportunity to meet an admittedly heavy burden of proof, it is our view that applicants must indicate what type of service they would provide if, after receiving authority, they chose to serve the markets at issue. This does not mean that an applicant must show that it will provide service if it receives authority but rather what the nature of its service would be if it decided to serve. We will give all existing and would-be applicants 15 days from the date of service of this order to supply data,[4] in order to give interested persons sufficient information on the nature of the applicant's proposal to assess consistency with the public convenience and necessity. Our tentative findings concerning all applicants that have not filed illustrative service proposals are contingent on such filings.

Upon review of all the facts and pleadings in this case, we have tentatively determined that there is no reason why we should not grant multiple awards. Our tentative conclusions comport with the letter and spirit of the Airline Deregulation Act of 1978, particularly the declaration of policy set forth in section 102 which instructs us to rely, to the maximum extent possible, on competitive forces, including potential competition.[5] See our general conclusions about the benefits of multiple authority in *Improved Authority to Wichita Case, et al.*, Order 78-12-106, December 14, 1978. Accordingly, we conclude that it is desirable to award the additional authority sought by the applicants, whether or not services are in fact operated. The existence of additional operating rights in markets now being served by incumbent carriers or authorized to be served will best effect the statute's policy objective of placing maximum reliance on the decisions of the marketplace. This will occur because newly authorized carriers may actually enter the market in order to exploit unmet demand, both in terms of price and service, or because incumbents will be encouraged by the realistic threat of entry to meet that demand. Because demand is dynamic in character and therefore constantly changing, the most effective means to assure that competitive forces will operate

[1] Braniff's motion was styled a "Response".

[2] TWA's motion was styled a "Contingent Objection".

[3] Officially noticeable data consist of that material filed under Section 302.24(m) of our Procedural Regulations. Applicants whose fitness cannot be so established must make a showing of fitness, as well as deal with any questions under sections 408 and 409 of the Act. Should such applications be filed, we will then consider how to deal with them procedurally.

On the basis of officially noticeable data, we find that Allegheny, Braniff, Continental, Northwest, Ozark and TWA are citizens of the United States and are fit, willing and able to perform the air services proposed and to conform to the provisions of the Act and our rules, regulations and requirements.

[4] They should submit an illustrative schedule of service in the markets at issue, which shows all points that they might choose to serve, the type and capacity of the equipment they would likely use and the elapsed trip time of flights in block hours over the segments. For the markets at issue only, they should also provide an environmental evaluation as required by Part 312 of our Regulations, and an estimate of the gallons of fuel to be consumed in the first year of operations in the markets if they instituted the proposed service, as well as a statement on the availability of the required fuel.

[5] Section 102(a) specifies as being in the public interest, among other things: "The placement of maximum reliance on competitive market forces and on actual and potential competition (a) to provide the needed air transportation system, and (b) to encourage efficient and well-managed carriers to earn adequate profits and to attract capital" and "The encouragement, development, and maintenance of an air transportation system relying on actual and potential competition to provide efficiency, innovation, and low prices, and to determine the variety, quality, and price of air transportation services."

quickly and efficiently is to award multiple operating authority to carriers that are fit, willing and able to provide service.

Notwithstanding, the foregoing tentative conclusions in support of multiple authority in this proceeding, we wish to make clear that we in no way desire to deter objections that might be asserted under the 1978 Act by air carriers, civic interests or other interested persons. The new statute contains a completely revised declaration of policy in section 102, as well as numerous additional and modified substantive provisions. Some of these statutory changes relate to considerations not expressly covered in the preceding statute. For example, while diversion from existing carriers will not be given decisive weight in rejecting applications for new authority except upon an extraordinary showing of financial jeopardy on the part of one or more existing air carriers, with the consequent loss of essential air service which cannot be immediately replaced, other provisions suggest that the Congress desires us to take into account other factors. These include, but are not limited to satellite airport questions and the degree of concentration within the industry and safety. Any party to this proceeding may explain in full why the authority that we propose to grant should not issue. Such explanations should apply specifically to the applications in issue, and should be sufficiently detailed to overcome the statutory presumption of favorable treatment that the Act bestows on applications.

Finally, upon review of the environmental evaluations submitted by Braniff and TWA in their applications, to which no answers have been filed, we find that our decision to award authority to these carriers does 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, or a major regulatory action under the Energy Policy and Conservation Act of 1975. We reserve judgment on the environmental consequences of other applications, pending submission of environmental data.

We will give interested persons 30 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; replies will be due within 10 days thereafter. We expect such persons to direct their objections, if any, to specific markets, and to support such objections with detailed economic analysis. If an evidentiary hearing is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts he would expect to establish through such a proceeding that cannot be established in written pleadings. We will not entertain general, vague, or unsupported objections.

Accordingly: 1. We make final the tentative findings and conclusions and proposed certificate amendment set out in Order 78-9-89;

2. We amend the certificate of public convenience and necessity of American Airlines, Inc. for Route 4, as shown in Appendix A:[6]

3. We make the certificate amendment effective on the service date of this order; after the date the continued effectiveness of the authority granted here shall be conditioned upon the timely payment of such license fees as we may prescribe.

4. We direct all interested parties to show cause why we should not issue an order making final the tentative findings and conclusions stated here and amending the certificate of Allegheny Airlines, Braniff Airways, Continental Air Lines, Northwest Airlines, Ozark Airlines and Trans World Airlines for Routes 97, 9, 29, 3, 107 and 2, respectively, to add a new segment authorizing the nonstop scheduled air transportation of persons, property and mail between the terminal point Reno, Nevada, and the terminal point Chicago, Illinois;

5. We consolidate Dockets 33490, 33505, 33535, 33585, 33730 and 33738 into the Reno-Chicago Show-Cause Proceeding. (Docket 34770).

6. We direct any interested persons having objections to the issuance of an order making final the proposed findings, conclusions and certificate amendments referred to in paragraph 4 to file in Docket 34770 and serve upon all persons listed in paragraph 9, no later than March 26, 1979, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections; answers shall be due no later than April 5, 1979;

7. If no one files objections to any part of this order, we will consider all further procedural steps relating to such part or parts waived, and the case submitted to us for further action;[7]

8. We direct Allegheny, Continental, Northwest, Ozark, and any other applicant for the authority in issue to file in Docket 34770 the data set forth in footnote 4 no later than March 12, 1979; and

9. We will serve a copy of this order on Allegheny, American, Braniff, Continental, Northwest, Ozark, TWA and the Reno Parties.

[6]Appendix A is filed with original document.

[7]Since provision is made for the filing of objections to this order, we will not entertain petitions for reconsideration.

We will publish a summary of this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,[8]
Secretary.

[FR Doc. 79-5928 Filed 2-27-79; 8:45 am]

[6320-01-M]

[Order No. 79-2-98; Docket 34773 et al.]

ALBUQUERQUE-ST. LOUIS/ATLANTA PROCEEDING

Order to Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 15th day of February, 1979; Albuquerque-St. Louis/Atlanta Show Cause Proceeding Docket 34773; Applications of Eastern Air Lines, Inc. Docket 33747, Continental Air Lines, Inc. Docket 33920, Ozark Air Lines, Inc. Docket 34173 for certificate authority in the Albuquerque-St. Louis/Atlanta market.

On October 23, 1978, Eastern Air Lines filed an application, in Docket 33747, to amend its certificate of public convenience and necessity for its Route 10 to include nonstop service between Albuquerque, New Mexico, and Atlanta, Georgia/St. Louis, Missouri. Concurrently, it filed a petition for issuance of an order to show cause.

In support of its motion, it states that it will provide the first nonstop service in the Albuquerque-Atlanta/St. Louis markets, and that it will offer two daily nonstop round trips between Albuquerque and Atlanta and one round trip through St. Louis to Atlanta, using B-727 equipment, thus providing, in some instances, first single plane or single carrier service to the southeastern region.

An answer to Eastern's petition was filed by Continental, stating that, as long as its application in Docket 33920 was acted on concurrently, it had no objection to our granting Eastern's petition.[1]

On November 2, 1978, Continental filed, in Docket 33920, and on December 12, Ozark filed in Docket 34173, applications for authority to provide service between Albuquerque and Atlanta/St. Louis. These applications were accompanied by motions to consolidate with Docket 33747. In addition, Continental filed a petition for an order to show cause why its application should not be granted.

We tentatively conclude, on the basis of the tentative findings below,

[8]All members concurred.

[1]American filed answers opposing Eastern's and Continental's (see next paragraph) petitions to the extent that they might receive authority in the Albuquerque-St. Louis market before it does. An order dealing with American's application for the addition of Albuquerque as an intermediate point on its Route 4 will be out shortly.

that granting, on a category II subsidy-ineligible basis, the Albuquerque-St. Louis/Atlanta applications of Eastern, Continental and Ozark and any other fit, willing and able applicant whose fitness, willingness and ability can be established by officially noticeable data[2] would be consistent with the public convenience and necessity. Further, we tentatively conclude that no oral evidentiary hearing is needed here since there are no material determinative issues of fact requiring such a hearing for their resolution.

Under the Airline Deregulation Act of 1978, we must approve an application for certificate authority unless we find, by a preponderance of the evidence, that approval would not be consistent with the public convenience and necessity (Pub. L. No. 95-504, section 14). The new Act creates a presumption that the grant of all applications is consistent with the public convenience and necessity. It places on any opponents of these applications the burden of proving them inconsistent with the public convenience and necessity (Pub. L. No. 95-504, section 14). To give such opponents a reasonable opportunity to meet an admittedly heavy burden of proof, it is our view that applicants must indicate what type of service they would provide if, after receiving authority, they chose to serve the markets at issue. This does not mean that an applicant must show that it will provide service if it receives authority but rather what the nature of its service would be if it decided to serve. We will give all existing and would-be applicants 15 days from the date of service of this order to supply data.[3] In order to give interested persons sufficient information on the nature of the applicant's proposal to assess consistency with the public convenience and necessity. Our tentative findings concerning all applicants that have not filed illustrative service proposals are contingent on such filings.

Upon review of all the facts and pleadings in this case, we have tentatively determined that there is no reason why we should not grant multiple awards. Our tentative conclusions comport with the letter and spirit of the Airline Deregulation Act of 1978, particularly the declaration of policy set forth in section 102 which instructs us to rely, to the maximum extent possible, on competitive forces, including potential competition.[4] See our general conclusions about the benefits of multiple permissive authority in *Improved Authority to Wichita Case, et al.*, Order 78-12-106, December 14, 1978. Accordingly, we conclude that it is desirable to award the additional authority sought by the applicants, whether or not services are in fact operated. The existence of additional operating rights in markets now being served by incumbent carriers or authorized to be served will best effect the statute's policy objective of placing maximum reliance on the decisions of the market place. This will occur because newly authorized carriers may actually enter the market in order to exploit unmet demand, both in terms of price and service, or because incumbents will be encouraged by the realistic threat of entry to meet that demand. Because demand is dynamic in character and therefore constantly changing, the most effective means to assure that competitive forces will operate quickly and efficiently is to award multiple operating authority to carriers that are fit, willing and able to provide service.

Notwithstanding the foregoing tentative conclusions in support of multiple authority in this proceeding, we wish to make clear that we in no way desire to deter objections that might be asserted under the 1978 Act by air carriers, civic interests or other interested persons. The new statute contains a completely revised declaration of policy in section 102, as well as numerous additional and modified substantive provisions. Some of these statutory changes relate to considerations not expressly covered in the preceding statute. For example, while diversion from existing carriers will not be given decisive weight in rejecting applications for new authority except upon an extraordinary showing of financial jeopardy on the part of one or more existing air carriers, with the consequent loss of essential air service which cannot be immediately replaced, other provisions suggest that the Congress desires us to take into account other factors. These include, but are not limited to satellite airport questions, the degree of concentration within the industry and safety. Any party in this proceeding may explain in full why the authority that we propose to grant should not issue. Such explanations should apply specifically to the applications in issue, and should be sufficiently detailed to overcome the statutory presumption of favorable treatment that the Act bestows on applications.

Finally, upon review of the environmental evaluations submitted by Eastern and Continental in their petitions, to which no answers have been filed, we find that our decision to award them authority does 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, or a major regulatory action under the Energy Policy and Conservation Act of 1975. We reserve judgement on the environmental consequences of other applications, pending submission of environmental data.

We will give interested persons 30 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; replies will be due within 10 days thereafter. We expect such persons to direct their objections, if any, with detailed economic analysis. If an evidentiary hearing is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts he would expect to establish through such a proceeding that cannot be established in written pleadings. We will not entertain general, vague, or unsupported objections.

Accordingly, 1. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated above and amending the certificate of public convenience and necessity of Eastern Air Lines for Route 10, Continental Air Lines for Route 29 and Ozark Air Lines for Route 107 so as to authorize these carriers to engage in nonstop operation between Albuquerque, on the one hand, and St. Louis and Atlanta on the other; and amending, to grant any of the authority in issue, the certificate of any other

[2]Officially noticeable data consist of that material filed under § 302.24(m) of our Procedural Regulations. Applicants whose fitness cannot be so established must make a showing of fitness, as well as dealing with any questions under section 408 and 409 of the Act. Should such applications be filed, we will then consider how to deal with them procedurally.

On the basis of officially noticeable data, we find that Eastern, Continental and Ozark are citizens of the United States and are fit, willing, and able to perform the air services proposed and to conform to the provisions of the Act and our rules, regulations and requirements.

[3]They should submit an illustrative schedule of service in the markets at issue, which shows all points that they might choose to serve, the type and capacity of the equipment they would likely use and the elapsed trip time of flights in block hours over the segments. For the markets at issue only, they should also provide an environmental evaluation as required by Part 312 of our Regulations, and an estimate of the gallons of fuel to be consumed in the first year of operations in the markets if they instituted the proposed service as well as the statement on the availability of the required fuel.

[4]Section 102(a) specifies as being in the public interest, among other things: "The replacement of maximum reliance on competitive market forces and on actual and potential competition (a) to provide the needed air transportation system, and (b) to encourage efficient and well-managed carriers to earn adequate profits and to attract capital" and "The encouragement, development, and maintenance of an air transportation system relying on actual and potential competition to provide efficiency, innovation, and low prices, and to determine the variety, quality, and price of air transportation services."

fit, willing and able applicants the fitness of which can be established by officially noticeable material;

2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions, or certificate amendments set forth here, to file with us in Docket 34773 and serve upon all persons listed in paragraph 7, no later than March 23, 1979, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections; answers shall be due not later than April 2, 1979;

3. If timely and properly supported objections are filed, we will accord full consideration to the matters and issues raised by the objections before we take further action;[5]

4. In the event no objections are filed, we will deem all further procedural steps to have been waived and we may proceed to enter an order in accordance with the tentative findings and conclusions set forth here;

5. We consolidate the applications of Eastern, Continental and Ozark into this proceeding;

6. We direct Ozark and any other applicants for the authority in issue to file the data set forth in footnote 5 no later than March 8, 1979; and

7. We will serve a copy of this order upon American, Eastern, Continental and Ozark.

We will publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,[6]
Secretary.

[FR Doc. 79-5925 Filed 2-27-79; 8:45 am]

[5]Since provision is made for the filing of objections to this order, we will not entertain petitions for reconsideration.

[6]All Members concurred.

[6320-01-M]

[Order No. 79-2-95; Docket 34771 et al.]

SERVICE TO BIRMINGHAM

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 15th day of February, 1979; Service to Birmingham, Docket 34771, Show Cause Proceeding; Application of the City of Birmingham, Docket 32573 for institution of route proceeding in the Birmingham-Cleveland/Dallas/ Houston/Philadelphia/Pittsburgh/St. Louis/Tampa/Washington markets. Applications of Braniff Airways, Inc., Docket 32628, Southern Airways, Inc., Docket 32756, Frontier Airlines, Inc., Docket 33606, Ozark Air Lines, Inc., Docket 34079, Allegheny Airlines, Inc., Docket 32725, Piedmont Aviation, Inc., Docket 32758 for certificate authority.

On April 28, 1978, the City of Birmingham, Alabama, filed an application asking us to initiate a proceeding to authorize new carriers to conduct nonstop air service between Birmingham, on the one hand, and Houston, Dallas/Fort Worth, Pittsburgh, Philadelphia, Tampa, Washington, Cleveland and St. Louis, on the other.[1]

The reasons given in support of this request were that Birmingham currently receives poor air service; no new carriers have been certificated to serve the city since 1949; granting the application could result in the creation of an alternative air transportation hub in the South to the currently overcrowded center at Atlanta; and low fare service would result since the current time and ticket cost penalties to Birmingham passengers who are routed through Atlanta would be eliminated.

Answers were filed in support of the application by the cities of Cleveland, St. Louis and Houston.[2] Braniff Airways and Southern Airways also filed answers supporting Birmingham's petition.[3]

Delta Air Lines filed an answer opposing any proceeding to authorize new carriers in the Birmingham-Houston/Dallas/Fort Worth/Philadelphia/Washington markets. It states that it provides sufficient nonstop and one-stop service to meet demand in those markets;[4] it operates only one-stop service between Birmingham and Washington, D.C., via Atlanta, due to the 650 mile restriction imposed on carriers operations to and from Washington National Airport, which limitation it feels that it would be difficult for it to alter; it provides 22 daily nonstop flights from Birmingham, 14 of which do not serve the Atlanta Airport Gateway; and, considering the lower number of daily O&D passengers in each of these Birmingham markets, the City is in fact benefitting from its service through Atlanta since this daily service would not otherwise be economically feasible for it to provide.

The other two incumbent carriers, Eastern and United, have not filed any responses in this case.

Braniff Airways, Docket 32628, and Southern Airways, Docket 32756, filed applications, accompanied by motions to consolidate, requesting amendments to their certificates in routes 9 and 98, respectively, to add the Birmingham-Cleveland/Dallas/Fort Worth/Houston/Philadelphia/Pittsburgh/St. Louis/Tampa/Washington markets.[5]

In Docket 32725, Allegheny Airlines filed an amended application to add five new segments to its certificate authority for route 94 consisting of the Birmingham-Pittsburgh/Philadelphia/Washington/Bristol/Kingsport/Johnson City/Tampa markets.

Piedmont Aviation, Docket 32758, applied for an amendment to its certificate for Route 87 to include the Birmingham-Richmond/Roanoke/Greensboro/High Point/Charlotte/Dallas/Fort Worth/Washington markets.

On July 21, 1978, the City of Birmingham filed a motion for an order to consolidate its application with those of Braniff, Southern and those portions of Allegheny's and Piedmont' application pertaining to any of Birmingham's eight priority markets.

On October 3, 1978, Frontier Airlines filed an application in Docket 33606 to amend its certificate authority for Route 73 to include the Birmingham-St. Louis market. In the accompanying motion to consolidate, it states that this market is not currently provided with adequate services;[6] it will offer nonstop Birmingham-St. Louis service as well as one-stop single-plane service between Birmingham and Denver; and it will generate profits from this service.

On November 20, 1978, Ozark Air Lines also filed an application for an amendment to its certificate for Route 107 to add the Birmingham-St. Louis route segment, accompanied by a motion to consolidate.

On June 5, 1978, the City of Philadelphia and the Greater Philadelphia

[1]The selection of these markets was based on the "Master Plan for Promotion and Improvement of Airline Services at Birmingham," a study completed in August 1977.

[2]Houston supports Birmingham's efforts to improve the service deficiencies in the Birmingham-Houston market but opposes any interference that the application might produce with respect to Houston's own efforts to obtain nonstop service to the northeast.

[3]Southern requests that the Birmingham-Cleveland market be deleted from Birmingham's list of priority markets since it is able to provide one-stop service between Birmingham and Cleveland via Nashville due to the new Nashville-Cleveland authority we granted in the *Nashville-cleveland Subpart M Proceeding,* Docket 32264.

Southern also requests that the issue of the removal of its one-stop Birmingham-St. Louis restriction as requested in Docket 32060, be considered in any proceeding involving that market.

[4]Delta began providing nonstop service in the Houston-Birmingham-Philadelphia markets on April 30, 1978; it operates two daily nonstop flights in the Birmingham-Dallas/Fort Worth market.

[5]Southern appears to also request authority in the Dallas/Fort Worth-Houston market. We will not consider that market in this order as it would expand the scope beyond our central concern of dealing with the air service needs of Birmingham.

[6]Eastern is the only carrier authorized to provide nonstop service, but has elected not to do so. Southern provides one southbound and two northbound daily one-stop flights via Memphis.

Chamber of Commerce filed a motion for leave to intervene as a full party in the proceeding. We will grant this motion.

On July 21, the City of Birmingham petitioned for expedited consideration of its application with the respective carriers' applications that have been filed, and suggested the use of show-cause procedures on a multiple authority basis to decide this case. The motion was supported by Braniff in its answer filed July 24, 1978.

Delta filed an answer opposing Birmingham's motion and again requested the deletion of the Birmingham-Dallas/Fort Worth/Houston/Philadelphia/Washington markets from any consideration of Birmingham's application.

On July 31, Southern Airways filed an answer supporting Birmingham's motion, but questioning the legality of the procedures requested by the City to expedite the determination of its application.

We tentatively conclude, on the basis of the tentative findings below, that it is consistent with the public convenience and necessity to grant, on a Category II subsidy-ineligible basis, the applications of Braniff, Southern and Allegheny for Birmingham-Houston/Dallas/Fort Worth/Tampa/Pittsburgh/Washington (National)/Washington (Dulles) Philadelphia authority; of Braniff and Southern for Birmingham-Cleveland authority; of Braniff, Southern, Frontier and Ozark for Birmingham-St. Louis authority; of Allegheny for Birmingham-Bristol/Kingsport/Johnson City authority; of Piedmont for Birmingham-Richmond/Roanoke/Greensboro/High Point/Charlotte/Dallas/Fort Worth/Houston/Washington (National)/Washington (Dulles) authority; and of any other fit, willing, and able applicant, for any of the authority in issue, whose fitness, willingness and ability can be established by officially noticeable data.[7] Further, we tentatively conclude that no oral evidentiary hearing is needed here since there are no material determinative issues of fact requiring such a hearing for their resolution.

We have also tentatively decided not to hyphenate Washington National and Washington Dulles. If a carrier does not use its authority for one of these airports, another carrier can obtain that authority under section 401(d)(5) of the Act as long as each airport is listed as a separate point on the first carrier's certificate. (*See* Order 78-11-41). We find this approach more consistent with the Act's declaration of policy which calls on us to encourage air service at major urban areas through secondary or satellite airports.

Under the Airline Deregulation Act of 1978, we must approve an application for certificate authority unless we find, by a preponderance of the evidence, that approval would not be consistent with the public convenience and necessity (Pub. L. No. 95-504, section 14). The new Act creates a presumption that the grant of all applications is consistent with the public convenience and necessity. It places on any opponents of these applications the burden of proving them inconsistent with the public convenience and necessity (Pub. L. No. 95-504, section 14). To give such opponents a reasonable opportunity to meet an admittedly heavy burden of proof, it is our view that applicants must indicate what type of service they would provide if, after receiving authority, they chose to serve the markets at issue. This does not mean that an applicant must show that it will provide service if it receives authority but rather what the nature of its service would be if it decided to serve. We will give all existing and further applicants 15 days from the date of service of this order to supply data,[8] in order to give interested persons sufficient information on the nature of the applicant's proposal to assess consistency with the public convenience and necessity. Our tentative findings concerning all applicants that have not filed illustrative service proposals are contingent on such filings.

Upon review of all the facts and pleadings in this case, we have tentatively determined that there is no reason why we should not grant multiple awards. Our tentative conclusions comport with the letter and spirit of the Airline Deregulation Act of 1978, particularly the declaration of policy set forth in section 102 which instructs us to rely, to the maximum extent possible, on competitive forces, including potential competition.[9] See our general conclusions about the benefits of multiple authority in *Improved Authority to Wichita Case, et al.*, Order 78-12-106, December 14, 1978. Accordingly, we conclude that it is desirable to award the additional authority sought by the applicants, whether or not services are in fact operated. The existence of additional operating rights in markets now being served by incumbent carriers or authorized to be served will best effect the statute's policy objective of placing maximum reliance on the decisions of the marketplace. This will occur because newly authorized carriers may actually enter the market in order to exploit unmet demand, both in terms of price and service, or because incumbents will be encouraged by the realistic threat of entry to meet that demand. Because demand is dynamic in character and therefore constantly changing, the most effective means to assure that competitive forces will operate quickly and efficiently is to award multiple operating authority to carriers that are fit, willing and able to provide service.

Notwithstanding the foregoing tentative conclusions in support of multiple authority in this proceeding, we wish to make clear that we in no way desire to deter objections that might be asserted under the 1978 Act by air carriers, civic interests or other interested persons. The new statute contains a completely revised declaration of policy in section 102 as well as numerous additional and modified substantative provisions. Some of these statutory changes relate to considerations not expressly covered in the preceding statute. For example, while diversion from existing carriers will not be given decisive weight in rejecting applications for new authority except upon an extraordinary showing of financial jeopardy on the part of one or more existing air carriers, with the consequent loss of essential air service which cannot be immediately replaced, other provisions suggest that the Congress desires us to take into account other factors. These include, but are not limited to satellite airport questions and the degree of concentra-

[7] Officially noticeable data consist of the material filed under § 302.24(m) of our Procedural Regulations. Applicants whose fitness cannot be so established must make a showing of fitness, as well as dealing with any questions under sections 408 and 409 of the Act. Should such applications be filed, we will then consider how to deal with them procedurally.

On the basis of officially noticeable data, we find that Piedmont, Southern, Allegheny, Braniff, Frontier and Ozark are citizens of the United States and are fit, willing and able to perform the air service proposed and to conform to the provisions of the Act and our rules, regulations and requirements.

[8] They should submit an illustrative schedule of service in the markets at issue, which shows all points that they might choose to serve, the type and capacity of the equipment they would likely use and the elapsed trip time of flights in block hours over the segments. For the markets at issue only, they should also provide an environmental evaluation as required by Part 312 of our Regulations, and an estimate of the gallons of fuel to be consumed in the first year of operations in the markets if they instituted the proposed service, as well as a statement on the availability of the required fuel.

[9] Section 102(a) specifies as being in the public interest, among other things: "The replacement of maximum reliance on competitive market forces and on actual and potential competition (a) to provide the needed air transportation system, and (b) to encourage efficient and well-managed carriers to earn adequate profits and to attract capital" and "The encouragement, development, and maintenance of an air transportation system relying on actual and potential competition to provide efficiency, innovation, and low prices, and to determine the variety, quality, and price of air transportation services."

tion within the industry and safety. Any party in this proceeding may explain in full why the authority that we propose to grant should not issue. Such explanations should apply specifically to the applications in issue, and should be sufficiently detailed to overcome the statutory presumption of favorable treatment that the Act bestows on applications.

Finally, since none of the carriers have submitted environmental evaluations, we reserve judgment as to whether awarding the authority they request would constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, or a major regulatory action under the Energy Policy and Conservation Act of 1975, pending submission of environmental data.

We will give interested persons 30 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; replies will be due within 10 days thereafter. We expect such persons to direct their objections, if any, to specific markets, and to support such objections with detailed economic analysis. If an evidentiary hearing is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts he would expect to establish through such a proceeding that cannot be established in written pleadings. We will not entertain general, vague, or unsupported objections.

Accordingly, 1. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated above and amending the certificates of public convenience and necessity of Braniff Airways for Route 9 and Southern Airways for Route 98 so as to authorize them to engage in nonstop operations between Birmingham, on the one hand, and Cleveland, Dallas/Fort Worth, Houston, Philadelphia, Pittsburgh, St. Louis, Tampa, Washington (National) and Washington (Dulles) on the other; the certificates of public convenience and necessity of Frontier Airlines for Route 73 and Ozark Air Lines for Route 107 so as to permit them to engage in nonstop operations between Birmingham, on the one hand, and St. Louis, on the other; the certificate of public convenience and necessity of Allegheny Airlines for Route 97 so as to authorize it to engage in nonstop operations between Birmingham, on the one hand, and Pittsburgh, Philadelphia, Washington (National), Washington (Dulles), Houston, Dallas/Fort Worth, Tampa, and Bristol/Kingsport/Johnson City, on the other; amending the certificate of Piedmont Aviation for Route 87 so as to authorize it to engage in nonstop operations between Birmingham, on the one hand, and Richmond, Roanoke, Greensboro, High Point, Charlotte, Dallas/Fort Worth and Washington (National), Washington (Dulles), on the other; and amending, to grant any of the authority in issue, the certificates of any other fit, willing and able applicants, the fitness of which can be established by officially noticeable material;

2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions, or certificate amendments set forth here, to file with us and serve upon all persons listed in paragraph 9, no later than March 26, 1979, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections; answers shall be due no later than April 5, 1979;

3. If timely and properly supported objections are filed we will accord full consideration to the matters and issues raised by the objections before we take further action; [10]

4. In the event no objections are filed, we will deem all further procedural steps to have been waived and we may proceed to enter an order in accordance with the tentative findings and conclusions set forth here;

5. We will consolidate the applications of the City of Birmingham, Braniff Airways, Southern Airways, Frontier Airlines, Ozark Air Lines, Allegheny Airlines, and Piedmont Aviation, Dockets 32573, 32628, 32756, 33606, 34079, 32725, and 32758, respectively into Docket 34771; [11]

6. We grant the motion of the City of Philadelphia and the Greater Philadelphia Chamber of Commerce for leave to intervene in Docket 32573;

7. We direct Braniff, Southern, Frontier, Ozark, Allegheny, Piedmont, and any other applicant for the authority in issue to file the data set forth in footnote 7 no later than March 9, 1979; and

8. We will serve a copy of this order upon:

The City of Birmingham
The City of Philadelphia
The Greater Philadelphia Chamber of Commerce
Braniff Airways, Inc.
Southern Airways, Inc.
Frontier Airlines, Inc.
Ozark Air Lines, Inc.
Allegheny Airlines, Inc.
Piedmont Aviation, Inc.

We will publish this order in the FEDERAL REGISTER.

[10] Since provision is made for the filing of objections to this order, we will not entertain petitions for reconsideration.

[11] Insofar as they are consistent with the scope of this proceeding.

By the Civil Aeronautics Board:

PHILLIS T. KAYLOR,
Secretary.

[FR Doc. 79-5923 Filed 2-27-79; 8:45 am]

[6320-01-M]

[Order No. 79-2-103; Docket 34544 et al.]

FRONTIER AIRLINES, INC.

Order Instituting Section 419 Proceeding

Adopted by the Civil Aeronautics Board at its offices in Washington, D.C. on the 15th day of February, 1979; Notice of Frontier Airlines, Inc. Docket 34544 of intent to terminate service at Enid, Ponca City, and McAlester, Oklahoma. Interim Essential Air Transportation at Enid, Ponca City, McAlester and Stillwater, Oklahoma, and Paris, Texas, Docket 34774.

On January 22, 1979, Frontier filed, under Sections 401(j) and 419(a)(3) of the Federal Aviation Act of 1958 (the Act), as amended by the Airline Deregulation Act of 1978, notice of its intent to terminate all of its services at Enid, Ponca City, and McAlester, Oklahoma. Frontier specified in its notice that it will not set a termination date until the Board has selected a replacement carrier or carriers under Section 419(a)(6) of the Act to provide essential air transportation at the three points. In no event would Frontier's termination of service occur earlier than 90 days from the date of notice. Frontier also stated that it will coordinate its departure date with the entry of the new carrier or carriers to achieve a smooth, contemporaneous transition of service at all three cities.

We are very concerned about the air service needs of these communities, and are prepared to take steps to see that they are met. Before relieving Frontier of its certificate obligations, we must determine that essential air transportation will be provided in the absence of Frontier's services. We intend, first, to make an interim essential air transportation determination [1] for Enid, Ponca City, and McAlester. We will do so, however, only after considering the views of the communities and the Oklahoma aeronautical authority. Once this interim determination is made, we will formally invite all air carriers, and especially those with experience in providing scheduled air services in the region,[2] to submit service proposals indicating the communities they will serve, the service patterns and equipment types they will

[1] We will make a final determination of each community's essential air transportation requirements before October 24, 1979. *See* section 419(a)(2)(A) of the Act.

[2] In this regard, we are serving a copy of this order on all air carriers that operate in Oklahoma, Texas, Arkansas, Missouri, Kansas or Colorado.

operate and the amount of compensation, if any, required for their service proposals.

We are requesting, therefore, that each of the communities and the Oklahoma aeronautical authority submit to the Board in Docket 34774 within 30 days of the service date of this order, the following information for each point: (1) its principal community(ies) of interest, (2) the minimum level of frequencies that would provide essential services, and (3) the acceptable size and characteristics of aircraft to be operated.[3] We expect the parties to bear in mind, as they assess their individual essential air service needs, the definition of essential air transportation as set forth in section 419(f) of the Act:

For purposes of this section, the term "essential air transportation" means scheduled air transportation of persons to a point provided under such criteria as the Board determines and satisfies the needs of the community concerned for air transportation to one or more communities of interest and insures access to the nation's air transportation system, at rates, fares and charges which are not unjust, unreasonable, unjustly discriminatory, unduly preferential, or unduly prejudicial, and—

(1) with respect to air transportation to any point (other than in the State of Alaska), in no case shall essential air transportation be specified as fewer than two daily round-trips, 5 days per week, or the level of service provided by air carriers to such point based on the schedules of such air carriers in effect for calendar year 1977, whichever is less; . . . .

Once we have determined that a qualified carrier or carriers will be able to inaugurate and maintain what we find to be the interim level of essential air transportation at Enid, Ponca City, and McAlester, we will relieve Frontier of its certificate obligations at those points. In the meantime, Frontier's certificate obligations will remain in force.

The Board is aware that the question of service to Enid, Ponca City, and McAlester has been the subject of applications for section 406 subsidy-eligible authority filed by Air Midwest (Docket 31762), Metro Airlines (Docket 31812), and Air Central (Docket 33741). Although these applications will not be the focus of this investigation, we are inclined, because of the content of their proposals, to expand the scope of this investigation to include points other than Enid, Ponca City, and McAlester. Specifically, Metro Airlines and Air Central have applied to serve Stillwater, Oklahoma, and Metro Airlines also desires to serve Paris, Texas. Because both of these points qualify now as "eligible points" for guaranteed essential air transportation under section 419(a)(1)(B) of the Act,[4] we have decided that it would be reasonable and would facilitate conduct of the Board's business to arrange in this investigation for the inauguration of air service at these points as well. Accordingly, we request the civic interests of Stillwater and Paris, and the Oklahoma and Texas aeronautical authorities, to supply us within thirty (30) days of the service date of this order with the same materials on interim essential air transportation at Stillwater and Paris as we have requested for Enid, Ponca City, and McAlester. After we determine their interim levels of essential air transportation, we intend to solicit service proposals for Stillwater and Paris.

Finally, we are instituting this investigation now, without waiting for pleadings or applications in response to Frontier's notice, because of the urgency we attach to resolving the matter and because the course of action we are taking in this order cannot possibly prejudice the rights of the communities or of any potential replacement carrier.

Accordingly, 1. We institute an investigation entitled *Interim Essential Air Transportation at Enid, Ponca City, McAlester, and Stillwater, Oklahoma, and Paris, Texas,* Docket 34774, under section 204 and 419 of the Federal Aviation Act of 1958, as amended;

2. We request the cities of Enid, Ponca City, McAlester, and Stillwater, Oklahoma, and Paris, Texas, and the Oklahoma and Texas aeronautical authorities to submit by March 23, 1979 their views, based on guidelines outlined in the body of this order, on what is essential air transportation for each point;

3. We require that Frontier Airlines continue to abide by its certificate obligations at Enid, Ponca City, and McAlester, Oklahoma, until a fit, willing, and able replacement carrier is found by the Board to inaugurate and maintain essential air transportation at any such point;

4. We will serve a copy of this order on Frontier Airlines, the mayors of Enid, Ponca City, McAlester, and Stillwater, Oklahoma, and Paris, Texas, on the Oklahoma and Texas aeronautical authorities, and on all air carriers registered with the Board that operate scheduled air transportation at any point in the State of Oklahoma, Texas, Arkansas, Missouri, Kansas, or Colorado;

5. We consolidate the proceeding in Docket 34544 into Docket 34774; and

6. This order may be amended or revoked at any time at the discretion of the Board without a hearing.

We shall publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,[5]
Secretary.

[FR Doc. 79-5926 Filed 2-27-79; 8:45 am]

[3]In addition to submitting written material, the communities and the State agency are welcome to arrange for discussions of he issue in person with Board staff. *See* P.R.-192, adopted and effective January 18, 1979.

[4]Both Stillwater and Paris are suspended from Frontier's Route 73 certificate (Paris, however, with replacement service by Metro Airlines). Orders 77-12-129, December 22, 1977; Order 75-10-68, October 21, 1975; Order 76-12-59, December 10, 1976; Order 76-11-137, November 29, 1976.

[5]All members concurred.

[6320-01-M]

[Order No. 79-2-96; Dockets 33754, 34776]

ST. LOUIS/SALT LAKE CITY PROCEEDING

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 15th day of February, 1979; application of Trans World Airlines, Inc., Docket 33754 for amendment of its certificate of public convenience and necessity for Route 2 pursuant to section 401(c) of the Federal Aviation Act of 1958, as amended; St. Louis/Salt Lake City Show-Cause Proceeding, Docket 34776.

On October 24, 1978, Trans World Airlines filed in Docket 33754 an application for amendment of its certificate for Route 2 to authorize nonstop service in 72 city-pair markets, all but 16 of which were already subject to currently pending TWA applications.[1] Subsequently, it petitioned for an order directing interested parties to show cause why its certificate should not be amended in accordance with the application in Docket 33754. It additionally applied in Docket 33824 for an exemption pursuant to section 416(b) of the Act for purposes of securing immediate authority to operate in the markets at issue.[2]

Eastern Airlines, Continental Airlines, American Airlines, North Central Airlines and Piedmont Aviation, each filed an answer in opposition. The Norfolk, Virginia Port and Industrial Authority petitioned to intervene.

Continental and American each fundmentally agree with the principles behind TWA's request, but strongly oppose grant of the authority without a simultaneous grant of authority to them on their pending applications regarding the city-pair markets at issue here. North Central, Eastern, and Piedmont raised more fundamental objections to TWA's application. North Central argues that the Airline Deregulation Act of 1978 was intended to provide a "gradual and phased transition to a deregulated system"[3] and did not contemplate the

[1]For a list of markets, see Appendices A and B.

[2]We denied the application. Order 79-2-97.

[3]*Citing* H. Rep. No. 1779, 95th Cong., 2d Sess. at 56.

wholesale grant of route authority by show cause procedures. Eastern views TWA's application as part of a broadside effort to achieve massive route restructuring without a showing of need in relevant markets. Piedmont voiced similar opinions.

We have decided to dismiss without prejudice TWA's application with respect to the 56 city-pair markets for which it has other currently pending applications. We believe that the most expeditious way of dealing with TWA's extremely wide-ranging requests is to deal here with those markets not the subject of other applications, while dealing with the remaining requests for authority in subsequent orders.

With respect to the other 16 city-pair markets, we tentatively conclude, on the basis of the tentative findings below, that it is consistent with the public convenience and necessity to award authority on a multiple permissive basis and to grant the applications of TWA and any other fit, willing and able applicant, whose fitness, willingness and ability can be established by officially noticeable data.[4] As indicated in Appendix B, these markets are radiants from two hub points, St. Louis and Salt Lake City. Further, we tentatively conclude that no oral evidentiary hearing is needed here since there are no material determinative issues of fact requiring such a hearing for their resolution.

Under the Airline Deregulation Act of 1978, we must approve an application for certificate authority unless we find, by a preponderance of the evidence, that approval would not be consistent with the public convenience and necessity (Pub. L. No. 95-504, section 14). The new Act creates a presumption that the grant of all applications is consistent with the public convenience and necessity. It places on any opponents of these applications the burden of proving them inconsistent with the public convenience and necessity (Pub. L. No. 95-504, section 14). To give such opponents a reasonable opportunity to meet an admittedly heavy burden of proof, it is our view that applicants must indicate what type of service they would provide if, after receiving authority, they chose to serve the markets at issue. This does not mean that an applicant must show that it will provide service if it receives authority but rather what the nature of its service would be if it decided to serve. We will give all existing and would-be applicants 15 days from the date of service of this order to supply data,[5] in order to give interested persons sufficient information on the nature of the applicant's proposal to assess consistency with the public convenience and necessity. Our tentative findings concerning all applicants that have not filed illustrative service proposals are contingent on such filings.

Upon review of all the facts and pleadings in this case, we have tentatively determined that there is no reason why we should not grant multiple awards. Our tentative conclusions comport with the letter and spirit of the Airline Deregulation Act of 1978, particularly the declaration of policy set forth in section 102 which instructs us to rely, to the maximum extent possible, on competitive forces, including potential competition.[6] See our general conclusions about the benefits of multiple permissive authority in *Improved Authority to Wichita Case, et al.*, Order 78-12-106, December 14, 1978. Accordingly, we conclude that it is desirable to award the additional authority sought by the applicants, whether or not services are in fact operated. The existence of additional operating rights in markets now being served by incumbent carriers or authorized to be served will best effect the statute's policy objective of placing maximum reliance on the decisions of the marketplace. This will occur because newly authorized carriers may actually enter the market in order to exploit unmet demand, both in terms of price and service, or because incumbents will be encouraged by the realistic threat of entry to meet that demand. Because demand is dynamic in character and therefore constantly changing, the most effective means to assure that competitive forces will operate quickly and efficiently is to award multiple operating authority to carriers that are fit, willing and able to provide service.

Notwithstanding the foregoing tentative conclusions in support of multiple permissive authority in this proceeding, we wish to make clear that we in no way desire to deter objections that might be asserted under the 1978 Act by air carriers, civic interests or other interested persons. The new statute contains a completely revised declaration of policy in section 102, as well as numerous additional and modified substantive provisions. Some of these statutory changes relate to considerations not expressly covered in the preceding statute. For example, while diversion from existing carriers will not be given decisive weight in rejecting applications for new authority except upon an extraordinary showing of financial jeopardy on the part of one or more existing air carriers, with the consequent loss of air service which cannot be immediately replaced, other provisions suggest that the Congress desires us to take into account other factors. These include, but are not limited to, satellite airport questions, the degree of concentration within the industry and safety. Any party in this proceeding may explain in full why the authority that we proposed to grant should not issue. Such explanations should apply specifically to the applications in issue and should be sufficiently detailed to overcome the presumption of favorable treatment that the Act bestows on applications.

Finally, we note that absent an environmental evaluation submitted by TWA in its application, we are unable to reach any conclusions required by us under the National Environmental Policy Act of 1969 or the Energy Policy and Conservation Act of 1975. We reserve judgment on the environmental consequences of all applications, pending submissions of environmental data.

[4] Officially noticeable data consist of that material filed according to Rule 24(m) of our Procedural Regulations. Applicants whose fitness cannot be so established must make a showing of fitness, as well as dealing with any questions under sections 408 and 409 of the Act. Should such applications be filed, we will then consider how to deal with them procedurally.

On the basis of officially noticeable data, we find that TWA is a citizen of the United States and is fit, willing and able to perform the air services proposed and to conform to the provisions of the Act and our rules, regulations and requirements. We have also tentatively decided not to hyphenate San Francisco and San Jose, and Los Angeles and Ontario. If, for example, a carrier does not use its Salt Lake City-San Jose authority, another carrier can obtain that authority under section 401(d)(5) of the Act as long as San Jose is listed as a separate point on the first carrier's certificate. *See* Order 78-11-41. We believe that this course of action is consistent with the Act's declaration of policy which calls on us to encourage air service at major urban airports through secondary or satellite airports.

[5] They should submit an illustrative schedule of service in the markets at issue, which shows all points that they might choose to serve, the type and capacity of the equipment that they would likely use and the elapsed trip time of flights in block hours over the segments. For the markets at issue only, they should also provide an environmental evaluation as required by Part 312 of our Regulations, and an estimate of the gallons of fuel to be consumed in the first year of operation in the markets if they instituted the proposed service, as well as a statement on the availability of the required fuel.

[6] Section 102(a) specifies as being in the public interest, among other things: "The placement of maximum reliance on competitive market forces and on actual and potential competition (a) to provide the needed air transportation system, and (b) to encourage efficient and well-managed carriers to earn adequate profits and to attract capital" and "The encouragement, development, and maintenance of an air transportation system relying on actual and potential competition to provide efficiency, innovation, and low prices, and to determine the variety, quality, and price of air transportation services."

We will give interested persons 30 days following the service date of this order to show cause why the tentative findings and conclusions set forth here should not be made final; replies will be due within 10 days thereafter. We expect such persons to direct their objections, if any, to specific markets, and to support such objections with detailed economic analysis. If an evidentiary hearing is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts he would expect to establish through such a proceeding that cannot be established in written pleadings. We will not entertain general, vague or unsupported objections.

Accordingly, 1. We direct all interested persons to show cause why we should not issue an order making final the tentative findings and conclusions stated above and amending the certificate of public convenience and necessity of Trans World Airlines for Route 2 so as to authorize the carrier to engage in nonstop operations in the following city-pair markets: St. Louis-Charlotte, St. Louis-Colorado Springs, St. Louis-Des Moines, St. Louis-Knoxville, St. Louis-Richmond, St. Louis-Toledo, St. Louis-Norfolk, Salt Lake City-San Francisco, Salt Lake City-San Jose, Salt Lake City-Oakland, Salt Lake City-Los Angeles, Salt Lake City-Ontario, Salt Lake City-Portland, Salt Lake City-Seattle, Salt Lake City-Sacramento, Salt Lake City-San Diego, and amending, to grant any of the authority in issue, the certificates of any fit, willing and able applicants the fitness of which can be established by officially noticeable material:

2. We direct any interested persons having objections to the issuance of an order making final any of the proposed findings, conclusions, or certificate amendments set forth here, to file in Docket 34776 and serve upon all persons listed in paragraph 8, no later than March 26, 1979, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections; answers shall be due no later than April 5, 1979;

3. If timely and properly supported objections are filed, we will accord full consideration to the matters and issues raised by the objections before we take further action;[7]

4. In the event no objections are filed, we will deem all further procedural steps to have been waived and we may proceed to enter an order in accordance with the tentative findings and conclusions set forth here;

5. We consolidate that portion of TWA's application in Docket 33754 shown in paragraph 1 above with the St. Louis/Salt Lake City Show-Cause Proceeding, Docket 34776;

6. We direct TWA and any other applicant for the authority in issue to file in Docket 34776 the data set forth in the footnote 5 no later than March 9, 1979;

7. We dismiss without prejudice TWA's application in Docket 33754 to the extent it requests route authority in city-pair markets not listed in paragraph 1, *supra;* and

8. We will serve a copy of this order on American, Continental, Eastern, North Central, Piedmont, TWA and the Norfolk Port and Industrial Authority.

We shall publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR,[8]
Secretary.

APPENDIX A.—TWA ROUTE APPLICATIONS ON FILE

Docket Number and City Pair

33261, Atlanta—Orlando, Tampa, West Palm Beach, Ft. Lauderdale, Miami.
33156, Chicago (Midway)—Buffalo, Newark/LaGuardia/J. F. Kennedy, Cincinnati, Des Moines, Louisville, Memphis, Omaha, Indianapolis, Boston, Washington, Atlanta, Dallas/Ft. Worth.
33048, Chicago (O'Hare)—Colorado Springs.
33260, Kansas City—Honolulu.
31724, Las Vegas—San Diego, San Jose, Ontario.
33049, Las Vegas—Denver.
29968, Louisville—Los Angeles.
33054, Nashville—Denver, Phoenix, Las Vegas.
32309, Phoenix—San Diego, Las Vegas, Palm Springs.
32710, Reno—San Francisco/Oakland, Albuquerque.
33071, Reno—Las Vegas.
33505, Reno—Chicago.
33049, Reno—Denver, St. Louis.
33543, Salt Lake City—Albuquerque, Denver, St. Louis.
32260, St. Louis—Honolulu.
33538, St. Louis—Little Rock, New Orleans.
33377, St. Louis—Orlando.
33520, St. Louis—Portland, Seattle.
33048, St. Louis—Colorado Springs.
33261, New Orleans—Orlando, Tampa, West Palm Beach, Ft. Lauderdale, Miami, Little Rock.
32944, San Diego—Tucson.
32727, San Diego—Albuquerque.
30387, San Diego—Kansas City, St. Louis.

APPENDIX B.—NEW ROUTES APPLIED FOR IN DOCKET 33754

St. Louis—Charlotte, Colorado Springs, Des Moines, Knoxville, Richmond, Toledo, Norfolk.
Salt Lake City—San Francisco/San Jose*, Oakland, Los Angeles/Ontario*, Portland, Seattle, Sacramento, San Diego.

[FR Doc 79-5924 Filed 2-27-79; 8:45 am]

[7]Since provision is made for filing of objections to this order, we will not entertain petitions for reconsideration.

[8]All members concurred.

* We have tentatively decided not to hyphenate San Francisco and San Jose, and Lose Angeles and Ontario. *See* note 4, *supra.*

[3510-25-M]

DEPARTMENT OF COMMERCE

Industry and Trade Administration

COMPUTER SYSTEMS TECHNICAL ADVISORY COMMITTEE

Partially Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Computer Systems Technical Advisory Committee will be held on Thurday, March 15, 1979, at 1:00 p.m. in Room 3817, Main Commerce Building, 14th Street and Constitution Avenue, NW., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. 2404(c)(1) and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration, Bureau of Trade Regulation, with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which may affect the level of export controls applicable to computer systems, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls.

The Committee meeting agenda has five parts:

GENERAL SESSION

(1) Opening remarks by the Chairman.
(2) Presentation of papers or comments by the public.
(3) Report on the current work program of the Subcommittees:
(a) Technology Transfer;
(b) Foreign Availability;
(c) Hardware; and
(d) Licensing Procedures.
(4) Review of proposed subcommittee study programs for 1979.

EXECUTIVE SESSION

(5) Discussion of matters properly classified under Executive Order 11652 or 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting is open to the public, at which a limited number of seats will be available. To the extent time permits members

of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

With respect to agenda item (5), the Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 6, 1978, pursuant to section 10(d) of the Federal Advisory Committee Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy. All materials to be reviewed and discussed by the Committee during the Executive Session of the meeting have been properly classified under Executive Order 11652 or 12065. All Committee members have appropriate security clearances.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Computer Systems Techical Advisory Committee and of any subcommittees thereof, was published in the FEDERAL REGISTER on September 14, 1978 (43 FR 41073).

Copies of the minutes of the General Session will be available by calling Ms. Margaret Cornejo, Operations Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, phone 202-377-2583.

For further information contact Ms. Cornejo either in writing or by phone at the address or number shown above.

Dated: February 23, 1979.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of Trade Regulation.

[FR Doc. 79-5896 Filed 2-27-79; 8:45 am]

[3510-25-M]

HARDWARE SUBCOMMITTEE OF THE COMPUTER SYSTEMS TECHNICAL ADVISORY COMMITTEE

Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held on Thursday, March 15, 1979, at 9:00 a.m. in Room 3817, Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977 and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. 2404(c)(1) and the Federal Advisory Committee Act. The Hardware Subcommittee of the Computer Systems Technical Advisory Committee was established on July 8, 1975, with the approval of the Director, Office of Export Administration, pursuant to the Charter of the Committee. And, on October 16, 1978, the Assistant Secretary for Industry and Trade approved the continuation of the Subcommittee pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which effect the level of export controls applicable to computer systems, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls. The Hardware Subcommittee was formed to continue to work of the Performance Characteristics and Performance Measurements Subcommittee, pertaining to (1) Maintenance of the processor performance tables and further investigation of total systems performance; and (2) Investigation of array processors in terms of establishing the significance of these devices and determining the differences in characteristics of various types of these devices.

The Subcommittee will meet only in Executive Session to discuss matters properly classified under Executive Order 11652 or 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 6, 1978, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed during the meeting should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the meeting will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy. All materials to be reviewed and discussed by the Subcommittee during the meeting have been properly classified under Executive Order 11652 or 12065. All Subcommittee members have appropriate security clearances.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Computer Systems Technical Advisory Committee and of any subcommittees thereof, was published in the Federal Register on September 14, 1978 (43 FR 41073).

For further information, contact Ms. Margaret A. Cornejo, Operations Division, Office of Export Administration, Industry and Trade Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone A/C 202-377-2583.

Dated: February 23, 1979.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

[FR Doc. 79-5899 Filed 2-27-79; 8:45 am]

[3510-25-M]

LICENSING PROCEDURES SUBCOMMITTEE OF THE COMPUTER SYSTEMS TECHNICAL ADVISORY COMMITTEE

Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee will be held on Wednesday, March 14, 1979, at 9:30 a.m. in Room 3708, Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to section 5 (c) (1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. 2404(c)(1) and the Federal Advisory Committee Act. The Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Commit-

tee was initially established on February 4, 1974. On July 8, 1975, the Director, Office of Export Administration, approved the reestablishment of this Subcommittee, pursuant to the charter of the Committee. And, on October 16, 1978, the Assistant Secretary for Industry and Trade approved the continuation of the Subcommittee pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to computer systems, including tehnical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls. The Licensing Procedures Subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

The Subcommittee meeting agenda has five parts:

1. Opening remarks by the Subcommittee Chairman.
2. Presentation of papers or comments by the public.
3. Review of status of Subcommittee recommendations and discussion items of the recent past.
4. Review of work program for the Subcommittee's current and future consideration.
5. Miscellaneous items currently pending:
   a. Repair parts and supplies;
   b. Permissive reexports (Section 374.2); and
   c. Qualified product license.

The meeting will be open for public observation and a limited number of seats will be available. To the extent time permits members of the public may persent oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

For further information, contact Mr. Richard J. Isadore, Acting Director, Operations Division, Office of Export Administration, Industry and Trade Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202-377-4738.

Copies of the minutes of the meeting can be obtained by calling Mrs. Margaret Cornejo, Operations Division, Office of Export Administration (202) 377-2583.

Dated: February 23, 1979.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

[FR Doc. 79-5898 Filed 2-27-79; 8:45 am]

[3510-25-M]

MANAGEMENT-LABOR TEXTILE ADVISORY COMMITTEE

Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Management-Labor Textile Advisory Committee will be held on March 21, 1979 at 1:30 p.m. in Room 5611, Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

The Committee was established by the Secretary of Commerce on October 18, 1961 to advise U.S. Government officials on problems and conditions in the textile and apparel industry and furnish information on world trade in textiles and apparel.

The agenda for the meeting will be as follows:

1. Review of import trends.
2. Implementation of textile agreements.
3. Report on conditions in the domestic market.
4. Other business.

A limited number of seats will be available to the public on a first-come basis. The public may file written statements with the Committee before or after each meeting. Oral statements may be presented at the end of the meeting to the extent time is available.

Copies of the minutes of the meeting will be made available on written request addressed to the ITA Freedom of Information Officer, Freedom of Information Control Desk, Room 3012, U.S. Department of Commerce, Washington, D.C. 20230.

Further information concerning the Committee may be obtained from Arthur Garel, Director, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230, telephone 202/377-5078.

Dated: February 23, 1979.

ARTHUR GAREL,
Director, Office of Textiles.

[FR Doc. 79-5363 Filed 2-27-79; 8:45 am]

[3510-08-M]

National Oceanic and Atmospheric Administration

ENVIRONMENTAL IMPACT STATEMENT

Public Hearings Draft

Notice is hereby given that the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, will hold public hearings for the purpose of receiving comments on the Draft Environmental Impact Statement (DEIS) Prepared on the Proposed Washington Coastal Zone Management Program Amendment No. 1: Deletion of the Evans Policy Statement.

The hearing schedule is:

WEDNESDAY, MARCH 21, 1979

Peninsula College, Little Theatre, 1502 East Laurisden, Port Angeles, Washington, 1:30-3:30 p.m. and, 7:00-10:00 p.m.

THURSDAY, MARCH 22, 1979

South Auditorium—4th Floor, New Federal Office Building, 915 Second Street, Seattle, Washington, 1:30-4:00 p.m., 7:00-10:00 p.m.

The views of interested persons and organizations on the adequacy of the impact statement and/or the Proposed Washington Coastal Zone Management Program Amendment No. 1: Deletion of the Evans Policy Statement, are solicited, and may be expressed orally or in written statements. Persons or organizations wishing to be heard on this matter should contact the Office of Coastal Zone Management (OCZM), National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235 (phone: 202/634-4253), so that an appearance schedule may be prepared. In addition, requests for presentations will be accepted immediately prior to the hearing. Presentations are scheduled on a first-come, first served basis, and should be limited to ten minutes in order to assure that all views can be heard. Office of Coastal Zone Management staff may wish to question speakers following the conclusion of his/his statement. If time permits, additional statements (and general discussion) may be scheduled at the conclusion of presentations. No verbatim transcript of the hearing will be maintained; but staff present will record the general thrust of the remarks.

As part of his review of the Proposed Amendment to delete the Evans Policy Statement from the Washington Coastal Zone Management Program, the Assistant Administrator for Coastal Zone Management will consider fully all comments received at these hearings, as well as written statements submitted to, and received by OCZM

on or before April 6, 1979. As part of the procedures leading toward approval of this program, a Final Environmental Impact Statement will be prepared pursuant to the National Environmental Policy Act of 1969 and its implementing guidelines which reflect his consideration of these comments. All written comments received by OCZM prior to the deadline will be included in the FEIS.

Dated: February 23, 1979.

R. L. CARNAHAN,
Acting Assistant Administration for Administration.

[FR Doc. 79-5921 Filed 2-27-79; 8:45 am]

[3510-17-M]

Office of the Secretary

ADVISORY COMMITTEE ON FIRE TRAINING AND EDUCATION, NATIONAL ACADEMY FOR FIRE PREVENTION AND CONTROL

Notice of Termination

Notice is hereby given of the termination of the Advisory Committee on Fire Training and Education for the National Academy for Fire Prevention and Control, whose charter expired on January 31, 1979.

GUY W. CHAMBERLIN, Jr.,
Assistant Secretary for Administration.

FEBRUARY 21, 1979.

[FR Doc. 79-5864 Filed 2-27-79; 8:45 am]

[3510-18-M]

COMMERCE TECHNICAL ADVISORY BOARD

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976) notice is hereby given that the Commerce Technical Advisory Board will hold a meeting on Thursday, March 22, 1979, from 9:30 a.m. until 5:00 p.m. and on Friday, March 23, 1979 from 9:00 a.m. until 12 o'clock Noon in Room 6802, Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Board was established to study and evaluate the technical activities of the Department of Commerce and recommend measures to increase their value to the business community.

Tentative agenda items include:

1. Domestic Policy Review of Industrial Innovation.
2. Development of Human Resources for Technological Innovation.
3. Final Study of Federal Policy on Entrepreneurship of Technology-Based Industries.
4. Report on CTAB Study of STI Policies.
5. Maritime Commerical Development Program: Lessons for Cooperative Technology.

The meeting will be open to public observation. The public may submit written statements or inquiries to the Chairman before or after the meeting. A limited number of seats will be available to the public and to the press on a first-come, first-served basis.

Copies of minutes and materials distributed will be made available for reproduction following certification by the Chairman, in accordance with the Federal Advisory Committee Act, in Room 3867, U.S. Department of Commerce, Washington, D.C. 20230.

Further information may be obtained from Mrs. Florence S. Feinberg, Administrator, Room 3867, U.S. Department of Commerce, Washington, D.C. 20230. Telephone (202) 377-5065.

Dated: February 22, 1979.

JORDAN J. BARUCH,
Assistant Secretary for Science and Technology.

[FR Doc. 79-5865 Filed 2-27-79; 8:45 am]

[3810-70-M]

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD ADVISORY GROUP ON ELECTRON DEVICES

Advisory Committee Meeting

Working Group C (Mainly Imaging and Display) of the DoD Advisory Group on Electron Devices (AGED) will meet in closed session 15-16 March 1979, at 201 Varick Street, 9th Floor, New York, New York 10014.

The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This special device area includes such programs as infrared and night vision sensors. The review will include classified program details throughout.

In accordance with 5 U.S.C. App. 1, 10(d) (1976), it has been determined that this Advisory Group Meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

FEBRUARY 23, 1979.

[FR Doc. 79-5837 Filed 2-27-79; 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, April 3, 1979; Tuesday, April 10, 1979; Tuesday, April 17, 1979; and Tuesday, April 24, 1979 at 10:00 a.m. in Room 2E-609, 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 Pub. L. 92-463, the Federal Advisory Committee Act, meetings may be closed to the public when they are "concerned with matters listed in section 552b. of Title 5, United States Code." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b. (c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b. (c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b. (c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b. (4)).

However, members of the public who may wish to do so are invited to submit material in writing to the

Chairman concerning matters believed to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D-281, The Pentagon, Washington, D. C.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

FEBRUARY 23, 1979.

[FR Doc. 79-5836 Filed 2-27-79; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1066-8]

AIR POLLUTION CONTROL

Open Meeting To Receive Comments on the Proposed Policy for Alternative Emission Reduction Options Within State Implementation Plans

AGENCY: Environmental Protection Agency.

ACTION: Notice of open meeting.

SUMMARY: An open meeting will be held on Thursday, March 15, 1979, at 9:30 a.m. at the Skyline Inn in Washington, D. C. to receive comments on the Proposed Policy Statement on the alternative emission reduction approach, commonly referred to as the "bubble concept."

FOR FURTHER INFORMATION CONTACT:

Inquiries and persons wishing to make oral statements should contact: Dale Shelly, U. S. Environmental Protection Agency, Economic Analysis Division (PM-220), 401 M Street, S. W., Room 3009, Washington, D. C. 20460, Telephone: (202) 755-2677.

SUPPLEMENTARY INFORMATION: On January 18, 1979, the Environmental Protection Agency proposed in the FEDERAL REGISTER a policy to encourage states to extend to facilities subject to State Implementation Plans the option of using alternative emission reduction controls (FEDERAL REGISTER, Vol. 44, No. 13, pp. 3740-44). This alternative emission control approach, commonly referred to as the "bubble" concept, enables states to revise their plans to permit facilities to place a greater burden of control on sources where the marginal cost of control is low, and lesser burden where cost is high.

The Agency is holding an open meeting for the purpose of receiving oral comments on this proposed policy. This meeting will be held in Washington, D. C. on Thursday, March 15, 1979, starting at 9:30 a.m., and will be located at the Skyline Inn, Room A (Hall of States), South Capitol and I Streets, S. W.

A record of the open meeting will be taken and comments submitted will be considered by EPA in the same manner as written comments.

EPA previously announced its desire to obtain written comments on the alternative emission reduction approach. These written comments must be submitted to the Agency prior to March 19, 1979 and should be sent to: Barbara Ingle, U. S. Environmental Protection Agency, Office of Planning and Evaluation (PM-220), 401 M Street, S.W., Room 3009, Washington, D. C. 20460.

Dated: February 23, 1979.

ROY N. GAMSE,
Deputy Assistant Administrator, Office of Planning and Evaluation.

[FR Doc. 79-5937 Filed 2-27-79; 8:45 am]

[6560-01-M]

[FRL 1066-5; OPP-30161]

PESTICIDE PROGRAMS

Receipt of Application to Register Pesticide Product Containing New Active Ingredient

American Cyanamid Co., Agricultural Div., Princeton, NJ 08540, has submitted to the Environmental Protection Agency (EPA) an application to register the pesticide NEM-A-TAK 2L NEMATICIDE (EPA File Symbol 241-ELL), containing 21.9% of the active ingredient cyclic methylene (diethoxyphosphinyl) dithioimidocarbonate which has not been included in any previously registered pesticide product. The application proposes that the pesticide be classified for restricted use on tobacco.

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 on or before March 30, 1979, and should bear a notation indicating the EPA File Symbol "241-ELL". 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 202/755-2562. The label furnished by American Cyanamid Co., 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 NEM-A-TAK 2L will be announced in the FEDERAL REGISTER. Except for such material protected by Section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136), 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: February 16, 1979.

DOUGLAS D. CAMPT,
Acting Director, Registration Division.

[FR Doc. 79-5938 Filed 2-27-79; 8:45 am]

[6560-01-M]

[FRL 1066-4; PF-121]

PESTICIDE PROGRAMS

Filing of Pesticide Petition

Monsanto Agricultural Products Co., 800 N Lindbergh Blvd., St. Louis, MO 63166, has submitted a petition (PF 9F2163) to the Environmental Protection Agency (EPA) which proposes that 40 CFR 180.364 be amended by establishing tolerances for the combined residues of the herbicide glyphosate (*N*-phosphonomethylglycine) and its metabolite aminomethylphosphonic acid in or on the agricultural commodities crop groupings: cucurbits, fruiting vegetables, small fruits, stone fruits, and the individual commodity hops at 0.1 part per million (ppm) resulting from the use of irrigation water following applications of said herbicide on or around aquatic sites; shellfish and crustaceans at 2.0 ppm, and fish at 0.2 ppm. The proposed analytical method for determining residues is by gas liquid chromatography using a phosphorus-specific flame detector. Notice of this submission is given pursuant to the provisions of section 408(d)(1) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on this petition 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. Inquiries concerning this petition may be directed to Product Manager (PM) 25, Registration Division (TS-767), Office of Pesticide Programs, at the above address, or by telephone at 202/755-2196. Written comments should bear a notation indicating the petition number. Comments may be made at any time while a petition is pending before the Agency. 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 p.m. Monday through Friday.

Dated: February 16, 1979.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc 79-5939 Filed 2-27-79; 8:45 am]

[6560-01-M]

[FRL 1066-6; OPP-30162]

PESTICIDE PROGRAMS

Receipt of Applications to Register Pesticide Products Containing New Active Ingredient

Applications have been submitted to the Environmental Protection Agency (EPA) to register pesticide products containing active ingredients which have not been included in any previously registered pesticide products. Applications were made pursuant to the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136) and the regulations thereunder (40 CFR 162).

Notice of receipt of these applications does not indicate a decision by the Agency on the applications. Interested persons are invited to submit written comments on any applications referred to in this notice to the FEDERAL REGISTER Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M St., SW, Washington, D.C. 20460. The comments must be received on or before March 30, 1979, and should bear a notation indicating the EPA file symbol number of the application to which the comments pertain. Comments received within the specified time period will be considered before a final decision is made; comments received after the specified time period will be considered only to the extent possible without delaying processing of the application. Specific questions concerning these applications and the data submitted should be directed to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, at the above address or appropriate telephone number cited. The labels furnished by each applicant, as well as all written comments filed pursuant to this notice, will be available for public inspection in the office of the FEDERAL REGISTER Section from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Notice of approval or denial of the applications to register pesticide products will be announced in the FEDERAL REGISTER. Except for such material protected by Section 10 of FIFRA, the test data and other information submitted in support of registration as well as other scientific information deemed relevant to the registration decision may be made available after approval under the provisions of the Freedom of Information Act. The procedures for requesting such data will be given in the FEDERAL REGISTER if an application is approved.

Dated: February 16, 1979.

DOUGLAS D. CAMPT,
Acting Director,
Registration Divison.

APPLICATIONS RECEIVED

EPA File Symbol 1448-AU. Buckman Labs., Inc., 1256 N. McLean Blvd., Memphis TN 38108. BUSAN 42. Active Ingredient: *2'-Hydroxyethyl-2,3-dibromopropionate* 30.0%. Application proposes that this product be classified for general use as a microbiocide in paints. PM21. (202/755-2562)

EPA File Symbol 1448-AL. Buckman Labs., Inc. BUSAN 44. Active Ingredient: *2'-Hydroxyethyl-2,3-dibromopropionate* 25.0%. Application proposes that this product be classified for general use as a microbiocide in paints. PM21.

[FR Doc. 79-5940 Filed 2-27-79; 8:45 am]

[6560-01-M]

[FRL 1066-7; OPP-31025]

PESTICIDE PROGRAMS

Receipt of Application To Register Pesticide Product Entailing a Changed Use Pattern

Farnam Co., 2230 East Magnolia St., Phoenix, AZ 85036, has submitted to the Environmental Protection Agency (EPA) an application to register the product ANT POWDER (EPA File Symbol 270-RGT) containing 0.15% of the active ingredient 3-phenoxybenzyl d-cis and trans 2,2-dimethly-3(2-methlypropenyl)cyclopropanecarboxylate. The application received from Farnam Co., Inc. proposes that the use pattern of this pesticide be changed to include outdoor application on ant hills. The application also proposes that the product be classified for general use.

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, D.C. 20460. The comments must be received on or before March 30, 1979, and should bear a notation indicating the EPA File Symbol "270-RGT." Comments received within the specified time period wil 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) 17, Registration Division (TS-767), Office of Pesticide Programs, at the above address or by telephone at 202/426-9425. The label furnished by Farnam Co., Inc. 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 ANT POWDER will be announced in the FEDERAL REGISTER. Except for such material protected by Section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA) as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136), 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: February 16, 1979.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc. 79-5941 Filed 2-27-79; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

TUCSON FM BROADCASTING CORP.

Notice of Publication of Draft Environmental Impact Statement

Adopted: February 12, 1979.
Released: February 16, 1979.

By the Chief, Broadcast Bureau:

Pursuant to Section 1.1315(c) of the Commission's Rules, notice is hereby given that a draft environmental impact statement was published February 16, 1979 concerning the application to Tucson FM Broadcasting Cor-

poration (BPH-10,347) for a new 100 kW FM station on Channel 298 (107.5MHz) in Tucson, Arizona. The antenna and transmitter would be located five miles west of Tucson, at the following coordinates:

32° 14′ 55″ North
111° 6′ 58″ West

The applicant proposes a tower 200 feet above ground, with center of radiation 150 feet above ground and 2000 feet above average terrain.

ENVIRONMENTAL PROBLEMS

Construction of the proposed facility will entail topographical alteration of the site and of the terrain along a 1.8 mile access road. Some soil erosion may result. In addition to disruption of desert vegetation, the tower and road will be partially visible from the nearby Saguaro National Monument West, Tucson Desert Museum, and Old Tucson, as well as from parts of the city of Tucson itself.

AVAILABILITY

The draft statement is available for inspection in the Commission's Public Reference Room. A limited number of copies will be made available on request. Copies will also be sent to those who have already expressed an interest in the environmental consequences of the proposal, and to those who responded to the Commission's Public Notice released October 12, 1978.

COMMENTS

Comments on the draft statement may be filed on or before April 16, 1979. An original and six copies shall be filed with the Commission, five copies with the Environmental Protection Agency, 215 Fremont St., San Francisco, CA 94105, and one copy with the applicant at Box 40698, Tucson, AZ 85717.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 79-5814 Filed 2-27-79; 8:45 am]

[6712-01-M]

RADIO TECHNICAL COMMISSION FOR MARINE SERVICES

Notice of 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:

EXECUTIVE COMMITTEE MEETING

The next Executive Committee Meeting will be on Thursday, March 15, 1979, 9:30 a.m., in Conference Room 7200, Nassif Building, 400 Seventh Street, S.W. (at D Street), Washington D.C.

AGENDA

1. Call to Order.
2. Administrative Matters.
3. Acceptance of FY-79 First Quarter Financial Statement.
4. Report of Nominating Committee.
5. New Business.

The RTCM has acted as a coordinator for maritime telecommunications since its establishement 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. 79-5813 Filed 2-27-79; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

[Docket No. 77-7]

AGREEMENTS NOS. 9929-2, 9929-3 AND 9929-4 (MODIFICATIONS TO THE COMBI LINE JOINT SERVICE AGREEMENT) AND AGREEMENTS NOS. 10-266 AND 10266-1 (JOINT MARKETING AGREEMENT BETWEEN INTERCONTINENTAL TRANSPORT, B.V., AND COMPAGNIE GENERALE MARITIME)

Availability of Final Energy and Environmental Impact Statement

Upon completion of a Final Energy and Environmental Impact Statement (FEEIS), the Federal Maritime Commission's Office of Environmental Analysis (OEA) has identified the energy and environmental consequences of the Commission's final resolution in this proceeding. The FEEIS indicates that the energy and environmentally preferable resolution of this proceeding is Commission approval of the Amendments. Approval would result in conservation of energy, though more in port air pollutants would be produced.

The assessment of energy consumption is required under section 382(b) of the Energy Policy and Conservation Act of 1975, and an environmental analysis is required under section 4332(2)(c) of the National Environmental Policy Act of 1969.

Docket No. 77-7 is an investigation to determine whether Agreements Nos. 9929-2, 9929-3 and 9929-4 and Agreements Nos. 10266 and 10266-1 should be approved, disapproved or modified pursuant to section 15 of the Shipping Act, 1916. Also included in this proceeding by "Modification of Order of Investigation and Hearing" served February 3, 1978, are Amendments 9929-5 and 10266-2.

The OEA's conclusions are contained in the FEEIS which is available on request from the Office of the Secretary, Room 11101, Federal Maritime Commission, Washington, D.C. 20573, telephone (202) 523-5725.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 79-5936 Filed 2-27-79; 8:45 am]

[4110-35-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

NATIONAL PROFESSIONAL STANDARDS REVIEW COUNCIL

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Council meeting:

Name: National Professional Standards Review Council.

Date and Time: March 26, 1979 (10:00 a.m. to 5:00 p.m.); March 27, 1979 (9:00 a.m. to 1:00 p.m.).

Place: Auditorium (first floor), HEW North Building, 330 Independence Avenue, S.W., Washington, D.C.

Purpose of Meetings: The Council was established to advise the Secretary of Health, Education, and Welfare on the administration of Professional Standards Review (Title XI, Part B, Social Security Act). Professional Standards Review is the procedure to assure that the services for which payment may be made under the Social Security Act are medically necessary and conform to appropriate professional standards for the provision of quality health care. The Council's agenda will include discussion of a variety of issues relevant to the implementation of the PSRO program. On March 14, 1979 a tentative agenda will be available to the public.

Meeting of the Council is open to the public. Public attendance is limited to space available.

Any member of the public may file a written statement with the Council before, during, or after the meeting. To the extent that time permits, the Council Chairman will allow public presentation of oral statements at the meeting.

All communications regarding this Council should be addressed to Margaret VanAmringe, Staff Director, National Professional Standards Review Council, Health Standards and Qual-

ity Bureau, Room 5127-S, Switzer Building, 330 "C" Street, Washington, D.C. 20201, (202) 472-5536.

Dated: February 22, 1979.

MARGARET VANAMRINGE,
Staff Director, National Professional Standards, Review Council.

[FR Doc. 79-5826 Filed 2-27-79; 8:45 am]

[4110-39-M]

National Institute of Education

PANEL FOR THE REVIEW OF LABORATORY AND CENTER OPERATIONS

Meeting

Notice is hereby given that the next meeting of the Panel for the Review of Laboratory and Center Operations will be held on March 17-18 in Room 800-A of the Carnegie Endowment for International Peace, 11 Dupont Circle, N.W., Washington, D.C. The Panel will meet from 9:00 a.m. until 5:00 p.m. on March 17 and from 9:00 a.m. until approximately 3:00 p.m. on March 18.

The Panel for the Review of Laboratory and Center Operations is established under Section 405 of the General Education Provisions Act as amended by Section 403(d) of the Education Amendments Act of 1976, 20 U.S.C. 1221e. Its functions include:

(a) Preparing recommendations on initial long-range funding and program plans submitted by the 17 educational laboratories and research and development centers;

(b) Reviewing and assessing the operations of the laboratories and centers and making recommendations for the improvement and continuation of the individual laboratories and centers and for the support of new laboratories and centers.

The entire meeting will be open to the public. The meeting will focus primarily on issues of dissemination. The Panel will hear presentations on the dissemination programs conducted by the U.S. Office of Education and will meet with staff of the regional educational laboratories to discuss their conception of practice improvement. The Panel will also discuss further the dissemination efforts of the National Institute of Education with N.I.E. staff.

The Panel will address two other topics during the meeting: the need for new regional educational laboratories and research and development centers; and equality of educational opportunity.

The agenda is not yet firm. However, it is likely that Saturday, March 17 will be devoted to discussion with U.S.O.E. and N.I.E. staff and with staff from the regional educational laboratories on dissemination and practice improvement. On Sunday the Panel will review Saturday's meeting, discuss the need for new laboratories and centers and equality of educational opportunity and plan future activities.

Interested persons are invited to attend the session. Written statements relevant to an agenda item or any topic deemed of interest to the Panel may be submitted to the Panel staff at the address below.

Copies of the records of all Panel proceedings may be obtained through the office of the Panel staff. Minutes require approval by the Panel at a subsequent meeting and are available to the public two weeks following their approval.

In order to verify the tentative agenda, or assure adequate seating arrangements, persons likely to attend the Panel meeting may contact the Panel staff Office as indicated below:

Panel for the Review of Laboratory and Center Operations, National Institute of Education, Washington, D.C. 20208, (202) 254-5830 or 254-5306.

Dated: February 22, 1979.

GRADY MCGONAGILL,
Staff Director, Panel for the Review of Laboratory and Center Operations.

[FR Doc. 79-5832 Filed 2-27-79; 8:45 am]

[4110-02-M]

Office of Education

ADVISORY COMMITTEE ON ACCREDITATION AND INSTITUTIONAL ELIGIBILITY

Revision of Meeting Notice

AGENCY: Department of Health, Education, and Welfare, Office of Education.

ACTION: Revision to notice of public meeting.

FOR FURTHER INFORMATION CONTACT:

John R. Proffitt, Director, Division of Eligibility and Agency Evaluation, Office of Education, Room 3030, ROB 3, 400 Maryland Avenue, S.W., Washington, D.C. 20202 (202/245-9873).

This notice sets forth revisions to the agenda of the next public meeting of the Advisory Committee on Accreditation and Institutional Eligibility. Notice of the meeting was published in the FEDERAL REGISTER on February 6, 1979, 44 FR, 7233-7234. The following reviews of nationally recognized accrediting agencies are added to the reviews listed in the previous notice.

Engineers' Council for Professional Development (renewal of recognition for accreditation of graduate programs leading to advanced entry into the engineering Profession).

Engineers' Council for Professional Development (interim report on accreditation of first professional degree programs in engineering and associate and baccalaureate degree programs in engineering technology).

Western Association of Schools and Colleges. Accrediting Commission for Schools (petition for an extension of scope of recognition to include accreditation, and preaccreditation as "Candidate for Accreditation," of elementary schools).

The Advisory Committee also will review the following policy matters affecting accreditation and institutional eligibility:

Report on the Status of Proposed Regulations:

1. Appeal Procedures Regarding Negative Decisions of the Commissioner of Education.
2. Criteria for Recognition of National Accrediting Bodies and State Agencies.
3. Institutional Eligibility Regulations.
4. System for Establishing the Comparability of Foreign Medical Schools for Purposes of Participation in the Guaranteed Student Loan Program.

GAO Report, *What Assurances Does Office of Education's Eligibility Process Provide?*, January 1979.

Report on the Status of the Educational Testing Service Project on Evaluation of the Office of Education's Criteria for Recognition of National Accrediting Bodies and State Agencies.

Requests for oral presentations before the Committee should be submitted in writing to the Director, Division of Eligibility and Agency Evaluation (address as above). Requests should include the names of all persons seeking an appearance, the party or parties which they represent (if applicable), and the purpose for which the presentation is requested. Request must be received by the Division of Eligibility and Agency Evaluation on or before February 28, 1979. Time constraints may limit oral presentation. However, all additional written material that a party wishes to file will be considered by the Advisory Committee.

Signed at Washington, D.C. on February 23, 1979.

JOHN R. PROFFITT,
Director, Division of Eligibility and Agency Evaluation, Office of Education.

[FR Doc. 79-5886 Filed 2-27-79; 8:45 am]

[4110-02-M]

NATIONAL ADVISORY COUNCIL ON BILINGUAL EDUCATION

Meeting

AGENCY: National Advisory Council on Bilingual Education.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming meetings of the National Advisory Council on Bilingual Education. Notice of these meetings is required under the Federal Advisory Committee Act (5 U.S.C. Appendix 1, 10(a)(2)). This document is intended to notify the general public of their opportunity to attend.

DATES: March 16, 1979 and March 17, 1979.

ADDRESS: Reporters' Building, room 402, 7th and "D" Streets, S.W., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT:

Willie R. Alire, Office of Bilingual Education, Reporters' Building, room 421, Office of Education, 400 Maryland Avenue, S.W., Washington, D.C. 20202. (202-245-2600)

The National Advisory Council of Bilingual Education is established under Section 732(a) of the Bilingual Education Act (20 U.S.C. 880b-11) to advise the Secretary of Health, Education, and Welfare and the Commissioner of Education concerning matters arising in the administration of the Bilingual Education Act.

The Council will be meeting as a committee of the whole for one hour on the morning of March 16th beginning at 8:30 a.m. and then will breakup into working committees until 12:00 noon. full Council meetings which are open to the public will begin at 1:00 p.m. on the 16th and continue through March 17th.

Records will be kept of all Council proceedings and shall be available for public inspection after approval by the full Council of said records has been obtained. These records will be available in Room 421, Reporters' Building, 300 7th Street, S.W., Washington, D.C. Written requests for such records should be sent to 400 Maryland Avenue, S.W., Reporters' Building, Room 421, Washington, D.C. 20202.

The proposed agenda includes the following:

March 16, 1979: Room 402, Reporters' Building.

8:30 a.m.—Committee of the Whole.

I. Call to Order.

II. Swearing-in and orientation of new members.

III. Committee Assignments.

9:30-1200—Break up into committee workshops—Rooms 408, 405, 411.

1:30-5:00—I. Reading, amendments and approval of minutes of February meeting.

II. Full Briefing by Regulations Team.

III. discussion of Final Rules and Regulations.

IV. Program Audit Report.

1. Comments by director.

2. Full discussion.

V. End of Year Report.

VI. Other.

March 17, 1979—Room 402.

9:00 a.m.—Unfinished and Old Business.

I. Planning for Hearings of Notice of Proposed Rule-Making.

II. Coordination Paper Issue.

III. European and Native American Languages Papers.

IV. Other.

In the event that the proposed agenda is completed prior to the projected date or time, the Council will adjourn the meeting.

Signed at Washington, D.C. on February 23, 1979.

DEAN BISTLINE,
Deputy Director,
Office of Bilingual Education.

[FR Doc. 79-5868 Filed 2-27-79; 8:45 am]

[4110-03-M]

Public Health Service

FOOD AND DRUG ADMINISTRATION

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HF (Food and Drug Administration) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health, Education, and Welfare (35 FR 3962, February 25, 1970, as amended most recently at 43 FR 16421, April 18, 1978) is amended to reflect a major reorganization within the National Center for Toxicological Research (NCTR).

The Secretary of Health, Education, and Welfare announced the establishment of a National Toxicology Program on November 12, 1978. Notice of the establishment was published in the FEDERAL REGISTER on November 15, 1978 (43 FR 53060). This Program will provide the focus for a major national effort to reduce human exposure to harmful substances in the environment. The Program will be comprised of relevant activities of the Food and Drug Administration (FDA), the Center for Disease Control (CDC), and the National Institutes of Health (NIH). This Program will operate under a joint agreement between these agencies. Each agency has a major role, through testing, regulating, or research, in Federal chemical toxicity control programs.

NCTR has been designated by the Commissioner of Food and Drugs to implement FDA's part of the Program. In order to implement the Program, all aspects of the operation of NCTR were reevaluated. The reevaluation revealed other areas where benefits could be obtained by reorganization.

Under this reorganization, NCTR will be divided into three major areas: Toxicological testing, scientific research, and management.

To accomplish this the following major changes are being made: establishment of the Office of Scientific Intelligence and the Divisions of Chemical Toxicology, Pathology, Management Services, Toxicological Data Management Systems, and Biometry; abolishment of the Divisions of Analytical Services, Scientific Information Systems, Molecular Biology, and Diet Preparation and reassignment of their functions.

All other divisions are retained intact or with title changes and/or minor revisions in the functional statement.

Section HF-B, *Organization and Functions* is amended as follows:

Delete the functional statements for the *National Center for Toxicological Research (HFT)* in their entirety and substitute the following:

(q) *National Center for Toxicological Research (HFT).* Conducts research programs to study the biological effects of potentially toxic chemical substances found in man's environment, emphasizing: the determination of the adverse health effects resulting from long-term, low-level exposure to chemical toxicants, determination of the basic biological processes for chemical toxicants in animal organisms, development of improved methodologies and test protocols for evaluating the safety of chemical toxicants, and development of data to facilitate the extrapolation of toxicological data from laboratory animals to man.

Conducts addition research programs which utilize facilities and expertise of the Center and contribute to its overall scientific capability.

Develops Center Programs as a national resource, in close cooperation with other agencies in the Public Health Service and the Environmental Protection Agency (EPA) and under the National Toxicology Program.

Operates with the advice of a Policy Board, consisting of members appointed by the Secretary of Health, Education, and Welfare and by the Administrator, EPA. The NCTR Policy Board recommends program priorities, reviews program and research results reviews budget requirements and allotments, recommends management policies, reviews qualifications of applicants for key positions, and advises agency heads on matters concerning the Center.

(q-1) *Office of the Director (HFT1).* Provides leadership and direction to assure the efficient and effective planning, performance, and evaluation of Center activities.

Provides leadership and direction to all Center research activities.

Provides for scientific intelligence between the Center and all related interests in toxicological research, including the National Academy of Sciences, the National Science Foundation, and the worldwide academic, sci-

entific, and medical communities consort: acts as principal liaison with the Director of the National Toxicology Program.

Coordinates Center programs with similar in-house, grant, and contract programs of FDA, EPA, NIH, the National Toxicology Program, and other government toxicological research laboratories.

Assures the implementation of departmental and EPA policies concerning performance and quality research efforts.

Monitors and evaluates performance of contractors supporting Center activities.

(q-2) *Office of Program and Resource Planning (HFT12).* Assists the NCTR Policy Board, Director, and other key Center officials by providing strategic and operational planning, analysis and recommendations on policy developments, advice on resource management, solutions to operational problems, and identification and evaluation of program priorities.

Coordinates the development of Centerwide operational plans for the conduct of research activities.

Identifies and evaluates significant problems impeding effective operations of the Center.

Reviews and coordinates for review by the NCTR Policy Board, Director, and other officials, major program issues and studies impacting on the policy, organization, direction, and functions of the Center.

Assists in the evaluation of proposals for large-scale projects at the Center in terms of funds, space, equipment, and manpower.

Formulates and develops justification for the Center budget.

Develops and issues management procedures and directives to assure the efficient performance of Center activities.

Serves as the Center public information focal point.

(q-3) *Office of Scientific Intelligence (HFT13).* Serves as the Center liaison with worldwide scientific, medical, and academic communities, both public and private, in coordination with the Office of Health Affairs.

Assures that Center scientific personnel are aware of current and developing trends and activities throughout the world which related to their areas of expertise.

Consults with Center personnel as requested on experimental design and implementation.

Provides administrative and logistic support for meetings of the NCTR Science Advisory Board, NCTR Policy Board, and other advisory committees.

Monitors scientific programs in the Center to provide overall scientific coordination among Center components.

Serves as the focal point at the Director's level for scientific overview and coordination of the Center's cooperative foreign research studies supported under the provisions of Pub. L. 480.

(q-4) and (q-5) reserved.

(q-6) *Division of Animal Husbandry (HFTA).* Provides and maintains an animal breeding capability for selected species and strains.

Maintains and cares for animal colonies used for breeding or research projects.

Establishes standards and administers procedures for barrier entry, animal handling, and observation and for quarantine of animals purchased from suppliers.

Provides and operates support services necessary to maintain the infection-free quality of the barrier operations.

Prepares and administers diets of animals used for breeding and experimentation.

Collects pertinent information concerning the production and care of animals.

Maintains adequate inventories of supplies and materials necessary to support and care for the animals held.

Consults and assists Center engineering personnel on specifications and design of animal support equipment and holding facilities.

(q-7) *Division of Chemical Toxicology (HFTN).* Plans and conducts the chemical toxicological testing portion of the National Toxicology Program annual plan designated by the Executive Committee and the Director of the National Toxicology Program as the responsibility of the Center.

Provides information to the Director of the National Toxicology Program in the development and evaluation of the total program.

Plans and implements sub-chronic and chronic toxicological evaluations emphasizing dose response relationships.

Develops and evaluates new or improved protocols for toxicological evaluations.

Develops and implements programs to evaluate the effects of nutritional components on the toxicity of a chemical and acts as consultants on these nutritional problems at the Center.

Coordinates chemical toxicological and nutritional activities at the Center with other components within FDA and the scientific community.

Establishes the requirements and criteria for analysis of basal and formulated diets used in toxicological evaluations.

Operates and maintains a diet preparation facility for the Center.

(q-8) *Division of Pathology (HFTP).* Plans and conducts research on responses of a variety of laboratory animals to potentially toxicologic and/or carcinogenic environmental agents.

Develops, improves, and standardizes pathology techniques, methodologies, nomenclature, and morphologic classifications.

Provides pathology expertise and advice for Center programs.

Provides scientific project leadership for Center contract on pathology support services.

(q-9) *Division of Microbiology and Immunology (HFTB).* Plans and conducts basic and applied research and provides guidance for solving specific and practical problems in microbiology, immunology, and cell biology identified in connection with carcinogenic, teratogenic, and mutagenic research.

Conducts research in the development and improvement of bioassay procedures and the use of microorganisms as tools in determining the toxicity of chemicals and other useful purposes.

Provides microbiological services and surveillance in support of the animal toxicology operations at the Center.

Designs and develops methods and procedures to isolate and identify contaminating or pathogenic microorganisms to insure their control or elimination from critical animal toxicology experiments.

(q-10) *Division of Chemistry (HFTC).* Develops new or improved chemical procedures for the trace analysis of carcinogens, teratogens, mutagens, toxicants, and other biologically active substances, in a wide variety of substrates for use in initiating or supporting toxicological research at the Center.

Conducts or sponsors research aimed at developing state-of-the-art techniques to enhance sensitivity, specificity, speed, and accuracy of trace-level analytical chemical determinations.

Operates an instrument laboratory and conducts studies utilizing highly specialized spectometric techniques such as radiometric mass spectrometry, nuclear magnetic resonance, and inductively coupled argon plasma emission.

Performs research and services relating to chemical and physico-chemical behavior of the test chemicals, integrity of dosage forms, and safe usage and disposal of test chemicals.

Develops and implements automated chemical data systems to collate and ensure integrity of results for compliance with good laboratory practice (GLP) requirements.

Provides radioimmunoassay services; fosters an environment for state-of-the-art development of radioimmunoassay techniques.

Develops and implements analytical methods to insure nutritional integrity and absence of deleterious substances

in animal diets as they affect bioassay results.

(q-11) *Division of Carcinogenesis Research (HFTK).* Conducts long-term studies to develop improved methods for evaluating exposure of experimental animals to possible life-shortening carcinogenic toxicants.

Determines and describes dose-time response relationships for specific chemical toxicants in experimental animals.

Conducts studies to develop biological and biochemical information, facilitating a better understanding of the mechanisms of toxic responses.

Innovates, designs, and develops new approaches and procedures that expand pathology capabilities for utilization in the assessment of the toxicity of compounds.

(q-12) *Division of Teratogenesis Research (HFTG).* Conducts or sponsors studies to determine the effect of certain toxic chemicals on the progeny of exposed animals.

Expands positive findings into species reflecting human morphology.

Conducts studies on the placental differences of various species and the morphological similarities of the malformations produced as well as neurological effects.

Conducts studies comparing the pharmacodynamics of mice with that of other common laboratory animals, including rats, rabbits, and hamsters.

Conducts studies which will increase the ability to predict the metabolism and kinetics of distribution and elimination during all stages of life from conception to senility.

(q-13) *Division of Mutagenesis Research (HFTH).* Performs research aimed at developing testing procedures for evaluating mutagenic effects of chemical toxicants and, in particular, in developing improved methods for detecting genetic alteration.

Conducts research on improved methodology for screening chemical toxicants.

Conducts research on developing techniques for mutagenic screening in mammals.

(q-14) *Division of Biometry (HFTT).* Provides leadership and liaison for other Agency, EPA, NIH components concerned with biometric applications to toxicology.

Develops the statistical criteria for program design and protocols necessary for valid analysis and provides the statistical analysis of Center expermental programs.

Employs mathematical and statistical procedures to develop improved expermental protocols and methods for analyzing toxicological data.

Provides statistical consultation services to aid in establishing regulatory standards for population risk.

Manages and operates the Center computer facility and provides related services and acts as liaison within FDA.

Managers the daily Center computer operations in support of productional systems.

(q-15) *Division of Facilities Engineering and Maintenance (HFTE).* Operates and maintains all environmental support systems, plants, buildings, and equipment required to support Center programs.

Prepares, in coordination with the Office of Management and Operations (OMO) long and short-range program plans for facilities requirement.

Develops renovation and improvement projects for the annual Agency work plan.

Develops and implements a preventative maintenance program for the Center with technical assistance and guidance from OMO.

(q-16) *Division of Toxicological Data Management Systems (HFTS).* Innovates, designs, develops, and implements automated data systems tailored to Center needs.

Provides guidance and training to Center research and support personnel in the design and use of data collection and retrieval systems.

Acts as the Center focal point for the acquisition of automated data systems equipment and services.

Acts as a national resource for guidance and counsel in toxicological data system methodologies.

(q-17) *Division of Management Services (HFTR).* Provides guidance and leadership to Center staff offices for all management services programs and provides administrative management services to the Center.

Manages and operates communications, graphic arts, printing and reproduction, and microform management programs.

Develops and conducts management programs in records, directives, correspondence, forms, and other management areas as assigned.

Manages and operates the Center contracts, procurement, property, and supply programs, and financial and accounting systems for all Center expenditures.

Manages Center personnel and training activities in coordination with the Office of Management and Operations.

Coordinates the development of Center policies and procedures for such services; advises the Director and Associate Director for Management on all aspects of management.

Dated: February 10, 1979.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 79-5933 Filed 2-27-79; 8:45 am]

[4310-84-M]

DEPARTMENT OF INTERIOR

Bureau of Land Management

IDAHO FALLS DISTRICT, GRAZING ADVISORY BOARD

Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Idaho Falls District Grazing Advisory Board will be held on April 25, 1979.

The meeting will begin at 10:00 a.m. in the conference room of the Bureau of Land Management Office at 940 Lincoln Road, Idaho Falls, Idaho.

The agenda for the meeting will include:

(1) a discussion of the function of the Board,

(2) the expenditure of range betterment funds and advisory board funds for range improvements,

(3) a review of the current policy and program relating to allotment management plans including the ongoing and future grazing environmental statement effort,

(4) election of officers,

(5) discussion of the Board's future,

(6) the arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Board between 11:30 a.m. and 12:00 noon, or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho, by April 13th, 1979. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established by the District Manager.

Summary minutes of the Board meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

O'DELL A. FRANDSEN,
District Manager.

FEBRUARY 20, 1979.

[FR Doc. 79-5884 Filed 2-27-79; 8:45 am]

[4310-84-M]

OUTER CONTINENTAL SHELF OFFICIAL PROTRACTION DIAGRAMS

Availability

1. Notice is hereby given that, effective with this publication, the following OCS Official Protraction Diagrams, last approved or revised on the dates indicated, are on file and available, for information only, in the New

Orleans Outer Continental Shelf Office, Bureau of Land Management, New Orleans, Louisiana. In accordance with Title 43, Code of Federal Regulations, these protraction diagrams are the basic record for the description of mineral and oil and gas lease offers in the geographic areas they represent.

OUTER CONTINENTAL SHELF OFFICIAL PROTRACTION DIAGRAMS

Description		Latest approval or revision date
NG 17-7	Pulley Ridge	October 24, 1978.
NG 17-8	Miami	October 24, 1978.
NG 17-10	Dry Tortugas	October 24, 1978.
NH 17-2	Brunswick	September 1, 1978.
NI 17-11	Savannah	September 1, 1978.

2. Copies of these protraction diagrams may be purchased for $2.00 each from the Manager, New Orleans Outer Continental Shelf Office, Bureau of Land Management, Suite 841, Hale Boggs Federal Building, 500 Camp Street, New Orleans, Louisiana 70130. Checks or money orders should be made payable to the Bureau of Land Management.

Dated: February 21, 1979.

JOHN L. RANKIN
Manager, New Orleans Outer Continental Shelf Office.

[FR Doc. 79-5883 Filed 2-27-79; 8:45 am]

[4310-70-M]

National Park Service

CUYAHOGA VALLEY NATIONAL RECREATION AREA ADVISORY COMMISSION

Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, that a meeting of the Cuyahoga Valley National Recreation Area Advisory Commission will be held at 7:30 p.m. (EST), March 22, 1979, at the Hudson Townhall, 27 E. Main Street, Hudson, Ohio.

The Commission was established by Pub. L. 93-555 to meet and consult with the Secretary of the Interior on matters relating to the development of the Cuyahoga Valley National Recreation Area and with respect to carrying out the provisions of the Public Law.

The members of the Commission are as follows:

Mrs. Robert G. Warren (Chairman), Mr. Courtney Burton, Mr. Norman A. Godwin, Mr. Donald W. Haskett, Mr. Robert L. Hunker, Mr. James S. Jackson, Mr. Melvin J. Rebholz, Mrs. Roger L. Rossi, Mrs. George N. Seltzer, Ms. Robbie Stillman, Mr. Barry K. Sugden, Mr. Robert W. Teater, Mr. William O. Walker.

Matters to be discussed at this meeting include:

1. Off road vehicle use within Cuyahoga Valley National Recreation area.
2. Short range plans for visitor services.
3. Report on Park operations.

The meeting will be open to the public. Interested persons may submit written statements. Such statements should be submitted to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from William C. Birdsell, Superintendent, Cuyahoga Valley National Recreation Area, P.O. Box 158, Peninsula, Ohio 44264, telephone 216-653-3313. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Cuyahoga Valley National Recreation Area, located at 501 West Streetsboro Road, (State Route 303) two miles east of Peninsula, Ohio.

Dated: February 15, 1979.

J. L. DUNNING,
Regional Director, Midwest Region.

[FR Doc. 79-5918 Filed 2-27-79; 8:45 am]

[4310-70-M]

[Order 3]

ADMINISTRATIVE ASSISTANT, SARATOGA NATIONAL HISTORICAL PARK

Delegation of Authority Regarding Execution of Purchase Orders for Supplies, Equipment, or Services

1. Administrative Assistant. The Administrative Assistant, Saratoga National Historical Park, may issue purchase orders not in excess of $1,000 for supplies, equipment, or services in conformity with applicable regulations and statutory authority and subject to availability of allotted funds. This authority may be exercised by the Administrative Assistant in behalf of any unit under the administration of Saratoga National Historical Park.

2. Revocation. This order supercedes Order No. 2, issued May 28, 1971.

(National Park Service Order No. 77 (FR 73-5474); 39 Stat. 535, 16 U.S.C., sec. 2; North Atlantic Region Order No. 2 (FR 77-15330), as amended.)

Dated: February 2, 1979.

W. GLEN GRAY,
Superintendent, Saratoga National Historical Park.

[FR Doc. 79-5917 Filed 2-27-79; 8:45 am]

[7555-01-M]

NATIONAL SCIENCE FOUNDATION

ADVISORY COMMITTEE ON POST-INTERNATIONAL PHASE OF OCEAN DRILLING (IPOD) SCIENCE

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

NAME: Advisory Committee on Post-IPOD Science.

DATE: March 16, 1979

TIME: 9:00 a.m.-4:00 p.m.

PLACE: Room 1243, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

TYPE OF MEETING: Part Open—March 16—9:00 a.m.-2:30 p.m. open. March 16—2:30 p.m.-4:00 p.m. closed.

CONTACT PERSON: Dr. Peter E. Wilkniss, Program Manager, Ocean Sediment Coring Program, Room 602, National Science Foundation, Washington, D.C. 20550.

SUMMARY MINUTES: May be obtained from the Committee Management Coordinator, Division of Financial and Administrative Management, Room 248, National Science Foundation, Washington, D.C. 20550.

PURPOSE OF ADVISORY COMMITTEE: To evaluate, in the context of the national scientific effort, a proposed program of drilling, and related activities, in the deep oceans for scientific purposes in the 1980's and to make recommendations concerning the advisability of the National Science Foundation sponsoring such a program.

AGENDA: 9:00 a.m. Current Status of Planning, 10:00 a.m. Scientific Objectives of Future Program, 11:30 a.m. Other Agency Interests & Technical Feasibility of Future Program. 1:00 p.m. OPEN DISCUSSION, 2:30 p.m.-4:00 p.m. CLOSED DISCUSSION of a proposal under consideration for funding.

REASON FOR CLOSING: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(c), Government in the Sunshine Act.

AUTHORITY TO CLOSE MEETING: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the au-

thority to make such determinations by the Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Committee Management Coordinator.

FEBRUARY 23, 1979.

[FR Doc. 79-5875 Filed 2-27-79; 8:45 am]

[7555-01-M]

SUBCOMMITTEE ON ECONOMICS

Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

NAME: Subcommittee on Economics of the Advisory Committee for Social Sciences.

DATE AND TIME: March 16th and 17th, 1979: 9:00 a.m. to 5:00 p.m. each day.

PLACE: Room 628, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

TYPE OF MEETING: Closed.

CONTACT PERSON: Dr. James H. Blackman, Program Director, Economics Program, Room 312, National Science Foundation, Washington, D.C. 20550, telephone (202) 632-5968.

PURPOSE OF SUBCOMMITTEE: To provide advice and recommendations concerning support for research in Economics.

AGENDA: To review and evaluate research proposals as part of the selection process for awards.

REASON FOR CLOSING: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

AUTHORITY TO CLOSE MEETING: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Committee Management Coordinator.

FEBRUARY 23, 1979.

[FR Doc. 79-5876 Filed 2-27-79; 8:45 am]

[7555-01-M]

DOE/NSF NUCLEAR SCIENCE ADVISORY COMMITTEE 1979 FACILITIES SUBCOMMITTEE

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

NAME: DOE/NSF Nuclear Science Advisory Committee and Facilities Subcommittee.

DATE AND TIME: March 19, 1979, 9:00 am-10:00 pm. March 20, 1979, 9:00 am-5:00 pm.

PLACE: Conference Room 338, National Science Foundation, Washington, D.C. Telephone 202/632-4318.

TYPE OF MEETING: March 19, 1979, Closed. March 20, 1979, Closed.

CONTACT PERSON: Dr. Howel G. Pugh, Head, Nuclear Science Section, Room 341, National Science Foundation, Washington, D.C. Telephone 202/632-4318.

SUMMARY MINUTES: May be obtained from the Committee Management Coordination Staff, Division of Financial and Administrative Management, National Science Foundation, Washington, D.C. 20550.

PURPOSE OF COMMITTEE: To provide advice on a continuing basis to both DOE and NSF on support for basic nuclear science in the United States.

AGENDA: *March 19, 1979. Closed Session (9:00 am-10:00 pm).* Discussion of projects under consideration for funding. *March 20, 1979. Closed Session (9:00 am-5:00 pm).* Discussion of projects under consideration for funding.

REASON FOR CLOSING: The projects being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

AUTHORITY TO CLOSE MEETING: This determination was made by the Committee Management Officer, pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Committee Management Coordinator.

FEBRUARY 23, 1979.

[FR Doc. 79-5878 Filed 2-27-79; 8:45 am]

[7555-01-M]

SUBCOMMITTEE ON ENGINEERING CHEMISTRY AND ENERGETICS OF THE ADVISORY COMMITTEE FOR ENGINEERING

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

NAME: Subcommittee on Engineering Chemistry and Energetics of the Advisory Committee for Engineering.

DATE & TIME: March 19 and 20, 1979—9 a.m. to 5 p.m. each day.

PLACE: Room 543, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

TYPE OF MEETING: Part Open: Open 3-19 9 a.m. to 11:45 a.m. 3-20 9 a.m. to 4:00 p.m. Closed 3-19 1 p.m. to 5:00 p.m.

CONTACT PERSON: Dr. Marshall M. Lih, Section Head, Engineering Chemistry and Energetics Section, Room 413, National Science Foundation, Washington, D.C. 20550. Telephone 202-632-5867.

SUMMARY MINUTES: May be obtained from the Committee Management Coordinator, Division of Financial and Administrative Management, Room 248, National Science Foundation, Washington, D.C. 20550.

PURPOSE OF SUBCOMMITTEE: To review current program areas and emphasis; to evaluate program balance and effectiveness; to discuss future directions and strategies for research support.

AGENDA: *OPEN—MARCH 19 (9 a.m. to 11:45 a.m.)* Status of Engineering Division. Report on Engineering Chemistry and Energetics Section with questions and answers. Program reports (Chemical Processes, Engineering Energetics, Particulate and Multiphase Processes, and Thermodynamics and Mass Transfer) with questions and answers. *CLOSED—March 19 (1 p.m. to 5 p.m.)* In depth program review including examination of grant proposal files and declination files. *OPEN—March 20 (9 a.m. to 4 p.m.)* Discussions on technical subject areas. Discussion on community interaction and program operations.

REASON FOR CLOSING: The meeting will deal with a review of grants and declinations in which the Subcommittee will review materials containing the names of applicant institutions and principal investigators and privileged information contained in declined proposals. This meeting will also include a review of the peer review documentation pertaining to

applicants. Any non-exempt material that may be discussed at this meeting (proposals that have been awarded) will be inextricably interwinded with the discussion of exempt material and no further separation is practical. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

AUTHORITY TO CLOSE MEETING: This determination was made by the Director, NSF, in accordance with the provisions of Section 10(d) of Pub. L. 92-463, the Federal Advisory Committee Act.

M. REBECCA WINKLER,
Committee Management Coordinator.

FEBRUARY 23, 1979.

[FR Doc 79-5877 Filed 2-27-79; 8:45 am]

[7555-01-M]

SUBCOMMITTEE FOR OCEANOGRAPHY PROJECT SUPPORT OF THE ADVISORY COMMITTEE FOR OCEAN SCIENCES

Notice of Meeting

In accordance with the Federal Advisory Committee Act, as amended, P.L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee for Oceanography Project Support.
Date and time: March 20 and 21, 1979, 9:00 am to 6:00 pm each day.
Place: Rooms 628 and 643, National Science Foundation, 1800 G Street, N.W., Washington, D.C.
Type of meeting: Closed.
Contact person: Dr. Robert E. Wall, Head, Oceanography Section, Room 611, National Science Foundation, Washington, D.C. 20550, telephone (202) 632-4227.
Purpose of meeting: To provide advice and recommendations concerning support for research in Oceanography.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed included information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determination by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Committee Management Coordinator.

FEBRUARY 23, 1979.

[FR Doc. 79-5871 Filed 2-27-79; 8:45 am]

[7555-01-M]

SUBCOMMITTEE ON HUMAN CELL BIOLOGY

Notice of Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Human Cell Biology of the Advisory Committee for Physiology, Cellular and Molecular Biology.
Date and time: March 22-23, 1979 at 9:00 a.m.
Place: Room 421, National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550.
Type of meeting: Closed.
Contact person: Dr. Herman W. Lewis, Program Director, Human Cell Biology Program, Room 326, National Science Foundation, Washington, D.C. 20550, telephone (202) 632-4200.
Purpose of subcommittee: To provide advice and recommendations concerning support for research in Human Cell Biology.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Committee Management Coordinator.

FEBRUARY 23, 1979.

[FR Doc. 79-5872 Filed 2-27-79; 8:45 am]

[7555-01-M]

SUBCOMMITTEE ON METALLURGY AND MATERIALS OF THE MATERIALS RESEARCH ADVISORY COMMITTEE

Notice of Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting.

Name: Subcommittee on Metallurgy and Materials of the Materials Research Advisory Committee.
Date: March 22 and 23, 1979.
Time: 9:00 am-5:00 pm each day.
Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.
Type of meeting: Open, both days.
Contact person: Dr. Norbert M. Bikales, Metallurgy and Materials Section, Room 412, National Science Foundation, Washington, DC 20550, telephone: (202) 632-7406.
Purpose of subcommittee: To provide advice and recommendations concerning support of research in Metallurgy and Materials.

AGENDA: MARCH 22, 1979

9:00 a.m.: Introductory remarks, comments about the Mathematical and Physical Sciences, and Engineering Directorate, and overview of the Division of Materials Research.
10:00 a.m.: Coffee break.
10:15 a.m.: Oversight review of the Ceramics Program. Report of ad hoc oversight review committee.
12:00 Noon: Lunch.
1:00 p.m.: Continuation of oversight review of Ceramics Program.
2:00 p.m.: Discussion of new needs and opportunities for fundamental materials research: materials substitution, other topics.
5:00 p.m.: Adjourn.

AGENDA: MARCH 23, 1979

9:00 a.m.: Final subcommittee report on review of the Ceramics Program.
9:30 a.m.: Discussion of Regional Instrumentation Centers.
10:00 a.m.: Coffee break.
10:15 a.m.: Discussion of instrumentation funding history, needs and future trends for Metallurgy and Materials research community.
12 Noon: Lunch.
1:00 p.m.: Continuation of discussion on instrumentation.
2:00 p.m.: Reports of special studies. Future outlook and directions.
5:00 p.m.: Adjourn.
Summary minutes: May be obtained from the Committee Management Coordinator, Division of Financial and Administrative Management, Rm. 248, National Science Foundation, Washington, D.C. 20550.

M. REBECCA WINKLER,
Committee Management Coordinator.

FEBRUARY 23, 1979

[FR Doc. 79-5873 Filed 2-27-79; 8:45 am]

[7555-01-M]

EXECUTIVE COMMITTEE OF THE ADVISORY COMMITTEE FOR BEHAVIORAL AND NEURAL SCIENCES

Notice of Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Executive Committee of the Advisory Committee for Behavioral and Neural Sciences.
Date and time: March 23, 1979—9 a.m. to 5 p.m.
Place: Room 321, National Science Foundation, 1800 G Street, NW., Washington, D.C.
Type of meeting: Closed.
Contact person: Dr. Richard T. Louttit, Director, Division of Behavioral and Neural Sciences, Rm. 320, National Science Foun-

dation, Washington, D.C 20550, telephone, 202-634-4230.

Purpose of committee: To provide advice and recommendations concerning support of research in the behavioral and neural sciences.

Agenda: Review and comparison of decline proposals (and supporting documentation) with successful awards under the Anthropology and Neurobiology Programs, including review of peer review materials and other privilege material.

Reason for closing: The meeting will deal with a review of grants and declinations in which the committee will review materials containing the names of applicant institutions and principal investigators and priviledged information contained in declined proposals. This meeting will also include a review of the peer review documentation pertaining to applicants. These materials are within exemptions (4) and (6) of 5 U.S.C. 552(b), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Director, NSF, in accordance with the provisions of section 10(d) of Pub. L. 92-463, the Federal Advisory Committee Act.

M. REBECCA WINKLER,
Committee Management Coordinator.

FEBRUARY 23, 1979.

[FR Doc. 79-5874 Filed 2-27-79; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

Notice of Proposed Meetings

In order to provide advance information regarding proposed meetings of the ACRS Subcommittees and Working Groups, and of the full Committee, the following preliminary schedule reflects the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published January 19, 1979 (44 FR 4056). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the FEDERAL REGISTER approximately 15 days (or more) prior to the meeting. Those Subcommittee and Working Group meetings for which it is anticipated that there will be a portion or all of the meeting open to the public are indicated by an asterisk (*). It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee and Working Group meetings usually begin at 8:30 a.m. The exact time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee and Working Group meetings will start will be published approximately 15 days prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the March 1979 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634-3267, ATTN: Mary E. Vanderholt) between 8:15 a.m. and 5:00 p.m., EST.

SUBCOMMITTEE AND WORKING GROUP MEETINGS

**Spent Fuel Storage*, February 23, 1979, Washington, DC. The Subcommittee will continue its review of the NRC proposed rule on Licensing Requirements for the Storage of Spent Fuel in an Independent Spent Fuel Storage Installation (ISFSI). Notice of this meeting was published February 8, 1979 (44 FR 8041).

**William H. Zimmer Nuclear Power Station*, February 27, 1979, RESCHEDULED from January 17, 1979, Washington, DC. The Subcommittee will review the application of the Cincinnati Gas and Electric Company for a license to operate Unit 1 of this station. Notice of this meeting was published January 2 and February 9, 1979 (44 FR 124 and 8391, respectively).

**Power and Electrical Systems*, February 28, 1979, Washington, DC. RESCHEDULED to March 30, 1979. Notice of this meeting was published January 19, 1979 (44 FR 4056).

**Evaluation of Licensee Event Reports*, March 1-2, 1979, Washington, DC. The Subcommittee will continue its review of Licensee Event Reports submitted during the period 1976-1978. Notice of this meeting was published February 14, 1979 (44 FR 9637).

**Anticipated Transients without Scram (ATWS)*, March 2, 1979, Washington, DC. The Subcommittee will continue its discussion of Vol. 3, NUREG-0460, "Anticipated Transients Without Scram for Light-Water Reactors." Notice of this meeting was published February 15, 1979 (44 FR 9814).

**Regulatory Activities*, March 6, 1979, RESCHEDULED from March 7, Washington, DC. The Subcommittee will review proposed regulatory guides and revisions to existing regulatory guides; also, it will discuss pertinent activities which affect the current licensing process and/or reactor operations. Notice of this meeting was published January 19 and February 16, 1979 (44 FR 4056 and 10147, respectively).

**Plant Arrangements*, March 7, 1979 (Tentative), Washington, DC. RESCHEDULED to April 4, 1979. Notice of this meeting was published January 19, 1979 (44 FR 4056).

**Improved Safety Systems*, March 7, 1979 (Morning), Washington, DC. The Subcommittee will discuss with representatives of the NRC Staff and the Department of Energy (DOE) their plans for research to improve light-water reactor safety systems. Notice of this meeting was published February 20, 1979 (44 FR 10443).

**Reactor Safety Research*, March 7, 1979 (Afternoon), Washington, DC. The Subcommittee will discuss with representatives of the NRC Staff plans for preparation of the ACRS 1979 Report to Congress regarding NRC sponsored research on reactor safety. Notice of this meeting was published February 20, 1979 (44 FR 10443).

**Sequoyah Nuclear Power Station*, March 12, 1979, Washington, DC. The Subcommittee will review the application of the Tennessee Valley Authority (TVA) for a license to operate Units 1 and 2 of this station. Notice of this meeting appears on Monday, February 26, 1979.

**Ft. St. Vrain Nuclear Power Station*, March 15, 1979, near Longmont, CO. The Subcommittee will review operating experience, refueling operations, and proposed modifications regarding this station.

**Emergency Core Cooling Systems (ECCS)*, March 19-20, 1979, Los Angeles, CA. The Subcommittee will discuss: 1) Code Work on Transient Two-Phase Flow, 2) Status of Physical Inputs to Codes, 3) Analysis of LOFT L2-2 Test, 4) Status of ECCS Related Research Programs, 5) Standard Problem Program, 6) ODYN Code Review, 7) Status of Analysis of Assymetric Blowdown Forces, and 8) Status of Current Licensing Actions.

**San Onofre Nuclear Generating Station, Units 2 and 3*, March 21-22, 1979, Los Angeles, CA. POSTPONED indefinitely. Notice of this meeting was published January 19, 1979 (44 FR 4056).

**Evaluation of Licensee Event Reports*, March 23-24, 1979, Washington, DC. The Subcommittee will continue its study of Licensee Event Reports.

**Palo Verde Nuclear Generating Station, Units 4 and 5*, March 29, 1979, RESCHEDULED from March 27, Phoenix, AZ. The Subcommittee will review the application of the Arizona Nuclear Power Company for a permit to construct Units 4 and 5 of this station. Notice of this meeting was published January 19, 1979 (44 FR 4056).

**Power and Electrical Systems*, March 30, 1979, RESCHEDULED from February 28, Phoenix, AZ. The Subcommittee will review the potential adverse interactions through the interconnection of protection and safety systems with reactor control

systems on the Westinghouse RESAR-414 design. Notice of this meeting was published January 19, 1979 (44 FR 4056).

*Regulatory Activities, April 4, 1979, Washington, DC. The Subcommittee will review proposed regulatory guides and revisions to existing regulatory guides; also, it will discuss pertinent activities which affect the current licensing process and/or reactor operations. Notice of this meeting was published January 19, 1979 (44 FR 4056).

*Plant Arrangements, April 4, 1979, RESCHEDULED from March 7, Washington, DC. The Subcommittee will continue its review of NRC Task Action Plan A-17, Systems Interactions in Nuclear Power Plants.

*Consideration of Class-9 Accidents, April 4, 1979 (Afternoon), Washington, DC. The Subcommittee will discuss a plan of action for arriving at a recommendation to the full Committee on the role Class-9 Accidents should have in the licensing process.

ACRS FULL COMMITTEE MEETINGS

March 8-10, 1979

A. *William H. Zimmer Nuclear Power Station—Operating License Review.

B. *Anticipated Transients Without Scram (ATWS)—Resolution of ATWS.

April 5-7, 1979—Agenda to be announced.

May 10-12, 1979—Agenda to be announced.

Dated: February 22, 1979.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 79-5805 Filed 2-27-79; 8:45 am]

[7590-01-M]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON THE FT. ST. VRAIN NUCLEAR POWER STATION

Meeting

The ACRS Subcommittee on the Ft. St. Vrain Nuclear Power Station will hold a meeting on March 15, 1979 at the site, near Longmont, CO. The purpose of this meeting is to review operating experience, refueling operations, and proposed modifications regarding this station. Notice of this meeting appears elsewhere in this issue.

In accordance with the procedures outlined in the Federal Register on October 4, 1978, (43 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Person desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows: *Thursday, March 15, 1979, 8:30 a.m. until the conclusion of business.*

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, the Public Service Company of Colorado, and their consultants, pertinent to this review. The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether any aspects need to be reviewed by the full Committee.

In addition, it may be necessary for the Subcommittee to hold one or more closed sessions for the purpose of exploring matters involving proprietary information. I have determined, in accordance with subsection 10(d) of Pub. L. 92-463, that, should such sessions be required, it is necessary to close these sessions to protect proprietary information (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Mr. John C. McKinley, (telephone 202/634-3265) between 8:15 a.m. and 5:00 p.m., EST.

Background information concerning items to be considered at this meeting can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H Street, N.W., Washington, DC 20555 and at the Greeley Public Library, City Complex Building, Greeley, CO 80631.

Dated: February 22, 1979.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 79-5804 Filed 2-27-79; 8:45 am]

[7590-01-M]

[Docket No. 50-348]

JOSEPH M. FARLEY NUCLEAR PLANT, UNIT 1

Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 8 to Facility Operating License No. NPF-2, issued to the Alabama Power Company which revised Technical Specifications for operation of the Joseph M. Farley Nuclear Plant, Unit 1 (the facility) located in Houston County, Alabama. The amendment was effective as of its date of issuance.

The amendment revises the Technical Specifications relating to the fuel rod bow penalty for 17×17 fuel, the surveillance of ECCS subsystems (high pressure and low pressure safety injection), administrative changes to the description of the spent fuel storage facility, use of quarter-core flux maps for excore neutron flux detection system calibration, secondary water chemistry, and changing the pressurizer heatup rate. The amendment also adds a license condition to implement a secondary water chemistry monitoring program to inhibit steam generator tube degradation.

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 issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendment dated November 4 and December 14, 1977 and August 9, 1978, (2) Amendment No. 8 to License No. NPF-2, and (3) the Commission's related Safety Evaluation. 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 George S. Houston Memorial Library, 212 W. Vurdeshaw Street, Dothan, Alabama 36301. A copy of items (2) and (3) may be ob-

tained 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 13th day of February, 1979.

For the Nuclear Regulatory Commission,

A. SCHWENCER,
Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[FR Doc. 79-5806 Filed 2-27-79; 8:45 am]

[7590-01-M]

[Docket No. 50-47]

BOSTON EDISON CO.

Notice of Availability of Draft Supplement to the Final Environmental Statement for Pilgrim Nuclear Power Station, Unit 2

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that a Draft Supplement to the Final Environmental Statement (NUREG-0530) prepared by the Commission's Office of Nuclear Reactor Regulation related to alternative sites to the proposed construction of the Pilgrim Nuclear Power Station, Unit 2, to be located in Plymouth County, Massachusetts, is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. and in the Plymouth Public Library, North Street, Plymouth, Massachusetts. The Draft Supplement is also being made available at the Office of State Planning, John McCormack Building, 1 Ashburton Place, Boston, Massachusetts, and at the Old Colony Planning Council, 232 Main Street, Brockton, Massachusetts. Requests for copies of the Draft Supplement should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C., Attention: Director, Division of Site Safety and Environmental Analysis.

The Applicant's Environmental Report, as supplemented, submitted by Boston Edison Company, the staff's Draft and Final Environmental Statements, and a letter dated January 25, 1979 from Mr. Nicholas C. Yost, General Counsel, Council on Environmental Quality are also available for public inspection at the above designated locations.

Pursuant to 10 CFR Part 51, interested persons may submit comments on the Draft Supplement to the Final Environmental Statement for the Commission's consideration. Federal and State agencies are being provided with copies of the Draft Supplement (local agencies may obtain these documents upon request). In accordance with the January 25, 1979 letter from Mr. Nicholas C. Yost, General Counsel, Council on Environmental Quality, to Harold R. Denton, Director, Office of Nuclear Reactor Regulation, Nuclear Regulatory Commission, the comment period will be 30 days. Comments are due by March 26, 1979. Comments by Federal, State, and local officials, or other persons received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, D.C. and the Plymouth Public Library, North Street, Plymouth, Massachusetts. Upon consideration of comments submitted with respect to the Draft Supplement to the Final Environmental Statement, the Commission's staff will prepare a Final Supplement to the Final Environmental Statement, the availability of which will be published in the FEDERAL REGISTER.

Comments on the Draft Supplement from interested persons of the public should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Site Safety and Environmental Analysis.

Dated at Bethesda, Maryland, this 16th day of February 1979.

For the Nuclear Regulatory Commission.

WM. H. REGAN, Jr.,
Chief, Environmental Projects Branch 2, Division of Site Safety and Environmental Analysis.

[FR Doc. 79-5807 Filed 2-27-79; 8:45 am]

[7590-01-M]

[Dockets Nos. 50-325 and 50-324]

CAROLINA POWER & LIGHT CO.

Notice of Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 20 and 44 to Facility Operating Licensed Nos. DPR-71 and DPR-62, respectively, issued to Carolina Power & Light Company (the licensee) for operation of the Brunswick Steam Electric Plant, Units Nos. 1 and 2 (the facility), located in Brunswick, North Carolina. The amendments are effective as of the date of issuance.

These amendments revise the surveillance requirement for the Standby Gas Treatment System heaters to demonstrate that the heaters will dissipate at least 15.2 kw when tested in accordance with the standard ANSI N510-1975 "Testing of Nuclear Air Cleaning System."

The application for amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of the amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendments will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of the amendments.

For further details with respect to this action, see (1) the application for amendments dated February 6, 1979, (2) Amendment Nos. 20 and 44 to License Nos. DPR-71 and DPR-62, and (3) the Commission's related Safety Evaluation. 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 Southport-Brunswick County Library, 109 West Moore Street, Southport, North Carolina 28461. 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 14th day of February 1979.

For the Nuclear Regulatory Commission.

THOMAS A. IPPOLITO,
Chief Operating Reactors Branch No. 3 Division of Operating Reactors.

[FR Doc. 79-5808 Filed 2-27-79; 8:45 am]

[7590-01-M]

DRAFT REGULATORY GUIDE

Notice of Issuance and Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series together with a draft of the associated value/impact statement. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to appli-

cants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, EM 805-5, is entitled "Nuclear Analysis and Design of Concrete Radiation Shielding for Nuclear Power Plants," and is intended for Divison 1, "Power Reactors." It describes practices for the analysis and design of concrete radiation shielding for nuclear power plants. The proposed guide will endorse ANS 6.4-1977, "Guidelines on the Nuclear Anaylysis and Design of Concrete Radiation Shielding for Nuclear Power Plants."

This draft guide and the associated value/impact statement are being issued to involve the public in the early stages of the development of a regulatory position in this area. They have not received complete staff review, have not been reviewed by the NRC Regulatory Requirements Review Committee, and do not represent an official NRC staff position.

Public comments are being solicited on both drafts, the guide (including any implementation schedule) and the draft value/impact statement. Comments on the draft value/impact statement should be accompanied by supporting data. Comments on both drafts should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, by April 20, 1979.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of draft guides or the latest revision of published guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides or draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 20th day of February 1979.

For the Nuclear Regulatory Commission,

GUY A. ARLOTTO,
Director Division of Engineering Standards Office of Standards Development.

[FR Doc. 79-5811 Filed 2-27-79; 8:45 am]

[7590-01-M]

[Docket No. 50-244]

ROCHESTER GAS & ELECTRIC CORP.

Notice of Granting of a Revision To Relief From ASME Section XI Inservice Inspection (Testing) Requirements

The U.S. Nuclear Regulatory Commission (the Commission) has granted a revision to the relief from certain requirements of the ASME Code, Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components" to Rochester Gas & Electric Corporation. The modified relief relates to the inservice inspection (testing) program for the R. E. Ginna Nuclear Power Plant (the facility) located in Wayne County, New York. The ASME code requirements are incorporated by reference into the Commission's rules and regulations in 10 CFR Part 50. The modified relief is effective as of its date of issuance.

The modified relief consists of the substitution of a radiographic-volumetric measurement of the reactor coolant pump casing welds for the dye penetrant examination. In addition, the relief which allows use of 100% of reference level as the evaluation criterion for indications detected during ultrasonic examination of components has been extended from December 11, 1978 to December 1981.

The request for a revision to the relief 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 letter granting relief. Prior public notice of this action was not required since the granting of this modified relief from ASME Code requirements does not involve a significant hazards consideration.

The Commission has determined that the granting of this modified relief 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 this action.

For further details, with respect to this action, see (1) the request for the modified relief dated August 22, 1978 and supplement thereto dated November 1, 1978, (2) Amendment No. 13 to License No. DPR-18, dated May 17, 1977, including the related transmittal letter, which contains detail relating to the previous relief, and Safety Evaluation, and (3) the Commission's letter to the licensee dated February 16, 1979.

These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington D.C. and at the Rochester Public Library, 115 South Avenue, Rochester, New York 14604. A copy of item (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 16th day of February, 1979.

For the Nuclear Regulatory Commission:

DENNIS L. ZIEMANN,
Chief Operating Reactors Branch No. 2, Division of Operating Reactors.

[FR Doc. 79-5809 Filed 2-27-79; 8:45 am]

[7590-01-M]

[Docket No. 11000435]

WESTINGHOUSE ELECTRIC CORP.

Application for facility export License

Please take notice that Westinghouse Electric Corporation, Pittsburgh, Pennsylvania, has submitted to the Nuclear Regulatory Commission an application for a license to authorize the export of two (2) power reactors with a thermal power level of 2,785 megawatts each to the Korea Electric Company and that the issuance of this license is under consideration by the Nuclear Regularoty Commission.

No license authorizing export of the reactors will be issued until the Nuclear Regulatory Commission determines that the export is within the scope of and consistent with the terms of an agreement for cooperation arranged pursuant to section 123 of the Atomic Energy Act of 1954, as amended (Act), nor until the Nuclear regulatory Commission has found that:

(a) The export complies with the requirements of the Act and the Commission's regulations set forth in 10 CFR, Chapter 1, and

(b) The reactors proposed to be exported are utilization facilities as defined in the Act and the Commission's regulations.

Unless on or before March 30, 1979, a request for a hearing is filed with the Nuclear Regulatory Commission, or a petition for leave to intervene is filed by any person whose interest may be affected by the proceeding, the Director of the Office of Interna-

tional Programs may, upon making the determinations and findings noted above, cause to be issued to Westinghouse Electric Corporation a facility export license and cause to be published in the FEDERAL REGISTER a notice of issuance of the license. If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in this notice the Nuclear Regulatory Commission will issue a notice of hearing or an appropriate order.

A copy of the application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C.

Dated at Bethesda, Maryland, this 16th day of February 1979.

GERALD G. OPLINGER,
Assistant Director, Export/Import and International Safeguards, Office of International Programs.

[FR Doc. 79-5810 Filed 2-27-79; 8:45 am]

[7590-01-M]

INTERNATIONAL ATOMIC ENERGY AGENCY DRAFT SAFETY GUIDE

Availability of Draft for Public Comment

The International Atomic Energy Agency (IAEA) is developing a limited number of internationally acceptable codes of practice and safety guides for nuclear power plants. These codes and guides will be developed in the following five areas: Government Organization, Siting, Design, Operation and Quality Assurance. The purpose of these codes and guides is to provide IAEA guidance to countries beginning nuclear power programs.

The IAEA codes of practice and safety guides are developed in the following way. The IAEA receives and collates relevant existing information used by member countries. Using this collation as a starting point, an IAEA working group of a few experts then develops a preliminary draft. This preliminary draft is reviewed and modified by the IAEA Technical Review Committee to the extent necessary to develop a draft acceptable to them. This draft code of practice or safety guide is then sent to the IAEA Senior Advisory Group which reviews and modifies the draft as necessary to reach agreement on the draft and then forwards it to the IAEA Secretariat to obtain comments from the Member States. The Senior Advisory Group then considers the Member State comments, again modifies the draft as necessary to reach agreement and forwards it to the IAEA Director General with a recommendation that it be accepted.

As part of this program, Safety Guide SG-QA11, "Quality Assurance in the Procurement, Design and Manufacture of Nuclear Fuel Assemblies," has been developed. An IAEA working group, consisting of Mr. C. Carrier of France; Mr. R. von Jan of Federal Republic of Germany; Mr. V. A. Chandramouli of India; and Mr. J. E. Vessely (Florida Power & Light Company) of the United States of America, developed SG-QA11 from an IAEA collation during a meeting on January 15-19, 1979, and we are soliciting public comment on it. Comments on this draft received by April 30, 1979 will be useful to the U.S. representatives to the Technical Review Committee and Senior Advisory Group in evaluating its adequacy prior to the next IAEA discussion.

Single copies of this draft may be obtained by a written request to the Director, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(5 U.S.C. 522(a))

Dated at Rockville, Md., this 21st day of February 1979.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director, Office of Standards Development.

[FR Doc. 79-5891 Filed 2-27-79; 8:45 am]

[7590-01-M]

STUDY OF NUCLEAR POWER PLANT CONSTRUCTION DURING ADJUDICATION

Meetings

The Nuclear Regulatory Commission has established an advisory committee on nuclear power plant construction during adjudication. The study group's second meeting was held at NRC Headquarters, 1717 H Street, NW., Washington, DC, 20555, on Friday, February 16, 1979. At that meeting the group continued work on its interim report to the Commission. That report will discuss the group's view on the proper scope of the study, the data collection techniques to be used, the methods to be used to obtain public input and participation and any other issues the group believes should be called to the Commission's attention.

As previously announced, the third meeting of the study group will be at 9 a.m. on Friday, March 2, 1979, at NRC Headquarters, 1717 H Street, NW., Washington, DC, 20555. The fourth meeting will be held on Friday, March 23, 1979, at the same time and at the same location. The purpose of these meetings will be to continue work on the interim report. At each meeting there will be a limited amount of time available for members of the public to make oral statements to the study group. Written comments, addressed to the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch, will be accepted for one week after the meeting.

The study group continues to be interested in obtaining the views of the public. The group will consider all written submittals made to it by members of the public. The group will also consider proposing to the Commission funding studies or surveys made for the group by members of the public. Persons proposing to undertake such a study or survey which will be relevant to the group's work should submit their proposals by (3 weeks) and should specify in detail what subjects their study will address, what techniques it will employ, what benefits it will produce for the study group's work, what its duration will be (not later than August 15, 1979) and what the estimated cost will be. Reimbursement, if any, will be subject to satisfaction of the Commission's regular contracting procedures and also to the group's obtaining specific authorization from the Commission for expending funds in this area. One potential subject for such a project might be a survey of the views of participants in the reactor licensing process (including intervenors, applicants and local governments) on the immediate effectiveness rule and on possible alternatives to it. The public submissions contemplated by this paragraph are in addition to any public comment on the study group's interim and final reports and on any new regulations the Commission might propose as a result of the group's report.

Future meetings of the group will be held at 9 a.m. on the first Friday of each month and at other times as necessary. The location of future meetings may change depending upon circumstances. The Chairman of the study group is empowered to conduct the meetings in a manner that, in his judgment, will facilitate the group's work, including, if necessary, continuing or rescheduling meetings to another day.

A file of documents relevant to the group's work, including a complete transcript of each meeting, memoranda exchanged between group members, and other documents, is available for inspection and copying at the Commission's Public Document Room at 1717 H Street, NW., Washington, DC, 20555. The Secretary of the NRC maintains a mailing-list for persons interested in receiving notices of the group's meetings and actions. Anyone wishing to be on that list should write to: Secretary of the Commission, Nuclear Regulatory Commission, Wash-

ington, DC, 20555, Attention: Docketing and Service Branch.

The study group will provide its final report to the Commission by November 1, 1979. For further information on the study group's mission, please call Stephen S. Ostrach, Office of the General Counsel, Nuclear Regulatory Commission (202) 634-3224.

Dated at Washington, DC, this 22nd day of February, 1979.

GARY MILHOLLIN,
Chairman.

[FR Doc. 79-5889 Filed 2-27-79; 8:45 am]

[7590-01-M]

[Docket No. PRM-20-13]

VICTOR E. ANDERSON

Filing of Petition for Rulemaking

Notice is hereby given that Mr. Victor E. Anderson, 59 Baird Avenue, Paulsboro, New Jersey, has filed with the Nuclear Regulatory Commission a petition for rule making dated January 17, 1979 requesting the Commission to amend its regulation "Standards for Protection Against Radiation," 10 CFR Part 20, to require that Health Physics personnel be certified by the Commission.

The text of the proposed amendments to Part 20 is set out in the petition. Section 20.600 proposed by the petitioner states that:

§ 20.600 Only individuals certified by the Commission may make surveys, evaluations and decisions on matters of radiation protection. This does not preclude individuals from taking actions for their own protection. A licensee may not override the decisions of a certified Health Physicist except in cases where the Health Physicist decision(s) are a clear violation of Federal Regulations or will result in a clear and present danger of loss of life.

The petitioner's proposed amendments provide for the certification of Health Physicists on five levels—Trainee, Junior, Senior, Supervisor, and Master Health Physicists. The proposed amendments also provide for certification, validation, and revocation of certificates.

In support of the petition the petitioner states that: Health Physics is one of the three most important job functions performed in a facility. Operations and maintenance are important for obvious reasons. Because of the nature of radioactive materials there must be a group of individuals who are concerned with radiation safety. These persons must be familiar with all phases of the facility operation, maintenance and above all have demonstrated a sound understanding of Health Physics. This is the ideal; unfortunately in the industry this is not true. Furthermore there are no official legal standards, only a regulatory guide for radiation protection managers and some ANSI Standards for Techs.

The primary reason for suggesting that amendment 10 CFR 20.600 be added is to prevent management from placing pressure on Health Physics personnel to engage in bad practice. * * *

A copy of the petition for rule making is available for public inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. A copy of the petition may be obtaned by writing the Division of Rules and Records at the below address.

All persons who desire to submit written comments or suggestions concerning the petition for rule making should send their comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch by April 30, 1979.

FOR FURTHER INFORMATION CONTACT:

Gerald L. Hutton, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, telephone 301-492-7086.

Dated at Bethesda, Md., this 23rd day of February 1979.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc. 79-5890 Filed 2-27-79; 8:45 am]

[6820-97-M]

PRESIDENTIAL COMMISSION ON WORLD HUNGER

INTERNATIONAL POLICY SUBCOMMITTEE

Amended Meeting Notice

The International Policy Subcommittee meeting scheduled for February 21, 1979, was cancelled due to inclement weather. The meeting is now scheduled to be held March 7, 1979, at 9:30 a.m. in Room 5141A of the General Services Administration Building, 18th and E Streets, NW, Washington, D.C. A limited number of seats are available for observers on a reservation basis. Requests for reservations should be addressed to the Presidential Commission on World Hunger, 734 Jackson Place, NW., Washington, D.C. 20006. Reservations will be honored on the basis of the earliest postmarks.

DONALD B. HARPER,
Administrative Officer, Presidential Commission on World Hunger.

[FR Doc. 79-5816 Filed 2-27-79; 8:45 am]

[6820-97-M]

MEETING

The fourth meeting of the Presidential Commission on World Hunger will be held on Wednesday, March 14, 1979, in Conference Room B at the Pan American Health Organization, 525 23rd Street, N.W., Washington, D.C. The meeting will begin at 9:30 a.m. and conclude at approximately 4:30 p.m..

The agenda for the meeting will be concerned with reports from the Commission's subcommittees and other business as may be required.

The meeting will be open to observation for the public to the extent space is available. Reservations are required and requests should be addressed to the Presidential Commission on World Hunger, 734 Jackson Place, N.W., Washington, D.C. 20006. Reservations will be honored on the basis of the earliest postmarks.

DONALD B. HARPER,
Administrative Officer, Presidential Commission on World Hunger.

[FR Doc. 79-5815 Filed 2-27-79; 8:45 am]

[4710-02-M]

DEPARTMENT OF STATE

Agency for International Development

JOINT COMMITTEE FOR AGRICULTURAL DEVELOPMENT OF THE BOARD FOR INTERNATIONAL FOOD AND AGRICULTURAL DEVELOPMENT

Meeting

Pursuant to Executive Order 11769 and the provisions of section 10(a)(2), Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given of the meeting of the Joint Committee on Agricultural Development (JCAD) of the Board for International Food and Agricultural Development on March 12 and 13, 1979.

The purpose of the meeting is to: discuss a proposal for a seminar on the problems of the small farmer and their relationships to Title XII programs; discuss how should the BIFAD staff allocate its time during the next coming year; review progress in development of a source book of U.S. agricultural training possibilities for foreign participants; discuss the results and implications of the review of the

Country Development Strategy Statements; and review the strengthening grant program.

The meeting on March 12, 1979, will convene in Regional Work Groups (RWGs): Africa RWG at 9:00 a.m. in Room 3676, New State Department Bldg. (Dr. Carl Ferguson, A.I.D. Federal Designee for this meeting, can be contacted at (703) 235-9085); Latin America RWG at 10:30 a.m. in Room 2242, New State Department Bldg. (Mr. Vince Cusumano, A.I.D. Federal Designee for this meeting can be contacted at (202) 632-8279); and Near East RWG at 9:30 a.m. in Room 6484, New State Department Bldg. (Mr. Russell Olson, A.I.D. Federal Designee for this meeting, can be contacted at (202) 632-9256). The Asia RWG meeting was cancelled. The meeting on March 13, 1979 will convene from 9:00 a.m. to 5:00 p.m. in the Dynasty Room of the Holiday Inn, 1850 N. Ft. Myer Drive, Arlington, Virginia 22209. The meeting is open to the public. Any interested person may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee, and to the extent the time available for the meeting permits.

Dr. Carl E. Ferguson, Office of Title XII Coordination and University Relations, Development Support Bureau, is designated A.I.D. Advisory Committee Representative at the March 13 meeting.

It is suggested that those desiring further information write to him in care of the Agency for International Development, State Department, Washington, D.C. 20523, or telephone him at (703) 235-9085.

CARL E. FERGUSON,
A.I.D. Advisory Committee Representative, Joint Committee on Agricultural Development, Board for International Food and Agricultural Development.

[FR Doc. 79-5840 Filed 2-27-79; 8:45 am]

[4710-02-M]

JOINT RESEARCH COMMITTEE OF THE BOARD FOR INTERNATIONAL FOOD AND AGRICULTURAL DEVELOPMENT

Meeting

Pursuant to Executive Order 11769 and the provisions of Section 10(a), (2), Pub. L. 92-463, Federal Advisory Committee Act, notice is hereby given of the twenty-first meeting of the Joint Research Committee of the Board for International Food and Agricultural Development on March 13 and 14, 1979.

The purpose of the meeting is to discuss progress or planning and implementation of authorized Collaborative Research Support Programs (CRSPs), and to continue discussion of appropriate areas of emphasis and priority for future action of the Joint Research Committee to recommend new CRSPs to the Agency for International Development.

The meeting will convene at 9:00 a.m. and adjourn at 5:00 p.m. on March 13 and 14, 1979. The meeting will be held in the Dynasty Room of the Holiday Inn, 1850 N. Ft. Myer Drive, Arlington, Virginia, 22209. The meeting is open to the public. Any interested person may attend, may file written statements with the Committee before or after the meeting, or may present oral statements in accordance with procedures established by the Committee, and to the extent the time available for the meeting permits.

Dr. Erven J. Long, Office of Title XII Coordination and University Relations, Development Support Bureau, is designated A.I.D. Advisory Committee Representative at the meeting. It is suggested that those desiring further information write to him in care of the Agency for International Development, State Department, Washington, D.C. 20523, or telephone him at (703) 235-8929.

Date: February 22, 1979.

ERVEN J. LONG,
A.I.D Advisory Committee Representative, Joint Research Committee, Board for International Food and Agricultural Development.

[FR Doc. 79-5841 Filed 2-27-79; 8:45 am]

[4810-22-M]

DEPARTMENT OF THE TREASURY

Office of the Secretary

ANTIDUMPING; CARBON STEEL PLATE FROM THE UNITED KINGDOM

Termination of Antidumping Investigation

AGENCY: U.S. Treasury Department.

ACTION: Termination of Antidumping Investigation.

SUMMARY: This notice is to advise the public that the antidumping investigation concerning carbon steel plate from the United Kingdom is being terminated, based on information received after the initiation of this investigation.

EFFECTIVE DATE: February 28, 1979.

FOR FURTHER INFORMATION CONTACT:

John R. Kugleman, Operations Officer, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5492).

SUPPLEMENTARY INFORMATION: On January 9, 1979, a notice was published in the FEDERAL REGISTER advising the public that, based upon information furnished in an antidumping petition filed by counsel on behalf of Lukens Steel Company, the Treasury was initiating antidumping investigations concerning imports of carbon steel plate from Belgium, France, the Federal Republic of Germany, Italy and the United Kingdom (44 FR 2053-4). The information contained in the petition filed by the Lukens Steel Company indicated, *inter alia*, that there may have been sales at less than fair value of carbon steel plate from the United Kingdom resulting in injury to a domestic industry. The information supplied by the petitioner related primarily to the 6-month period ending June 30, 1978. Information received by the Treasury Department subsequent to the initiation of investigations of imports of carbon steel plate from the five specified countries, pertaining to the period selected for investigation purposes in those five cases, specifically July 1, 1978 through December 31, 1978, has revealed the following:

1. It appears that there may have been no "sale" of carbon steel plate from the United Kingdom to United States purchasers during the period July 1, 1978 through December 31, 1978.

2. An examination of the circumstances surrounding the only shipment which appears to have occurred during the period July 1, 1978 through December 31, 1978 from the United Kingdom to a United States purchaser, including information submitted by the petitioner relevant to the foreign market value of this merchandise and price information pertaining to this sale to the United States with known likely adjustments to those prices, indicate that there is serious doubt that the transact ion in question occurred at a price less than the foreign market value of the merchandise as alleged by petitioner.

Section 153.34(b), Customs Regulations (19 CFR 153.34(b)), provides that a negative determination shall be issued when quantities sold to the United States are insignificant:

"Merchandise will not be deemed to have been sold at less then fair value unless the quantity involved in the sale or sales to the United States * * * is more than insignificant."

It has been concluded that, in the circumstances presented in the case of carbon steel plate from the United Kingdom, the absence of sales to the United States during the referent period July 1, 1978, through December 31, 1978, may be considered analogous, in determining whether that investigation ought to be terminated, to the situation contemplated under section 153.34(b) in which a negative determination is warranted where the quantity involved in the sale or sales to the

United States has been and will likely continue to be "insignificant."

Accordingly, I hereby conclude that based upon all of the factors described above it is appropriate to terminate the antidumping investigation of carbon steel plate from the United Kingdom. In taking cognizance of evidence described above, the petitioner has informed the Treasury Department, in a letter dated February 8, 1979, that it "would not object to the termination of this proceeding as to U.K. carbon steel plate."

The antidumping investigations of carbon steel plate from Belgium, France, the Federal Republic of Germany and Italy will continue.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

FEBRUARY 22, 1979.

[FR Doc. 79-5894 Filed 2-27-79; 8:45 am]

[4810-22-M]

VISCOSE RAYON STAPLE FIBER FROM SWEDEN

Notice of Discontinuance of Antidumping Investigation

AGENCY: U.S. Treasury Department.

ACTION: Final Discontinuance of Antidumping Investigation.

SUMMARY: This notice is to advise the public that it has been determined to discontine the antidumping investigation of viscose rayon staple fiber from Sweden because the margin of less than fair value sales is minimal in relation to the volume of exports. In addition appropriate assurances have been filed that future sales will not be made at less than fair value. Future shipments will be monitored in order to insure adherence to the price assurances.

EFFECTIVE DATE: February 28, 1979.

FOR FURTHER INFORMATION CONTACT:

Mary Clapp, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229 (202-566-5492).

SUPPLEMENTARY INFORMATION: On March 28, 1978, a petition in proper form was received from counsel on behalf of Avtex Fibers, Inc., Valley Forge, Pennsylvania, alleging that viscose rayon staple fiber from Sweden is being sold at less than fair value, thereby causing injury to, or the likelihood of injury to, an industry in the United States, within the meaning of the Antidumping Act, 1921 as amended (19 U.S.C. 100 *et seq.*) ("the Act"). On the basis of this information and subsequent preliminary investigation by the Customs Service, an "Antidumping Proceeding Notice" was published in the Federal Register of May 5, 1978 (43 FR 19492). A "Withholding of Appraisement Notice" was published in the FEDERAL REGISTER of November 16, 1978 (43 FR 53533).

For purposes of this notice, the term "viscose rayon staple fiber" refers to rayon staple fiber in noncontinuous form, not carded, not combed and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments).

DISCONTINUANCE OF ANTIDUMPING INVESTIGATION

On the basis of information developed in the Customs' investigation and for the reasons noted below, pursuant to section 153.33(e), Customs Regulations (19 CFR 153.33(e)), I hereby determine that the antidumping investigation concerning viscose rayon staple fiber from Sweden should be discontinued.

STATEMENT OF REASON ON WHICH THIS DISCONTINUANCE IS BASED

The reasons and basis for the above discontinuance are as follows:

a. *Scope of the Investigation.* All imports of the subject merchandise from Sweden were manufactured and sold by Svenska Rayon AB. Therefore, the investigation was limited to this manufacturer.

b. *Basis of Comparison.* For purposes of this discontinuance, the proper basis of comparison is between the purchase price and the home market price of such or similar merchandise. Purchase price, as defined in section 203 of the Act (19 U.S.C. 162), was used since all export sales to the United States were made to non-related customers. Home market price, as defined in section 153.2, Customs Regulations (19 CFR 153.2), was used since such or similar merchandise was sold in the home market in sufficient quantities to provide a basis for comparison.

In accordance with section 153.31(b), Customs Regulations (19 CFR 153.31(b)), pricing information was obtained concerning United States imports and home market sales during the period November 1, 1977, through April 30, 1978.

c. *Purchase price.* For purposes of this discontinuance, the purchase price was calculated on the basis of selling price to unrelated United States purchasers in accordance with section 203 of the Act. Adjustments were made for ocean freight, insurance, United States customs duties, and inland freight. These adjustments were made since these costs and charges were incident to bringing the merchandise from the place of shipment in Sweden to the place of delivery in the United States and the charges were included in the selling price. All United States sales were to distributors.

d. *Home Market Price.* For purposes of this discontinuance, the home market price has been calculated on the basis of the sale price of similar merchandise to end-users in the home market. Adjustments were made for inland freight, selling expenses, and differences in merchandise. The adjustment for inland freight was made as a deduction of charges incurred in transporting the merchandise from the place of shipment to the place of delivery. The adjustment for selling expenses was made as an offset equal to the commission paid on United States sales in accordance with section 153.10(b), Customs Regulations (19 CFR 153.10(b)). Adjustment for differences in merchandise sold in the two markets was made based upon differences in the cost of manufacture (comprised of directly related material, labor, and factory overhead costs). A claim for and adjustment for differences in levels of trade was withdrawn. At the time of the Tentative Determination, fair value comparisons were made between prices to unrelated U.S. purchasers and the weighted-average price to unrelated third country purchasers. Subsequent to the Tentative Determination, Petitioner urged that Treasury re-examine whether "similar" merchandise is sold in the home market in sufficient quantities for fair value comparison purposes. Based upon that reexamination, Treasury has determined that merchandise was sold in the home market which is similar to that sold in the United States, and that such sales occurred in adequate quantities for comparison purposes.

e. *Cost of Production.* Information received from petitioner indicated the possibility that sales of Swedish viscose rayon staple fiber were being made in the home market at prices less than the cost of producing the merchandise, within the meaning of section 205(b) of the Act (19 U.S.C. 164(b)). Therefore, cost information was requested from respondent with reference to the period May 1, 1977, through April 30, 1978.

The cost to produce was calculated on the basis of the cost of materials, labor, and selling and general expenses. A comparison of the actual cost of the home market price during the investigatory period revealed that those sales were at prices not less than the cost of producing the merchandise, pursuant to section 153.5, Customs Regulations (19 CFR 153.5). Therefore, home market sales were used for the purposes of determining the fair value of the merchandise. Petitioner has urged that certain general overhead expenses borne by Svenska's parent company KF/Konsum Coop

Group, should be attributed to the cost of producing this merchandise. It has been concluded that no determination whether these expenses, for planning, budget review, investment review, and financing, are attributable to the cost of producing this merchandise, since the allocation of a portion of these costs to the production of viscose rayon stapler fiber would not alter the conclusion that home market sales occurred at prices not less than the cost of production.

Respondent had urged that general and selling expenses should not be included within the "cost of producing" this merchandise, under section 205(b) of the Act. In prior Treasury decisions applying section 205(b) of the Act, the cost of producing has been construed as including all elements of cost pertaining to the manufacture and marketing of the merchandise. The individual home market or third country prices, as appropriate, with which the cost of producing is compared, also include these cost factors. Consequently, it is determined that the term "cost of producing" in section 205(b) encompasses all cost elements, including costs of manufacture and of marketing, which are included in the prices with which the cost of producing is being compared.

f. *Results of Fair Value Comparison.* Using the above criteria, comparisons were made on virtually all sales of the subject merchandise to the United States during the period of investigation. These comparisons indicated that the purchase price of viscose rayon staple fiber from Sweden was less, or likely to be less, than the home market price of such or similar merchandise. Margins were found on approximately 29 percent of the sales compared, ranging from 1.50 to 2.06 percent. A weighted average margin of approximately 0.52 percent was found on all sales compared. These margins have been determined to be minimal in relation to the volume of exports involved. In addition, appropriate price assurances have been filed in accordance with § 153.33(c), Customs Regulations (19 CFR 153.33(c)).

The Secretary has provided an opportunity to known interested persons to present written and oral views pursuant to § 153.40, Customs Regulations (19 CFR 153.40).

The order issued November 16, 1978, to withhold appraisement on the subject merchandise from Sweden, the notice of which is cited above, is hereby terminated, effective February 28, 1979.

This Notice is being published pursuant to § 153.33(e), Customs Regulations (19 CFR 153.33(e)).

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

FEBRUARY 22, 1979.

[FR Doc. 79-5895 Filed 2-27-79; 8:45 am]

[8320-01-M]

VETERANS ADMINISTRATION

NATIONAL CEMETERY—FEDERAL REGION V

Availability of Draft Environmental Impact Statement

Notice is hereby given that a document entitled "Draft Environmental Impact Statement for the Veterans Administration National Cemetery, Federal Region V," dated March 1979, has been prepared as required by the National Environmental Policy Act of 1969.

Two alternative sites, both on the General Services Administration's list of excess Federal lands, are analyzed for potential environmental impacts resulting from development as a National Cemetery. An analysis of the Veterans Administration's preferred site at Fort Custer in south central Michigan indicated no significant impact as a result of the proposed action. An analysis of the alternative site at Plumbrook, near Sandusky in north central Ohio, indicates that the adverse environmental impacts primarily related to groundwater conditions would make this site environmentally less preferable.

The document is being placed for public examination in the Veterans Administration office in Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, Director, Environmental Affairs Office (66), Room 950, Veterans Administration, 1425 K Street NW., Washington, D.C. 20420, (202-389-2526).

Single copies of the Draft Statement may be obtained on request to:

Director, Environmental Affairs Office (66), Veterans' Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420.

Dated: February 23, 1979.

By direction of the Administrator.

MAURY S. CRALLE, JR.,
Assistant Deputy Administrator for Financial Management and Construction.

[FR Doc. 79-5879 Filed 2-27-79; 8:45 am]

[8320-01-M]

NATIONAL CEMETERY FEDERAL REGION IV

Availability of Draft Environmental Impact Statement

Notice is hereby given that a document entitled "Draft Environmental Impact Statement, Veterans Administration National Cemetery, Federal Region IV," dated March 1979, has been prepared as required by the National Environmental Policy Act of 1969.

This Draft Environmental Impact Statement evaluates the adverse and beneficial effects of creating a new National Cemetery in Federal Region IV. For each of three alternative sites—Fort Gillem, Georgia; Fort Mitchell, Alabama; and Fort Jackson, South Carolina—eleven categories of economic, social and physical environmental effects are examined and compared with existing conditions. For each site and for each category of impact, measures to mitigate impacts are described. Alternatives to these sites are discussed, as is the no-action alternative. Finally, a list of preparers, bibliography and index to available appending materials is provided.

The document is being placed for public examination in the Veterans Administration office in Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, Director, Environmental Affairs Office (66), Room 950, Veterans Administration, 1425 K Street, NW., Washington, D.C. 20420, (202-389-2526).

Single copies of the Draft Statement may be obtained on request to:

Director, Environmental Affairs Office (66), Veterans' Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420.

Dated: February 23, 1979.

By direction of the Administrator.

MAURY S. CRALLE, JR.,
Assistant Deputy Administrator for Financial Management and Construction.

[FR Doc. 79-5880 Filed 2-27-79; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Notice No. 30]

Assignment of Hearings

FEBRUARY 22, 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 46054 (Sub-79F), Brown Express, Inc., now assigned for hearing on April 17, 1979, (4 days), at the Holiday Inn, 1945 N. Expressway, Brownsville, Texas.

MC 46054 (Sub-79F), Brown Express, Inc., now assigned for hearing on April 23, 1979, (1 week), in La Posada Hotel, 1000 Zaragoza, Laredo, Texas.

MC 46054 (Sub-79F), Brown Express, Inc., now assigned for hearing on April 30, 1979, (1 week), at the Sheraton-Mockingbird Hotel, 1893 W. Mockingbird Lane, Dallas, Texas.

MC 46054 (Sub-79F), Brown Express, Inc., now assigned for hearing on June 5, 1979, (4 days), at the Stouffer Hotel, 141 W. 6th Street, Cleveland, Ohio.

MC 46054 (Sub-79F), Brown Express, Inc., now assigned for hearing on June 11, 1979, (1 week), at the Pick Congress Hotel, 520 S. Michigan Avenue, Chicago, Illinois.

MC 46054 (Sub-79F), Brown Express, Inc., now assigned for hearing on June 18, 1979, (1 week), at the Sheraton-Century Center Hotel, 1 N. Broadway, Oklahoma City, Oklahoma.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-5819 Filed 2-27-79; 8:45 am]

[7035-01-M]

FOURTH SECTION APPLICATIONS FOR RELIEF

FEBRUARY 22, 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 March 15, 1979.

FSA No. 43666, Karlander (Australia) Pty. Limited's No. 3, intermodal rates on general commodities in containers, from ports in Australia, New Guinea, and the Soloman Islands, to rail carriers' terminals at specified U.S. Atlantic and Gulf Coast ports, by way of U.S. Pacific Coast ports, effective March 16, 1979, in its Tariff No. 20, ICC KRPU 300. Grounds for relief—all-water competition.

FSA No. 43667, Southwestern Freight Bureau, Agent's No. B-799, rates on liquefied petroleum gas, from stations in Southwestern Territory to stations in Southern Territory, effective March 19, 1979, in Sup. 97 to its Tariff SWFB 4681, ICC SWFB 4681. Grounds for relief—revision of rate structure; modified short line distance formula and grouping.

FSA No. 43668, Western Trunk Line Committee, Agent's No. A-2756, rates on beet or cane sugar, from specified stations in Minnesota and North Dakota to Ripon, Wis., effective March 15, 1979, in Sup. 48 to Burlington Northern Inc., Tariff KHH 3605-Q, ICC KHH 3605-Q. Grounds for relief—market competition, rate relationship, and returned shipments.

By the Commission.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-5818 Filed 2-27-79; 8:45 am]

[7035-01-M]

[No. 36700]

CAR SERVICE

Petition Seeking Institution of Rulemaking Proceeding

AGENCY: Interstate Commerce Commission.

ACTION: Notice of denial of petition.

SUMMARY: The petition, filed by Computer Identics Corporation (CIC) seeks a rulemaking governing the use of automatic car identification (ACI) systems. The petition was initially denied December 15, 1977 because it appeared that CIC sought the perpetuation of an experiment with the ACI that CIC had designed and sells, even though the system had not been able to satisfy the requirements of the Association of American Railroads. After reopening the record and consideration of all statements and documents, the prior decision is reaffirmed. The essential reason for reaching this conclusion is not that the Commission questions the value of the ACI concept. It does not. However, the Commission believes that the present system has failed to prove itself satisfactory and that the design and selection of a replacement system appears to be a matter best left with the industry, for the present, since the record makes it clear that the carriers themselves are pursuing the matter. A detailed decision containing the Commission's reasons was served February 22, 1979.

FOR FURTHER INFORMATION CONTACT:

Janice M. Rosenak or Harvey Gobetz, Office of Proceedings, Washington, D.C. 20423 (202-275-7694).

This Notice is issued pursuant to 49 U.S.C. 10326.

Dated: February 13, 1979.

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

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-5913 Filed 2-27-79; 8:45 am]

[7035-01-M]

[Notice No. 31]

ASSIGNMENT OF HEARINGS

FEBRUARY 23, 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 19311 (Sub-46F), Central Transport, Inc., Modified Procedure is vacated, proceeding now reassigned for oral hearing on March 13, 1979 (9 days), at Indianapolis, Indiana, in a hearing room to be later designated.

No. 36298, Nu-Car Carriers, Inc. v. Volkswagen of America, Inc., et al., now being assigned for hearing on April 24, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 32882 (Sub-96F), Mitchell Bros. Truck Line, now assigned for hearing on March 13, 1979, at Los Angeles, Calif., is canceled and reassigned for March 13, 1979 (4 days), at the Ramada Inn, 999 South Main Street, Salt Lake City, Utah and continued to March 19, 1979 (1 week), at the Registry Hotel, 18800 MacArthur Boulevard, Irvine, California.

MC 99439 (Sub-10F), Suwannee Transfer, Inc., transferred to Modified Procedure.

MC 94201 (Sub-135), M1, Bowman Transportation, Inc., transferred to Modified Procedure.

MC 106398 (Sub-828F), National Trailer Convoy, Inc., now assigned February 27, 1979, at Washington, D.C. is canceled and transferred to Modified Procedure.

MC 42000 (Sub-6F), Texas Interstate Motor Express, Inc., now assigned for hearing on March 21, 1979, at Dallas, Texas is canceled and application dismissed.

MC 66746 (Sub-21F), Shippers Express, Inc., now being assigned for continued hearing on February 22, 1979 (1 day), at the Holiday Inn, Highway North, Columbus, Miss., February 26, 1979 (2 days), at the Hilton, North State Street, Jackson, Mississippi and March 7, 1979 (2 days), at New Orleans, La., location of hearing room will be designated later.

MC 2908 (Sub-24F), Capitol Motor Lines, d/b/a Capitol Trailways, now assigned for hearing on March 19, 1979, at Montgomery, Alabama will be held in the Quality Inn-Diplomat, 3951 Norman Bridge Road, instead of Room No. 816, Aranov Building, 474 S. Court Street.

MC 85255 (Sub-61F), Puget Sound Truck Lines, Inc., now assigned for hearing on March 12, 1979, at Olympia, Washington is postponed to May 1, 1979 (4 days), at Olympia, Washington, location of hearing room will be by subsequent notice.

MC 22301 (Sub-26F), Sioux Transportation Company, Inc., now assigned March 12,

1979, at Sioux Falls, South Dakota, is postponed to May 29, 1979 (9 days), at Sioux Falls, South Dakota in a hearing room to be later designated.

MC 110988 (Sub-375F), Schneider Tank Lines, Inc., now assigned March 27, 1979, at the Office of the Interstate Commerce Commission, Washington, DC.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-5905 Filed 2-27-79; 8:45 am]

[7035-01-M]

[Second Revised Service Order No. 1332; exception No. 15]

ATCHISON, TOPEKA AND SANTA FE RAILWAY CO.

Revised Service Order; Exemption

Decided February 16, 1979.

By the Board.

Because of delays in accumulating sufficient tonnage to operate unit trains of potash from Carlsbad, New Mexico, to Houston, Texas, The Atchison, Topeka and Santa Fe Railway Company (ATSF) is temporarily unable to forward all cars within 60 hours as required by Sections (a)(4)(i) of Second Revised Service Order No. 1332.

It is ordered, Pursuant to the authority vested in the Railroad Service Board by Section (a)(1)(v) of Second Revised Service Order No. 1332, the ATSF is required to forward loaded cars from Carlsbad, New Mexico, to Houston, Texas, within 72 hours.

Effective February 16, 1979.

Expires 11:59 p.m., March 15, 1979.

JOEL E. BURNS,
Chairman
Railroad Service Board.

[FR Doc. 79-5908 Filed 2-27-79; 8:45 am]

[7035-01-M]

[Revised Service Order No. 1301; exception No. 4]

BURLINGTON NORTHERN INC., CHICAGO AND NORTH WESTERN TRANSPORTATION CO.

Revised Service Order; exemption

Decided February 15, 1979.

By the Board.

Pursuant to the authority vested in me by Section (a)(6) of Revised Service Order No. 1301, Burlington Northern Inc. and Chicago and North Western Transportation Company are authorized to use forty-foot narrow-door plain boxcars owned by any railroad which has made its cars exempt from Car Service Rules 1 and 2 and which are identified in Interstate Commerce Commission Exemptions Nos. 12 and 129, or successive issues thereof.

Effective February 15, 1979.

Issued at Washington, D.C., February 15, 1979.

JOEL E. BURNS,
Director,
Bureau of Operations.

[FR Doc. 79-5907 Filed 2-27-79; 8:45 am]

[7035-01-M]

[Revised Service Order No. 1312; exception No. 2]

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD CO.

Revised service Order; exemption

Because of extreme cold weather and heavy snow, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company is not able to assemble empty unit-grain-trains in a complete set at various loading points. Privately owned covered hopper cars and railroad owned covered hopper cars are being delayed waiting for the complete set of empty cars to be assembled for loading. Section (a) of Revised Service Order No. 1312 authorizes any railroad which is unable to supply the number of covered hopper cars required by its tariffs to transport unit-grain-trains of fewer cars in accordance with the scale in Section (b).

Pursuant to the authority vested in the Director, Bureau of Operations, by Section (h) of Revised Service Order No. 1312, Chicago, Milwaukee, St. Paul and Pacific Railroad Company is authorized to operate unit-grain-trains, on a one trip basis, with a minimum of fifty (50) percent of the weight requirement or the required number of cars to be operated in the first movement. The remaining cars of the unit-grain-train will be operated together in the final movement of the train. The total tariff minimum weight will be transported as required except if the railroad is unable to move all of the empty covered hoppers to the loading point on the final movement, the train can be reduced by the allowable number of cars or allowable weight percentage, as set forth in Section (b) of this Service Order.

This exception applies to privately owned and railroad owned covered hopper cars.

The bills of lading and waybills shall bear the following endorsement: "Unit-grain-train of ( ) tons or ( ) cars. Partial movement of ( ) tons or ( ) cars forwarded authority Exception No. 2 to ICC Revised Service Order No. 1312. ( ) tons or ( ) cars to follow".

Demurrage rules will be treated as if each of the movements of the unit-train is a complete movement in itself.

Effective February 16, 1979.

Expires 11:59 p.m., march 31, 1979.

Issued at Washington, D.C., February 16, 1979.

JOEL E. BURNS,
Director,
Bureau of Operations.

[FR Doc. 79-5910 Filed 2-27-79; 8:45 am]

[7035-01-M]

[Revised Service Order No. 1312; Exemption No. 1]

CONSOLIDATED RAIL CORP.

Revised Service Order; Exception

Decided February 15, 1979.

By the Board.

Because of extreme cold weather and heavy snow, a movement of 50 empty private covered hooper cars has been seriously delayed on Consolidated Rail Corporation enroute to Sidney, Ohio, for loading. Landmark Corporation of Sidney, Ohio, desires to ship a fifty (50) car unit-grain-train of wheat to York, Pennsylvania, routed ConRail. The consignee at York is badly in need of the grain. Only 36 empty hoppers have arrived at Sidney. Section (a) of Service Order No. 1312 authorizes any railroad which is unable to supply the number of covered hopper cars required by its tariffs to transport unit-grain-trains of fewer cars in accordance with the scale in Section (b). The scale in Section (b) authorizes reduction of a fifty (50) car unit-train by four cars and a weight reduction of 2 percent.

It is ordered, Pursuant to the authority vested in the Railroad Service Board by Section (h) of Revised Service Order No. 1312, Consolidated Rail Corporation is authorized to operate a fifty (50) car unit-grain-train from Sidney, Ohio, to York, Pennsylvania, comprised of fifty (50) private hoppers, on a one trip basis, with a minimum of 30 loaded cars operated in the first movement, and the remaining cars of the unit-train operated together in the final movement of this unit-grain-train. The total tariff minimum weight will be transported as required.

Effective February 15, 1979.

Expires 11:59 p.m., February 28, 1979.

JOEL E. BURNS,
Chairman,
Railroad Service Board.

[FR Doc. 79-5909 Filed 2-27-79; 8:45 am]

[7035-01-M]

[Notice No. 28]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

FEBRUARY 20, 1979.

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 relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded and 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.

NOTE.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

MOTOR CARRIERS OF PROPERTY

MC 4024 (Sub-3TA), filed January 11, 1979. Applicant: HORN TRUCKING CO., 300 Schmetter Road, Highland, Illinois 62249. Representative: Edward D. McNamara, Jr., 907 South 4th St., Springfield, Illinois 62703. *Iron and Steel Articles* from 1) East Chicago, Indiana to points in Illinois on and South of U.S. 24 and to points in Missouri, 2) Between Maverick Tube Corp. at or near Union, MO. on the one hand, and points in Arkansas, Illinois, Indiana, Kentucky, Tennessee, Ohio, and Wisconsin, on the other, 3) From St. Louis, MO. and Staunton, IL. to points in Arkansas, Kentucky, Tennessee and from Staunton, Illinois to points in Missouri and 4) From the plantsites of Inland Steel Corp. at East Chicago, IN. to points in Illinois on and south of U.S. 24 and points in Missouri, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Maverick Tube Corp, P.O. Box 696, Union, MO. 63084. Tubular Steel, Inc., 7220 Polson Lane, Hazelwood, MO. 63042. Inland Steel Company, 30 West Monroe St., Chicago, IL. 60603. Whittaker Metal, 4504 Euclid, East Chicago, IN. 46312. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol, Springfield, IL. 62701.

MC 8872 (Sub-9TA), filed January 10, 1979. Applicant: SOUTH END CARTAGE CORPORATION OF DELAWARE, 4222 S. Knox Ave., Chicago, IL 60632. Representative: Abraham A. Diamond, 29 S. LaSalle St., Chicago, IL 60603. (1) *General commodities, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, in demountable steamship containers,* from points in IL, IN, IA, KY, MI, MN, MO, NE and WI to points in the Chicago, IL Commercial Zone; and, (2) *Empty demountable steamship containers* between points in the Chicago Commercial Zone, on the one hand, and, on the other, points in IL, IN, IA, KY, MI, MN, MO, NE and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Alltransport, Inc., 300 S. Wacker Dr., Chicago, IL. Send protests to: Lois Stahl, TA, ICC, 219 S. Dearborn St., Rm. 1386, Chicago, IL 60604.

MC 18738 (Sub-53TA), filed January 10, 1979. Applicant: SIMS MOTOR TRANSPORT LINES, INC., 610 W. 138th St., Riverdale, IL 60627. Representative Eugene Cohn, One No. LaSalle St., Chicago, IL 60606. *Iron and steel products,* Chicago, Blue Island and Evanston, IL to points in Kenosha, Milwaukee, Racine, Waukesha, Washington and Ozaukee, Counties, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Unarco-Leavitt, Division of Unarco Industries, Inc., 1717 W. 115th St., Chicago, IL 60643. Send protests to: Lois M. Stahl, ICC, 219 S. Dearborn St., Rm. 1386, Chicago, IL 60604.

MC 19311 (Sub-54TA); filed January 10, 1979. Applicant: CENTRAL TRANSPORT, INC., 34200 Mound Rd., Sterling Hts., MI 48077. Representative: Elmer J. Maue (same as applicant). (1) *voting machines and equipment, materials, and supplies used in the manufacturing and distribution of voting machines,* between NY, on the one hand, and, on the other, IL, IN, and OH; (2) *new furniture, new household, office and store fixtures and furnishings and equipment, materials and supplies used in the manufacturing and distribution of new furniture, new office and store fixtures and furnishings,* between CT, ME, MD, MA, NH, NJ, NY, PA, RI, VT, on the one hand, and, on the other, IL, IN, OH, and WI, for 180 days. Supporting Shipper(s): There are 9 shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: Tim Quinn, DS, ICC, 604 Federal Building and U.S. Courthouse, 231 W. Lafayette Blvd., Detroit, MI 48226.

MC 22179 (Sub-21TA); filed January 10, 1979. Applicant: FREEMAN TRUCK LINE, INC., P.O. Drawer 925, 419 Jackson Avenue, Oxford, MS 38655. Representative: Douglas C. Wynn, P.O. Box 1295, Greenville, MS 38701. (1) *Petroleum products, vehicle body sealer and/or sound deadener compounds and filters* (except commodities in bulk, in tank vehicles) from points in Warren County, MS to points in AL, AR, GA, KY, LA and TN; and (2) *Petroleum products, vehicle body sealer and/or sound deadener compounds, filters and materials, supplies and equipment* used in the manufacture, sale and distribution for the foregoing commodities (except commodities in bulk, in tank vehicles) from points in AL, GA and KY to points in Warren County, MS, for 180 Days. Restricted to shipments originating at or destined to the facilities of Quaker State Oil Refining Corp. Supporting Shipper(s): Quaker State Oil Refining Corp., P.O. Box 989, Oil City, PA 16301. Send protests to: Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, 100 North Main Building—Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 41406 (Sub-111TA), filed January 8, 1979. Applicant: ARTIM TRANSPORTATION SYSTEM, INC., 7105 Kennedy Ave., Hammond, IN 46323. Representative: E. Stephen Heisley, 666 Eleventh St., N.W., Washington, DC 20001. *Aluminum sheet (DLK),* from Oswego, NY to Fairmont, WV, for 180 days. An underlying ETA seeks 90 day authority. Supporting Shipper(s): Alcan Aluminum Corporation, P.O. Box 6977, Cleveland, OH 44101. Send protests to: Lois Stahl, TA, ICC, 219 S. Dearborn St., Rm. 1386, Chicago, IL 60604.

MC 41951 (Sub-36TA); filed January 4, 1979. Applicant: WHEATLEY TRUCKING, INC., P.O. Box 458, Cambridge, MD 21613. Representative: Gary E. Thompson, 4304 East-West Hwy., Washington, DC 20014. *Foodstuffs,* except commodities in bulk, in tank vehicles, from Cambridge, MD to Kansas City, KS; Garland and Houston, TX; and Kenner, LA, for 180 days. An underlying ETA seeks 90 day authority. Supporting Shipper(s): RJR Foods, Inc., P.O. Box 3037, Winston-Salem, NC 27101. Send protests to: T. M. Esposito, Transportation Asst., 600 Arch St., Room 3238, Philadelphia, PA 19106.

MC 52460 (Sub-230TA), filed January 12, 1979. Applicant: ELLEX TRANSPORTATION, INC., 1420 West 35th Street, P.O. Box 9637, Tulsa, OK 74107. Representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. (1) *Petroleum, petroleum products, vehicle body sealer and/or sound deadener compounds,* (except commodities in bulk, in tank vehicles), *and filters,* from points in Warren County, MS to points in AL, AR, GA, KS, LA, MO, NM, OK, TN and TX; and (2) *Petroleum, petroleum products, vehicle body sealer and/or sound deadener compounds, filters, materials, supplies, and equipment* as are used in the manufacture, sale, and distribution of the commodities named in part (1) above, (except commodities in bulk, in tank vehicles), from points in AL, GA, and OK to points in Warren County, MS, for 180 days. RESTRICTED in parts (1) and (2) above to shipments originating at or destined to the facilities of Quaker State Oil Refining Corporation located in Warren County, MS, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Quaker State Oil Refining Corp., P.O. Box 989, Oil City, PA 16301. Send protests to: Connie Stanley, Transportation Assistant, Interstate Commerce Commission, Room 240 Old Post Office and Court House Bldg., 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 59352 (Sub-4TA), filed January 17, 1979. Applicant: C. L. & A. MOTOR DELIVERY, INC., 4110 Dane Ave., Cincinnati, OH 45223. Representative: Norbert B. Flick, 715 Executive Bldg., Cincinnati, OH 45202. *Glass containers, accessories for glass containers and cartons,* from the facilities of Thatcher Glass Manufacturing Co. at Lawrenceburg, IN, to Columbus, OH, for 180 days. Supporting Shipper(s): Thatcher Glass Manufacturing Co., Division of Dart Industries, Inc., James F. Rehr, Asst. General Traffic Manager, P.O. Box 265, Elmira, NY 14902. Send protests to: Paul J. Lowry, DS, ICC, 5514-B Federal Bldg., 550 Main St., Cincinnati, OH 45202.

MC 61396 (Sub-365TA), filed January 22, 1979. Applicant: HERMAN BROS., INC., 2565 St. Marys Avenue, P.O. Box 189, Omaha, NE 68101. Representative: Duane L. Stromer (same address as above). *Cement, in bag and bulk,* from Knoxville, TN, and the facilities of Penn-Dixie Industries, Inc., at or near Richard City, TN, to points in the states of AL, AR, GA, FL, KY, MS, NC, SC, VA, and WV, for 180 days. Supporting Shipper(s): David L. Williams, Penn-Dixie Industries, Inc., Cement Division, P.O. Box 152, Nazareth, PA 18064. Sent protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 68860 (Sub-36TA), filed January 23, 1979. Applicant: RUSSELL TRANSFER, INC., 5259 Aviation Drive, N.W., Roanoke, Virginia 24012. Representative: Liniel G. Gregory, Jr. (same address as applicant). *Controller or controller parts, electric, and empty air cargo containers* between Philadelphia, PA on the one hand, and on the other Charlottesville, VA restricted to traffic shipped in air cargo containers and on traffic having a prior or subsequent movement by air, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): General Electric Corporation, 1501 Roanoke Blvd., Salem, Virginia. Send protests to: Paul D. Collins, District Supervisor, ICC, Rm. 10-502 Federal Bldg., 400 North 8th Street, Richmond, VA. 23240.

MC 80653 (Sub-14TA), filed January 8, 1979. Applicant: DAVID GRAHAM COMPANY, P.O. Box 115, Croydon, PA 19020. Representative: Paul F. Sullivan, 711 Washington Blvd., Washington, DC 20005. *Iron and steel articles* from facilities of Worthington Steel Corp., Baltimore, MD to points in VA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Worthington Steel Co., 6301 Erdman Ave., Baltimore, MD 21205. Send protests to: T. M. Esposito, Transportation Asst., 600 Arch St., Room 3238, Philadelphia, PA 19106.

MC 107496 (Sub-1182TA), filed January 15, 1979. Applicant: RUAN TRANSPORT CORP., 666 Grand Avenue, Des Moines, IA 50309. Representative: E. Check (same as applicant). *Vegetable oil, in bulk, in tank vehicles,* from Cedar Rapids and Washington, IA to points in IL for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Cargill, Inc., 411 6th St. NE., Cedar Rapids, IA 52402; Durkee Foods Vis. of SCM Corp., P.O. Box 796, Joliet, IL 60435. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 110525 (Sub-1286TA), filed January 8, 1979. Applicant: CHEMICAL LEAMAN TANK LINES, INC., 520 E. Lancaster Ave., Downingtown, PA 19335. Representative: Thomas J. O'Brien (same as applicant). *Liquid silicate of soda,* in bulk, in tank vehicles from facilities of Diamond Shamrock Corp. at Dallas, TX to points in AL, AZ, CO, FL, GA, ID, IL, IA, IN, KS, KY, LA, MI, MN, MS, MO, MT, NE, NV, NM NC, ND, OH, OK, SC, SD, TN, UT, VA, WI, and WY, for 180 days. Supporting Shipper(s): Diamond Shamrock Corp., P.O. Box 500, Deer Park, TX 77536. Send protests to: T. M. Esposito, Transportation Asst., 600 Arch St., room 3238, Philadelphia, PA 19106.

MC 114273 (Sub-530TA), filed January 16, 1979. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same as applicant). *Confectionary and confectionary products; hollow and solid chocolate novelties,* from the facilities of R. M. Palmer Co. at or near Wyomissing and West Reading, PA to Chicago, IL, Omaha, NE, Kansas City, MO and Minneapolis, MN for 180 days. The purpose of this application is to eliminate joint-line service. Supporting shipper(s): R. M. Palmer Company, 77 Second Avenue, West Reading, PA 19611. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 114273 (Sub-534TA), filed January 10, 1979. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same as applicant). *Mineral fiber, mineral fiber products and insulating materials* from the facilities of the United States Gypsum Co. at Wabash, IN to AR, CO, IA, KS, MN, MO, NE, ND, OK, SD, TX and WI, for 180 days. Supporting shipper(s): United States Gypsum Company, 101 South Wacker Drive, Chicago, IL 60606. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

NOTE: Common control may be involved.

MC 115311 (Sub-333TA), filed January 5, 1979. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, GA 31061. Representative: Mark C. Ellison, P.O. Box 872, Atlanta, GA 30301. (1) *Petroleum, petroleum products, vehicle body sealer and/or sound deadener compounds, (except in bulk, in tank vehicles) and filters* from points in Warren County, MS to points in AL, DC, FL, GA, KY, MD, NY, NC, OH, PA, RI, SC, TN, VA and WV. (2) *Petroleum, petroleum products, vehicle body sealer and/or sound deadener compounds, filters, materials, supplies and equipment as are used in the manufacture, sale and distribution of the commodities named in (1) above (except in bulk, in tank vehicles)* from points in AL, GA, KY, NY, OH, PA, RI, SC, VA and WV to points in Warren County, MS, for the account of Quaker State Oil Refining Corporation, for 180 days. Supporting shipper(s): Quaker State Oil Refining Corp., P.O. Box 989, Oil City, PA 16301. Send protests to: Sara K. Davis, T/A, Bureau of Operations, Interstate Commerce Commission, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 115826 (Sub-375TA), filed January 15, 1979. Applicant: W. J. DIGBY, INC., 6015 East 58th Avenue, Denver, CO 80022. Representative: Howard Gore (same address as applicant). *Prepared foods, frozen foods, restaurant equipment and supplies,* from points in CA to points in NM and CO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Nobel, Inc., 1101 W. 48th Avenue, Denver, CO 80217. Send protests to: District Supervisor H. C. Ruoff, 492 U.S. Customs House, 721 19th St., Denver, CO 80202.

MC 115841 (Sub-661TA), filed January 10, 1979. Applicant: COLONIAL REFRIGERATED TRANSPORTATION, INC., 9041 Executive Park Drive, Suite 110, Building 100, Knoxville, TN 37919. Representative: D. R. Beeler, same address as applicant. (1) *Such merchandise as is dealt in by discount and variety stores (except foodstuffs, furniture and commodities in bulk);* and (2) *Foodstuffs (except in bulk) and furniture, in mixed loads with commodities in (1)* from Charlotte, NC to Chicago, IL, Detroit, MI, Kansas City, KS/MO, Dallas, TX, Columbus, OH, and Memphis, TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): K-Mart Corporation, 3100 West Big Beaver Road, Troy, MI 48084. Send protests to: Glenda Kuss, TA, ICC, Suite A-422 U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 116004 (Sub-54TA), filed January 19, 1979. Applicant: TEXAS OKLAHOMA EXPRESS, INC., 2222 E. Grauwyler Rd., Irving TX 75247. Representative: Doris Hughes, P.O. Box 47112, Dallas, TX 75247. Common carrier, regular route. *General commodities, except those of unusual value, classes A & B explosives, household goods as defined by the Commission, commodities in bulk or those requiring special equipment),* from the facilities of Virden Lighting Corporation at or near Durant, OK as an off-route point in connection with carrier's present regular route operations, for 180 days. Supporting Shipper(s): Virden Lighting Corporation, P.O. Box 715, Eaker Field, Durant, OK 74701. Send protests to: Opal M. Jones, Trans. Asst., Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 116763 (Sub-470TA), filed January 15, 1979. Applicant: CARL SUBLER TRUCKING, INC., North West St., Versailles, OH 45380. Representative: Gary J. Jira (same address as applicant). Heating and air conditioning equipment and parts and accessories for heating and air conditioning equipment (except commodities the transportation of which because of size and weight require the use of special equipment and commodities in bulk, in tank vehicles), from LaVergne and Nashville, TN, to points in AL, FL, GA, KY, MS, NC, SC, and VA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Heil Quaker Corporation, Joe W. Malone, General Traffic Manager, 1714 Heil Quaker Blvd., LaVergne, TN 37086. Send protests to: Paul J. Lowry, DS, ICC, 5514-B Federal Bldg., 550 Main St., Cincinnati, OH 45202.

MC 117613 (Sub-28TA), filed January 8, 1979. Applicant: D. M. BOWMAN, INC., Route 2, Box 43A1, Williamsport, MD 21795. Representative: Charles E. Creager, 15 East Oak Ridge Drive, Route 9, Box 26, Hagertown, MD 21740. *Contract carrier:* irregular routes: *Fuel oils,* from Baltimore, MD and its commercial zone, to Harrisburg and New Cumberland, PA and their respective commercial zones for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Pedroni Fuel Oil, Wheat Road, Vineland, NJ. Send protests to: Carol Rosen, TA, ICC, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 117730 (Sub-39TA), filed January 16, 1979. Applicant: KOUBENEC MOTOR SERVICE, INC., Route 47, Huntley, IL 60142. Representative: Stephen H. Loeb, Suite 200, 205 W. Touhy Avenue, Park Ridge, IL 60068. *Iron and steel coils,* from West Butler and West Leechburg, PA, Massillon, OH, and Wallingford, CT, to the facilities of United Industries, Inc., in Beloit, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): United Industries, Inc., 1546 Henry Avenue, Beloit, WI 53511. Send protests to: Lois M. Stahl, TA, ICC, 219 S. Dearborn St., Room 1386, Chicago, IL 60604.

MC 118959 (Sub-196TA), filed January 17, 1979. Applicant: JERRY LIPPS, INC., 130 S. Frederick St., Cape Girardeau, MO 63701. Representative: Jack Gleason (same as above). *Paper napkins, towels, toilet paper, facial tissue, products made from pulpboard, wrapping paper, plastic film, foil, and cellulose film* between the warehouses of American Can Company, Neenah, Menasha, Green Bay, Wausau, and Ashland, WI to all 48 states, for 180 days. Supporting Shipper(s): American Can Company, P.O. Box 702, Neenah, WI 54956. Send protests to: P. E. Binder, DS, Interstate Commerce Commission, Bureau of Operations, Room 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 119493 (Sub-260TA), filed January 17, 1979. Applicant: MONKEM COMPANY, INC., P.O. Box 1196, Joplin, MO 64801. Representative: Thomas D. Boone (same address as applicant). *Containers,* from points in IN and TN to points in IA for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Doane Products Company, W. 20th Street, Joplin, MO 64801. Send protests to: John V. Barry, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 119894 (Sub-10TA), filed December 26, 1978. Applicant: BOWARD TRUCK LINE, INC., 104 Azar Bldg., Glen Burnie, MD 21061. Representative: M. Bruce Morgan (same as applicant). *Scrap or waste paper* from points in NC to facility of Sonoco Products Co., at or near Hartsville, SC, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Sonoco Products Co., N. Second St., Hartsville, SC 29550. Send protests to: T. M. Esposito, Transportation Asst., 600 Arch St., Room 3238, Philadelphia, PA 19106.

MC 124813 (Sub-193TA), filed January 29, 1979. Applicant: UMTHUN TRUCKING CO., 910 South Jackson Street, Eagle Grove, IA 50533. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. *Wood fencing, timbers, wood shavings and posts* from Gladstone, MI to points in IL, IN, IA, MN and WI for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): MacGillis & Gibbs Company, P.O. Box 12788, New Brighton, MN 12788. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 125433 (Sub-194TA), filed January 10, 1979. Applicant: F-B TRUCK LINE COMPANY, 1945 South Redwood Road, Salt Lake City, UT 84104. Representative: John B. Anderson (same address as applicant). *Paper and paper products* from Burlington, IA, to Salt Lake City, UT, Denver, CO, Phoenix, AZ, El Paso, TX, Fresno and Los Angeles, CA, and Seattle, WA, for 180 days. Supporting Shipper(s): Georgia-Pacific Corporation, 800 Summer Street, Stamford, CT 06901. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 127799 (Sub-9TA), filed January 29, 1979. Applicant: LUPPES TRANSPORT COMPANY, INC., P.O. Box 101, Webster City, IA 50595. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. *Grain alcohol, in bulk,* from Decatur, IL to Fort Dodge and Webster City, IA for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Luppes-Block Oil Co., P.O. Box 152, Webster City, IA 50595. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 128746 (Sub-46TA), filed December 29, 1978. Applicant: D'AGATA NATIONAL TRUCKING CO., 3224-44 S. 61st St., Philadelphia, PA 19153. Representative: Edward J. Kiley, Suite 501, 1730 M St., NW., Washington, DC 20036. *Glass containers,* between facilities of Midland Glass Co., Inc., Cliffwood, NJ, on the one hand, and, on the other, East Hartford, Meriden, New Haven and New London, CT; New Castle and Wilmington, DE; Baltimore and Catonsville, MD; Braintree, Lowell, Lynn, Millis, New Bedford, Northampton, Sagamore, Somerville, Waltham, Worcester, MA; Albany, Hamlin, Middletown, Newburgh, Rochester, Saratoga Springs, Scotia, Syracuse and Williamson, NY; Reading, Scranton and Wilkes-Barre, PA and Providence, RI, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Midland Glass Co., Inc., P.O. Box 557, Cliffwood, NJ 07721. Send protests to: T. M. Esposito, Transportation Asst., 600 Arch St., Room 3238, Philadelphia, PA 19106.

MC 129455 (Sub-36TA), filed January 9, 1979. Applicant: CARRETTA TRUCKING, INC., South 160 Route 17 North, Paramus, NJ 07652. Representative: Joseph Carretta, same address as applicant. *Contract carrier:* irregular routes: *Chemicals* (except in bulk) from the facilities of Amoco Chemicals Corporation, Springs, Joliet, and Wood River, IL to points in NJ for 180 days. An underlying ETA seeks 30 days plus two extensions. Supporting Shipper: Amoco Chemicals Corporation, 200 East Randolph Drive, Chicago, IL 60601. Send protests to: Joel Morrows, DS, ICC, 9 Clinton Street, Newark, NJ 07102.

MC 135046 (Sub-15TA), filed January 11, 1979. Applicant: ARLINGTON J. WILLIAMS, INC., 1398 S. DuPont Highway, Smyrna, DE 19977. Representative: Samuel W. Earnshaw, 833 Washington Bldg., Washington, DC 20005. *Sinks, worktables, cocktail units, ice chests and related fixtures and supplies,* from Smyrna, DE to New Orleans, LA, Richardson, TX, Philadelphia, PA and Newark, NJ, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper: Metal Masters Foodservice Co., Inc., 655 W. Glenwood Ave., Smyrna, DE 19977. Send protests to: William L. Hughes, District Supervisor, 1025 Federal Building, Baltimore, MD 21201.

MC 135524 (Sub-13TA), filed January 17, 1979. Applicant: G. F. TRUCKING CO., 1028 West Rayen Avenue, Youngstown, OH 44501. Representative: George Fedorisin, 1455 McCollum Road, Youngstown, Oh 44509. *Conveyors, conveyor systems and accessories, parts, materials, supplies, and equipment* necessary for the erection, installation, completion and maintenance thereof from Florence, KY, to Romulus, MI for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper: Litton Unit Handling Systems, 7100 Industrial Road, Florence, KY 41042. Send protests to: Mary A. Wehner, District Supervisor, Interstate Commerce Commission, 1240 E. Ninth Street, Cleveland, OH 44199.

MC 136605 (Sub-87TA), filed January 22, 1979. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Thomas J. Burke, Jr., Attorney at Law, 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80264. *Precast concrete products* from points in the commercial zones of Denver, CO and Oshkosh, WI to points in the U.S. in and West of WI, IL, MO, AR, and LA, except AK and HI, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper: Duwe Mausoleum Sales Corporation, P.O. Box 2068, Oshkosh, WI 54903. Send protests to: Paul J. Labane, DS, ICC, 2502 First Avenue North, Billings, MT 59101.

MC 138313 (Sub-53TA), filed January 22, 1979. Applicant: BUILDERS TRANSPORT, INC., 409 14th Street S.W., Great Falls, MT 59404. Representative: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. *Bentonite,* in bags, from the facilities of American Colloid Company at or near Belle Fourche, SD and Upton, WY to points in King County, WA, for 180 days. An underlying ETA seeks 25 days authority. Supporting Shipper: American Colloid Company, P.O. Box 228, Skokie, IL 60076. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 138875 (Sub-129TA), filed January 4, 1979. Applicant: SHOEMAKER TRUCKING COMPANY, 11900 Franklin Road, Boise, ID 83705. Representative: F. L. Sigloh, 11900 Franklin Road, Boise, ID 83705. *China toilets (except in bulk),* from points in Lee County, MS to the facilities of Familian Sierra Craft, Inc. located at City of Industry and Woodland, CA, Caldwell, ID and Aurora, OR for 180 days. Restricted to traffic originating at and destined to named origins and destinations. An underlying ETA seeks 90 days authority. Supporting Shipper: Familian Sierra Craft, Inc., 17711 E. Railroad St., City of Industry, CA 91744. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 142080 (Sub-2TA), filed October 16, 1978. Applicant: OLIVER BROWN TRUCKING CO., INC., 700 South Avenue, Middlesex, NJ 08846. Applicant's representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. Authority sought to operate as a contract carrier, by motor vehicle, over irregular routes, transporting: Polyurethane, foam, and on return materials and supplies sued in the manufacturing, distributing and packaging of Polyurethane Foam, except in bulk, from Cornelius, NC and Spartanburg, SC to points in CT, DE, NJ, NY and PA for 180 days under a continuing contract or contracts with Reeves Brothers, Inc., Curon-Metro Division. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting Shipper: Reeves Brothers, Inc., Curon-Metro Division, 12 Ridgewood Parkway East, Denville, N.J. 07834. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, 9 Clinton St., Newark, NJ 07102.

MC 143594 (Sub-4TA), filed December 29, 1978. Applicant: NATIONAL BULK TRANSPORT, INC., P.O. Box 5078, Atlanta, GA 30302. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Ft. Lauderdale, FL 33308. *Liquid amorphous polypropylene* from Longview, TX and Neal, WV to Sayreville, NJ, for 180 days. Supporting Shipper: Essex Chemical Corporation, 1333 Broad Street, Clifton, NJ 07015. Send protests to: Sara K. Davis, T/A, Bureau of Operations, Interstate Commerce Commission, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 144543 (Sub-2TA), filed January 29, 1979. Applicant: INTERNATIONAL CONSOLIDATORS, INC., 777 West 2nd Street, Pomona, California 91769. Representative: Richard C. Celio, 1415 West Garvey Avenue, Suite 102, West Covina, CA 91790. *Building materials (except in bulk),* between ports of entry on the United States-Canadian border in WA, ID and MT, on the one hand, and, on the other, points in AZ, CA, CO, NV, NM, TX and UT, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting Shipper(s): Ronan Wood, Inc., 74720 Old Prospector Trail, Palm Desert, CA 92260; Newport International Forest Products, 567 San Nicholas Drive, Newport Beach, CA. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, California 90012.

MC 145406 (Sub-10TA), filed January 9, 1979. Applicant: MIDWEST EXPRESS, INC., 380 East Fourth Street, Dubuque, IA 52001. Representative: Richard A. Westley, 4506 Regent Street, Suite 100, Madison, WI 53705. *Fresh meat and packinghouse products* from the facilities of Wilson Foods Corp., at or near Albert Lea, MN; Cedar Rapids and Des Moines, IA to CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting

Shipper: Wilson Foods Corporation, 4545 Lincoln Boulevard, Oklahoma City, OK 73105. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Building, Des Moines, IA 50309.

MC 145760 (Sub-2TA), filed January 18, 1979. Applicant: JOHNSON TRANSPORTATION CO., 1327 Highway 13 N., Columbia, MS 39439. Representative: Fred W. Johnson, Jr., P.O. Box 22628, Jackson, MS 39205. *Brick and tile* from Plant City, FL to Birmingham, Dothan, and Montgomery, AL; New Orleans, LA; Denver, CO; Houston, TX; Atlanta and Augusta, GA; and Chicago, IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper: Florida Brick & Clay Co., Inc., P.O. Box 1656, Plant City, FL 33566. Send protests to: Alan Tarrant, D/S, ICC, 145 E. Amite Bldg., Rm. 212, Jackson, MS 39201.

MC 146146TA, filed January 19, 1979. Applicant: HADDAD TRANSPORTATION, INC., 500 Wyoming, Dearborn, MI 48126. Representative: J. F. Schouman, 21925 Garrison, Dearborn, MI 48124. Authority sought to operate as a contract carrier by motor vehicle, over irregular routes, transporting: *fluid drives and couplings, gas and air moving equipment, dust collectors, and industrial coils and related equipment and supplies,* from Dearborn, MI to points in the 48 contiguous states; *materials, equipment, and supplies used in the manufacture and distribution of the above-mentioned commodities,* from points in IL, IN, PA, and MI to Dearborn, MI, for 180 days. Said operations are limited to a transportation service to be performed under a continuing contract, or contracts with American Standard of New Brunswick, NJ. An underlying ETA seeks 90 days authority. Supporting Shipper(s): American Standard Inc., P.O. Box 2003, New Brunswick, NJ 08903. Send protests to: Tim Quinn, DS, ICC, 604 Federal Building and U.S. Courthouse, 231 W. Lafayette Blvd., Detroit, MI 48226.

MC 146201TA, filed January 19, 1979. Applicant: JOSEPH C. FIORENTINO, dba, J. C. FIORENTINO, 1515 Hill Drive, Los Angeles, CA 90041. Representative: Same as applicant. *Contract:* Irregular: *Fresh bananas,* from Los Angeles and Long Beach Harbors, CA, to points in the States of UT, ID, MT, WA, OR, NM, NV, AZ and TX, for 180 days. Supporting shipper: Castle & Cooke Foods, 17880 Sky Park Circle, #140, Irvine, CA 92714. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, California 90012.

MC 146202TA, filed January 2, 1979. Applicant: CONTRACTUAL CARRIERS, INC., Harmony Industrial Park, Newark, DE 19711. Representative: Samuel W. Earnshaw, 833 Washington Bldg., Washington, DC 20005. *General commodities* (except of unusual value, Classes A and B explosives, household goods, commodities in bulk, commodities requiring special equipment), between the facilities of D & S Warehousing, Inc., Newark, DE, and points within 200 miles of Newark, DE, for 180 days. Supporting shipper: D & S Warehousing, Inc., Alan Drive, Harmony Industrial Park, Newark, DE 19711. Send protests to: T. M. Esposito, Transportation Asst., 600 Arch St., Room 3238, Philadelphia, PA 19106.

By the Commission.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-5906 Filed 2-27-79; 8:45 am]

[4110-86-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Center for Disease Control

SECRETARY'S CONFERENCE ON INFLUENZA

Open Meeting

A meeting will be convened by the Honorable Joseph A. Califano, Secretary of Health, Education, and Welfare, to (a) review expert recommendations on influenza vaccine composition, dosage, and populations to receive vaccine; (b) review 1978-1979 Federal influenza immunization activities; and (c) discuss the role of the Federal government in influenza immunization programs in 1978-1979. Specific agenda items will include the review and discussion of: Recommendations on influenza vaccine composition, dosage, and populations to receive vaccine, which were developed by two Public Health Service advisory committees and other expert consultants at a Surgeon General's Meeting on Influenza held on February 12, 1979; Federal immunization activities in 1978-1979; and policy on influenza immunization and the role of the Federal government in implementing that policy.

The meeting will be open to the public, limited only by the space available:

Date: March 6, 1979.
Time: 8:30 a.m.
Place: Conference Room 800, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201.

Additional information may be obtained from:

Dr. Gary R. Noble, Center for Disease Control, Building 7, Room 112, 1600 Clifton Road, NE., Atlanta, Georgia 30333 (Phones: FTS: 236-3591; Commercial: 404/329-3591).

Dated: February 27, 1979.

JOHANNES STUART, PH.D.,
Acting Director,
Center for Disease Control.

[FR Doc. 79-6262 Filed 2-27-79 2:04 pm]

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).

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[6320-01-M]

1

[M-196 amdt. 2; Feb. 15, 1979]

CIVIL AERONAUTICS BOARD.

Notice of addition of item to the February 21, 1979 agenda.

TIME AND DATE: 9:30 a.m., February 21, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

4a. Dockets 29001 and 33453: *TWA-Southern Route Exchange; Nashville's Application for Exemption Authority*—Tentative Opinion and Order disposing of deferred issues in Docket 29001 and denying exemption application in Docket 33453 (OGC).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: It was not possible to get Item 4a to the Board sooner, due to the illness of the staff attorney assigned to the case. Accordingly, the following Members have voted that agency business requires the addition of Item 4a to the February 21, 1979 agenda and that no earlier announcement of this addition was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer.

[S-387-76 Filed 2-26-79; 9:46 am]

[6320-01-M]

2

[M-196 amdt. 5; Feb. 21, 1979]

CIVIL AERONAUTICS BOARD.

Notice of change of time and notice of deletions from and additions to the February 21, 1979 agenda.

TIME AND DATE: 11 a.m. February 21, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

Deleted: 1. Ratification of items adopted by notation.

Deleted: 2. Docket 34507, Application of El Al Israel Airlines Limited for an amended foreign air carrier permit to add Miami, Florida and Chicago, Illinois as well as additional intermediate and beyond points to its route description (BIA).

Deleted: 3. Docket 32868, Application of Eastern Air Lines Inc. for exemption to operate nonstop between Miami and Santo Domingo (Memo #8527, BIA, OGC).

Added: 14a. Docket 34110, American's notice of intent to suspend all air service at Providence, Rhode Island (Memo #8531, BPDA).

Deleted: 20. Docket 29165, Consumer Protection for Charter Participants (Memo #6399-F, OGC, BPDA, BCP).

STATUS: Open.

PERSON TO CONTACT:

Phillis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: At today's meeting, the staff requested that Item 1 be deleted because the snow emergency did not allow time for the preparation of the ratifications; that Item 2 be deleted because the staff's memo was not ready; that Item 3 be deleted because changed circumstances may require the redrafting of the order; and that Item 14a be added because American's notice of intent expires on February 25, 1979 and the Board needs to discuss this notice. Accordingly, the following Members have voted that agency business requires the deletions of Items 1, 2, 3 and the addition of Item 14a to the February 21, 1979 agenda and that no earlier announcement of these changes were possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

The Members were not ready to discuss Item 20 and needed more time to consider it; they decided to defer it for one week and to discuss this item at the next week's meeting. Accordingly, the following Members have voted that agency business requires the deletion of Item 20 from the February 21, 1979 agenda and that no earlier announcement of this change was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-388-79 Filed 2-26-79; 9:46 am]

[6320-01-M]

3

[M-196 Amdt. 4; Feb. 21, 1979]

CIVIL AERONAUTICS BOARD.

Notice of addition of item to the February 21, 1979 agenda.

TIME AND DATE: 11 a.m., February 21, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

15a. Docket 34345: TXI's emergency exemption application to reduce service below the essential level at Roswell, New Mexico (BPDA).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: The staff asks that this item be added to the agenda for the February 21, 1979 Board Meeting. TXI requested action by February 15. Given the timing circumstances and issues involved, we believe that this item should be handled at the February 21st sunshine meeting instead of waiting until February 29. Accordingly, the following Members have voted that agency business requires the addition of Item 15a to the February 21, 1979 agenda and that no earlier announcement of this addition was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

[S-389-79 Filed 2-26-79; 9:46 am]

[6320-01-M]

4

[M-196 Amdt. 3; Feb. 21, 1979]

CIVIL AERONAUTICS BOARD.

Notice of addition and closure to the February 21, 1979 agenda.

TIME AND DATE: 11 a.m., February 21, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

23. Bureau of International Aviation briefing on ongoing consultations with the U.S.S.R. (Memo #8526, BIA, BPDA).

STATUS: Closed.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: On Friday, February 16, 1979, Chairman Cohen and Member Schaffer requested that the Board hold a meeting to discuss the Bureau of International Aviation's proposals concerning the expiration of the current provisions for scheduled and charter services under the basic U.S.-U.S.S.R. Air Transport Agreement. These proposals are discussed in Case Memorandum 8526. Accordingly, the following Members have voted that agency business requires the addition of Item 23 to the February 21, 1979 agenda and that no earlier announcement of this addition was possible:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

This meeting will concern the Board's view on the ongoing negotiations with the U.S.S.R. Public disclosure, particularly to foreign governments with whom the United States is or will be negotiating, of the opinions, evaluations, and strategies of the Board and its staff could seriously compromise the ability of the United States Delegations to achieve agreements which would be in the best interest of the United States. Accordingly, the following Members have voted that public observation of this item would involve matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action within the meaning of the exemption provided under 5 U.S.C. 552b(c)(9)(B) and 14 CFR 310b.5(9)(B) and that the meeting on this item will be closed:

Chairman, Marvin S. Cohen
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey
Member, Gloria Schaffer

PERSONS EXPECTED TO ATTEND

Board Members.—Chairman, Marvin S. Cohen;
Member, Richard J. O'Melia;
Member, Elizabeth E. Bailey;
Member, Gloria Schaffer.

Assistants to Board Members.—Mr. Sanford Rederer, Mr. David M. Kirstein, and Mrs. Stephen H. Lachter.

Office of the Managing Director.—Mr. John R. Hancock.

Bureau of International Affairs.—Mr. Donald A. Farmer, Jr., Mr. Donald L. Litton, Mr. Anthony M. Largay, Mr. Frank R. Stair, and Mr. David A. Levitt.

Office of the General Counsel.—Mr. Peter B. Schwarzkopf.

Bureau of Pricing and Domestic Aviation.—Mr. Michael E. Levine, Mr. Herbert Aswall, Mr. Douglas V. Leister, and Ms. Barbara A. Clark.

Office of Economic Analysis.—Mr. Robert H. Frank.

Bureau of Consumer Protection.—Mr. Reuben B. Robertson and Ms. Patricia Kennedy.

Department of State.—Mr. Jim Atwood, Mr. Robert Clark, Mr. Wilson Riley, and Mr. William Witting.

Office of the Secretary.—Mrs. Linda Senese.

GENERAL COUNSEL CERTIFICATION

I certify that this meeting may be closed to the public under 5 U.S.C. 552b(c)(9)(B) and 14 CFR 310b.5(9)(B) and that the meeting may be closed to public observation.

_____,
General Counsel.

[S-390-79 Filed 2-26-79; 9:46 am]

[6320-01-M]

5

[M-197; Feb. 22, 1979]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 10 a.m., March 1, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items adopted by notation.

2. Dockets 33209, 31217, and 33838: National Airlines, application for certificate authority and Trans International Airlines, applications for certificate and immediate exemption authority to serve Israel via intermediate points (Memo 8363-D, BIA, OGC).

3. Dockets 33959, 34021, 33931, and 34024: Application of Eastern Air Lines for temporary exemption authority between Miami and Guatemala City, Guatemala; Applications of Air Florida, Eastern, and Southern Airways for temporary exemption authority between Miami and San Jose, Costa Rica (BIA).

4. Docket 34507: Application of El Al Israel Airlines Limited for an amended foreign air carrier permit to add Miami, Florida and Chicago, Illinois as well as additional intermediate and beyond points to its route description (BIA).

5. Docket 32868: Application of Eastern Air Lines, Inc. for an exemption to operate nonstop between Miami and Santo Domingo (Memo 8527, BIA, OGC).

6. Docket 34307: Application of Euramex for exemption to operate as a foreign freight forwarder (BIA).

7. Docket 29165: Consumer Protection for Charter Participants (Memo 6399-F, OGC, OI, OEEO, BCAA, BLJ, BPDA, OEA, BCP).

8. Docket 32143: *San Antonio/Austin-Atlanta Service Investigation*—Draft Opinion and Order granting permissive awards to all four applicants (OGC).

9. Dockets 29857: 33063, 33064, 33065, 33066; *Continental Realignment* (BPDA).

10. Dockets 32594, 34060, 34106, 32534, 32842, 34032, 34018, and 33990: Draft order making final the tentative findings and conclusions contained in Order 78-10-98 amending American's certificate to permit nonstop service between St. Louis and Salt Lake City; Airwest's certificate application Route 76; Allegheny's certificate application Route 97; Continental's certificate application Route 29; Eastern's certificate application Routes 5 and 10; Ozark's certificate application Route 107; TWA's certificate application Route 2, and Western's certificate application Route 19 all for nonstop service between St. Louis and Salt Lake City (Memo 8239-A, BPDA, OGC, BLJ).

11. Docket 33565: Application of Allegheny Airlines, Inc. for amendment of its certificate of public convenience and necessity (Charleston-Parkersburg) (BPDA).

12. Dockets 33054, 33163, 33519, 33597, 33630, 34002, 34498, and 34505: Applications of Allegheny, Braniff, Continental, Ozark, Trans World, and Western for *Nashville-Denver/Las Vegas/Phoenix* authority and of Piedmont and Southern for *Nashville-Denver/Las Vegas/Phoenix* and for Knoxville-Denver authority (BPDA).

13. Dockets 32528, 32574, and 32702: Removal of Kansas City-Chicago/Denver restrictions on certificates of Braniff, Continental, Delta, Frontier and TWA (BPDA).

14. Dockets 28316, 28436, 29584, 30094, 30558, 32698, 32761, 32704, 33023, 33595, 33998, and 34467: Applications of Western, Frontier, North Central, Northwest, Texas International, Braniff, Allegheny and Ozark for Milwaukee authority; North Central's application for removal of restrictions in six markets, one of which is Denver-Milwaukee (Memo 8529, BPDA, OGC, BLJ).

15. Docket 33221: Joint application of Frontier and Louisville for exemption authority in the Louisville-Kansas City Market (Memo 8452, BPDA, OGC).

16. Docket 34345: TXI's request for an emergency exemption from the overflight requirements of its certificate or 401(j)(1)(B) to reduce service at Roswell from two daily round trips to one contingent upon the provision of replacement service by Zia (Memo 8530, BPDA, OCCR).

17. Dockets 34387, 34388, 34389, 34390, 34393, 34394, 34398, 34448, 34483, 34489, 34496, 34508, 34510, 34535, 34536, 34575, 34577, 34582, 34585, 34589, 34594, 34596, 34600, 34601, 34602, 34607, 34611, 34612, 34616, 34621, 34624, 34626, 34628, and 34637: Applications for Automatic Market Entry (Memo 8537, BPDA, OGC).

18. Docket 34395: Amend certificates of charter air carriers to add authority to engage in transportation of mail (Memo 4395-J, BPDA).

19. Docket 34404: National's notice of intent to suspend service at Daytona Beach, Florida, under Section 401(j)(1). (Memo 8533, BPDA, OCCR).

20. Dockets 34530 and 34531: Piedmont Aviation's request for an exemption from section 401(j)(2) to allow suspension of service in 27 markets as of March 1, 1979 rather than the full 60 days as required; Piedmont 401(j)(2) Notice of Intent to Suspend Service (Memo 8538, BPDA, OCCR).

21. Docket 34509; Piedmont's notice of intent to suspend service at Greenville-Spartanburg, South Carolina, under section 401(j)(1) (Memo 8534, BPDA, OCCR).

22. Dockets 34203 and 34666: Allegheny's Notice to Terminate Service at Liberty/Monticello; Ransome's Notice to Terminate Service at Liberty/Monticello (Memo 8535, BPDA, OCCR).

23. Docket 29836, Agreement CAB 26159-A1: Application of ATA for prior approval of an amendatory agreement for the exchange of dishonored check data (Memo 8536, BPDA, BCP).

24. Dockets 30313 and 30675: Air Midwest Subsidy Rates, Order to Show Cause why proposed rates are not fair and reasonable for past period from November 14, 1976, through June 30, 1978, and future annual periods effective July 1, 1978 (BPDA).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, (202) 673-5068.

[S-391-79 Filed 2-26-79; 9:46 am]

[6712-01-M]

6

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Wednesday, February 28, 1979.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item No. and Subject

General—1—Report and Order in Docket 20790, establishing a single system of identification for all radio-frequency devices covered under the equipment authorization program.

General—2—Delegation of authority to the Executive Director (with concurrence by the General Counsel) to act on requests by other federal agencies for disclosure of information submitted to the Commission in confidence under the Freedom of Information rules.

Safety and Special Radio Services—1—Amendment of Part 97 to extend the grace period for renewal of an expired Amateur Radio Service operator license.

Disposition of Petitions for Rule Making.

Amendment of Part 83 to implement an Inter-Governmental Maritime Consultative Organization's Resolution pertaining to the Safety of Life at Sea Convention, and Petition for the continued use of A3 emission in the Maritime Service.

Common Carrier—1—Continental Telephone Petition for Order Prohibiting Expansion of Execunet.

Cable Television—1—Petition for Special Relief, filed by Television Broadcast Station KRTV Great Falls, Montana.

Assignment and Transfer—1—Request for issuance of a tax certificate in connection with the sale of AM station KKTT, Los Angeles, California, and FM station KUTE, Glendale, California, et al.

Assignment and Transfer—2—Application for transfer of control of Scripps-Hagadone Newspaper parent licensee of station KVNI, Coeur d' Alene, Idaho from Scripps League Newspapers, Inc. to Duane B. Hagadone; and Request for waiver of Section 73.35(a) of the Commission's Multiple Ownership Rules.

Renewal—1—Application for renewal of license for Bairdland Broadcasting, Inc., Radio Station KCHS, Truth or Consequences, New Mexico.

Renewal—2—Petition to deny filed by Paterson Coalition for Media Change against the pending broadcast license renewal applications of WPAT and WPAT-FM, Paterson, New Jersey.

Renewal—3—Petition filed by the St. Louis Broadcast Coalition seeking reconsideration of Commission Orders in Newhouse Broadcasting Corporation, KSD/KSD-TV, Inc., Newhouse Broadcasting Corporation, et al. and letter of January 22, 1979 withdrawing the petition for reconsideration as it pertains to KSD (AM), contingent upon the approval and consumation of the assignment of KSD (AM) to Combined Communication Corporation, Inc.

Aural—1—"Request for Waiver of Section 73.35(a) of the Commission's Rules" filed by WREL, Inc., WREL, Lexington, Virginia, in conjunction with an application to relocate its antenna transmitter site (File No. BMP-780814 AW).

Aural—2—Applications for noncommercial educational FM broadcast construction permits and requests for waiver of Section 73.509 of the rules filed by St. Michaels College, WWPV-FM, Colchester, Vermont and Board of Education, Greece Central School District, WGMC, Greece, New York.

Television—1—Request for waiver of Section 73.653(b) of the Rules to permit separate operation of TV aural and visual transmitters.

Television—2—Application of Arkansas ETV Commission for CP for new noncommercial educational TV station on channel *6, Mountain View, Arkansas, et al.

Complaints and Compliance—1—Response of the licensee of KIFW (AM) and KIFW-TV, Sitka, Alaska, to the Notice of Apparent Liability for Forfeiture adopted by the Commission September 22, 1978.

Additional information concerning this meeting may be obtained from the FCC Public Information Office, telephone number (202) 632-7260.

Issued: February 26, 1979.

[S-397-79 Filed 2-26-79; 2:48 pm]

[6712-01-M]

7

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Wednesday, February 28, 1979.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Closed Commission meeting.

MATTERS TO BE CONSIDERED:

Agenda Item No., and Subject

Hearing—1—Draft Decision in the Homewood-Birmingham, Alabama, UHF comparative television proceeding, Docket Nos. 15461 and 16761.

Complaints and Compliance—1—Inquiry into the operation of TV Station KBSA, Guasti, California, licensed to Broadcasting Service of America, Inc.; and Application for the voluntary assignment of license of television station KBSA, Guasti, California from Broadcasting Service of America, Inc., to Metropolitan Broadcasting Company (BALCT-647).

Additional information concerning this meeting may be obtained from the FCC Public Information Office, telephone number (202) 632-7260.

Issued: February 26, 1979.

[S-398-79 Filed 2-26-79; 2:48 pm]

[6210-01-M]

8

FEDERAL RESERVE SYSTEM (BOARD OF GOVERNORS)

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (44 FR 11030, February 26, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2:30 p.m., Wednesday, February 28, 1979.

CHANGES IN THE MEETING: Addition of the following open items to the meeting:

1. Program to improve Federal Reserve automated clearinghouse services.
2. Proposed procedures regarding access policy for Federal Reserve member banks who are not members of their local automated clearinghoues associations.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board: (202) 452-2304.

Dated: February 23, 1979.

THEODORE E. ALLISON,
Secretary of the Board.

[S-392-79 Filed 2-26-79; 9:46 am]

[6210-01-M]

9

FEDERAL RESERVE SYSTEM (BOARD OF GOVERNORS)

TIME AND DATE: 10 a.m., Friday, March 2, 1979.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED: Any items, that due to time constraints, were not resolved at the open meeting announced for Wednesday, February 28, 1979.

NOTE.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

Dated: February 23, 1979.

THEODORE E. ALLISON,
Secretary of the Board.

[S-393-79 Filed 2-26-79; 9:46 am]

[7020-02-M]

10

[USITC SE-79-11]

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Thursday, March 8, 1979.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary:
a. Carbon steel plate from Taiwan (Docket No. 560).
5. Any items left over from previous agenda.

Portions closed to the public:

6. Status report on Investigation 332-101 (MTN Study), if necessary.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary, 202-523-0161.

[S-394-79 Filed 2-26-79; 11:09 am]

[7550-01-M]

11

NATIONAL MEDIATION BOARD

TIME AND DATE: 2 p.m., Wednesday, March 7, 1979.

PLACE: Board hearing room, 8th floor, 1425 K St. NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

(1) Ratification of Board actions taken by notation voting during the month of February 1979.

(2) Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Secretary's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Rowland K. Quinn, Jr., Executive Secretary, 202-523-5920.

(Date of Notice: February 26, 1979.)

[S-395-79 Filed 2-26-79; 12:43 pm]

[4910-58-M]

12

NATIONAL TRANSPORTATION SAFETY BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: S-370-79, to be published February 27, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Wednesday, February 28, 1979, 2 p.m. [NM-79-8]

CHANGE IN MEETING: A majority of the Board has determined by recorded vote that the business of the Board requires revising the agenda of this meeting and that no earlier announcement was possible. The agenda as now revised is set forth below.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Briefing* by the Federal Highway Administration on its Safety Programs.
2. *Briefing* by Staff on the current status of Federal Aviation Administration's RENOT issued on June 26, 1978, regarding air traffic control procedures.
3. *Letter* to Federal Aviation Administration on notice of proposed rulemaking on "Controlled Visual Flight" rules.

CONTACT PERSON FOR MORE INFORMATION:

Sharon Flemming, 202-472-6022.

[S-399-79 Filed 2-26-79; 3:46 pm]

[7710-12-M]

13

POSTAL SERVICE (BOARD OF GOVERNORS)

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 9:00 A.M. on Tuesday, March 6, 1979, in the Benjamin Franklin Room, 11th Floor, Postal Service Headquarters, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260. The meeting is open to the public. The Board expects to discuss the matters stated in the Agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245-4632.

AGENDA

1. Minutes of the Previous Meeting.

2. Remarks of the Postmaster General.
(In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the members of miscellaneous current developments concerning the Postal Service. He might report, for example, the occurrence of a recent Congressional hearing, the appointment or assignment of a key official, or the effect on postal operations of unusual weather or a major strike in the transportation industry. Nothing that requires a decision by the Board is brought up under this item.)

3. Report on proposed annual testimony to legislative committees.
(Mr. Horgan, Assistant Postmaster General, Government Relations Department, will provide an account of anticipated Postal Service testimony before the cognizant Congressional Committees in the light of the requirement enacted by the Postal Reorganization Act Amendments of 1976 that the Postal Service should appear by not later than March 15 of each year before these Committees "to submit information which any such committee considers necessary to determine the amount of funds to be appropriated for the operation of the Postal Service, and to present testimony and respond to questions with respect to [the Postal Service's budget and Annual Comprehensive Statement]."

4. Report on Law Department.
(Mr. Cox, General Counsel, will brief the Board on Developments in the Law Department.)

5. Capital Investment Project:
New General Mail Facility and Vehicle Maintenance Facility for Lafayette, Louisiana.

(Mr. Biglin, Senior Assistant Postmaster General, will present a proposal to increase the amount which the Board authorized for investment at its October 4, 1977, meeting by approximately 9%.)

6. Recommended Decision of the Postal Rate Commission on the Domestic Mail Classification Schedule.

(The Governors will consider the Recommended Decision of November 29, 1978, concerning the Proper Scope and Extent of the Mail Classification Schedule (Commission Docket No. MC76-5).)

LOUIS A. COX,
Secretary.

[S-396-79 Filed 2-26-79; 1:58 pm]

federal register

WEDNESDAY, FEBRUARY 28, 1979

PART II

OFFICE OF MANAGEMENT AND BUDGET

■

IMPROVING GOVERNMENT REGULATIONS

Implementation of Executive Order 12044

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

IMPROVING GOVERNMENT REGULATIONS

Implementation of Executive Order 12044; Guidelines

FEBRUARY 15, 1979.

AGENCY: Office of Management and Budget.

ACTION: Publication of guidelines for implementing Executive Order 12044.

SUMMARY: OMB is publishing its approved guidelines for implementing Executive Order 12044, Improving Government Regulations. Included also is a summary of the comments received on these guidelines as they were proposed in the May 22, 1978 FEDERAL REGISTER. In response to those comments, attached is a listing of current OMB bulletins and circulars.

ADDRESS AND CONTACT FOR FURTHER INFORMATION:

Ms. Velma Baldwin, Assistant to the Director for Administration, Room 243, Executive Office Building, Washington, D.C. 20503, 202-395-4790.

OFFICE OF MANAGEMENT AND BUDGET RESPONSE TO PUBLIC COMMENT FOR IMPLEMENTING EXECUTIVE ORDER 12044, IMPROVING GOVERNMENT REGULATIONS

The Office of Management and Budget received seven public comments on its plan to implement Executive Order 12044, from two state government officials, two corporations, one industry association, one public interest group and one individual.

GENERAL COMMENTS ON THE EXECUTIVE ORDER

Several respondents commented on the Order itself, generally supporting the intent of the Order. One indicated support for the basic rationale but questioned the degree of change that can be achieved.

Concerned that agencies were going beyond legislative requirements in their regulations, one respondent encouraged OMB to monitor and review agency attempts to consolidate and coordinate their regulatory actions.

The point was also raised that reviewers of agency regulatory analyses should be independent of the drafters. OMB notes that the order requires these analyses to be made available to the public and that members of the public are given the opportunity to comment on the adequacy of the analysis.

COMMENTS RELATING TO OMB'S PLAN TO IMPLEMENT THE ORDER

Three respondents supported OMB's plan. One particularly liked the requirement for public participation in the development of those circulars which affect the public. Another expressed the hope that OMB's coverage of circulars, which are not regulations but which can have the effect of regulations, would set an example for other agencies to follow.

One state official noted that many publications refer to OMB circulars and bulletins by number rather than title, making it difficult to identify the subject area or to track them in standard indexes. Two other respondents specifically asked to have a list of current bulletins and circulars published. OMB has, in the past, published the notice of availability of such a list in the Freedom of Information Indexes in the FEDERAL REGISTER. A current title and subject index is published as an addendum to this report. In the future, whenever the list is updated and sent to the departments and agencies, a copy will be published in the FEDERAL REGISTER and other appropriate publications. Copies will continue to be available from the Office of Management and Budget, Publications Unit, Washington, D.C. 20503 (202-395-4660).

No comments were received on the specific provisions of the report. The draft report is, therefore, being published as the final report.

IMPLEMENTATION OF EXECUTIVE ORDER 12044, BY THE OFFICE OF MANAGEMENT AND BUDGET

INTRODUCTION AND COVERAGE

As a staff agency to the President, the Office of Management and Budget has a special obligation in complying with the spirit and intent of President Carter's Executive Order 12044 on Improving Government Regulations.

The Office of Management and Budget is not normally thought of as a regulatory agency. Although it is true that OMB ordinarily does not issue rules and regulations directly requiring compliance by members of the public, it does issue directives that are applicable to all executive agencies. When agencies, in turn, apply these directives, the effect on the public is often the same as regulations. Therefore, OMB must be sensitive to the ultimate effect of its requirements on the public.

The intent of the Order is to make government requirements more understandable and more open to public participation. In the past, OMB did not seek public comment on its draft instructions to the agencies. Over the years, many of OMB's directives (circulars and bulletins) have taken on increasing importance for grant-in-aid programs, contracting procedures, State and local consultation, reports clearance, and paperwork reduction. In recent years, some of these circulars have been published in final form in the FEDERAL REGISTER.

In keeping with the President's desire to expand opportunities for public participation in the regulatory process, OMB will now undertake a systematic effort to increase public participation in the development of circulars and bulletins that are likely to have a significant impact on the public, on State and local governments, and on public and private institutions.

The process by which OMB will develop new circulars and bulletins is described in this report. These procedures will be incorporated into a new system of directives currently being developed for OMB.

DEVELOPMENT OF NEW OMB DIRECTIVES

OMB generally issues two types of directives—bulletins and circulars. Bulletins are short-term instructions to the agencies that require one-time action or are of a temporary nature. Circulars are long-term instructions to the agencies that remain in effect until rescinded. These OMB directives govern a wide range of agency requirements including administrative requirements for grants and agreements with universities, hospitals, and other nonprofit organizations; policies for acquiring commercial or industrial products and services for government use; clearance of agency requests for information from the public; user charges; coordination of proposed Federal and federally-assisted development programs and projects; guidelines for the use of consulting services, etc.

For all new and revised directives, OMB adopts as its general policy, the principles stated in section 1 of Executive Order 12044. The specific requirements of section 2 will apply to all directives which are likely to affect:

(1) The existing procedures by which State or local governments contribute to or participate in the development of Federal policy;

(2) The nature and scope of information collected by Federal agencies from non-Federal respondents;

(3) The nature and scope of information provided by agencies of the Federal Government under the Privacy Act;

(4) The standards by which agencies establish requirements associated with grants, contracts, or other forms of financial assistance.

Those bulletins and circulars that outline procedures to be followed by departments and agencies for the President's budget and legislative program will not be covered. In addition,

OMB directives on procurement are excluded from coverage. Procurement regulations are excluded by section 6 of the Order but are developed with full public participation under the provisions of the Office of Federal Procurement Policy Act, Pub. L. 93-400.

AGENDA AND OVERSIGHT

Twice each year OMB will publish an agenda of upcoming action on OMB directives covered by Executive Order 12044. The agenda will include both new directives and existing directives under review. A schedule of publication dates will be published in the FEDERAL REGISTER on the first Monday in October. Before any action can be included on an agenda (or supplement if necessary), the responsible Associate Director will be required to notify the Director of work begun on new or revised directives. This notification will include:

(1) A statement of the problem addressed by the directive and the means by which this problem was brought to the attention of OMB.

(2) The legal basis for issuance of the directive and the name of a knowledgeable agency official.

(3) A statement as to whether or not a regulatory analysis will be required.

(4) A statement of the issues involved and the alternatives being explored.

(5) A plan for public involvement and the target dates for steps in the development process.

A copy of this notification will also be sent to the Assistant to the Director for Administration and the General Counsel. The Assistant to the Director for Administration will compile the agenda of upcoming agency actions from the information required above and will include on the agenda the status of actions listed on the previous agenda. Each agenda will be approved by the Director and sent to the FEDERAL REGISTER for publication.

PUBLIC PARTICIPATION

To the fullest extent possible, OMB will extend to the public an opportunity to participate in the development of OMB directives. OMB will consult with and notify affected parties through the FEDERAL REGISTER and other publications.

To implement the President's March 23, 1978, instruction to the agencies, State and local governments or their representatives may request the Deputy Associate Director for Intergovernmental Affairs to develop a specific plan for appropriate intergovernmental consultation.

When the draft directive is published in the FEDERAL REGISTER, it shall be accompanied by a brief description of the intergovernmental consultations conducted, the suggestions received and the proposed response to these suggestions.

REGULATORY ANALYSIS

Executive Order 12044 requires that a regulatory analysis be prepared whenever there are major economic effects resulting from an agency's regulatory actions. OMB will prepare an analysis if: (a) the directive has an annual effect on the economy of $50 million or more, or (b) it will result in a major increase in costs or prices for individual industries, public and private institutions, levels of government, or geographic regions. In addition, at the discretion of the Director of OMB, a regulatory analysis may be conducted on any new or revised OMB directive.

If one of these criteria is met, a regulatory analysis will be prepared and made available to the public at the time the directive is published for comment. A final analysis will be prepared along with the final directive and made available to the public. Such an analysis shall contain a statement of the problem, a description of the major alternative ways of dealing with the problem, and analysis of the economic consequences of each of these alternatives and a detailed explanation of the reasons for choosing one alternative over the other.

OMB directives covered by the Executive Order will be published for a 60-day comment period. If this is not possible, the directives will be accompanied by a brief statement of the need for a shorter time period.

REVIEW OF EXISTING REQUIREMENTS

OMB is beginning its review of existing requirements by reviewing Circulars A-40 (Clearance of plans and report forms under the Federal Reports Act), A-106 (Reporting requirements in connection with the prevention, control, and abatement of environmental pollution at existing Federal facilities), A-108 (Responsibilities for the maintenance of records about individuals by Federal agencies), A-102 (Uniform administrative requirements for grants-in-aid to State and local governments), A-110 (Uniform administrative requirements for grants and other agreements with institutions of higher education, hospitals, and other nonprofit organizations), and Federal Management Circulars 73-8 (Cost principles for educational institutions), and 74-4 (Cost principles applicable to grants and contracts with State and local governments).

In the future, OMB will review periodically its existing requirements:

(1) In response to agency and public comment;

(2) When conditions affecting the requirements change; and

(3) When there is a need to simplify or clarify the requirements.

Members of the public will be informed of OMB reviews of existing directives through the semiannual agenda and other public notices.

JAMES T. MCINTYRE, Jr.,
Director.

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OFFICE OF MANAGEMENT AND BUDGET CIRCULARS AND FEDERAL MANAGEMENT CIRCULARS UNDER OMB JURISDICTION

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OFFICE OF MANAGEMENT AND BUDGET CIRCULARS

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	Transmittal Memorandum No. 1	03/23/67
A-19 (Revised)	Legislative coordination and clearance	07/31/72
A-20 (Revised)	System of control over the use of foreign currencies	05/21/66
A-25	User charges	09/23/59
	Transmittal Memorandum No. 1	10/22/63
	Transmittal Memorandum No. 2	04/16/74
A-30 (Revised)*	Federal Employees Uniform Allowance Act	03/20/66
A-31 (Revised)	Distribution of appropriations and other budget authority made to the President.	02/22/72
	Transmittal Memorandum No. 1	07/20/73
A-34 (Revised)	Instructions on budget execution	07/15/76
	Transmittal Memorandum No. 7	07/15/76
A-36 (Revised)	Deferred pay days	10/25/48
A-40 (Revised)	Management of Federal reporting requirements	05/03/73
	Transmittal Memorandum No. 1	02/10/76
	Transmittal Memorandum No. 2	11/05/76
A-44 (Revised)	Management review and improvement program	05/24/72
	Transmittal Memorandum No. 1	07/17/73
A-45 (Revised)	Policy governing charges for rental quarters and related facilities.	10/31/64
	Transmittal Memorandum No, 1	03/03/68
	Transmittal Memorandum No. 2	10/30/74
A-48 (Revised)**	Reponsibilities for planning training investments and regulations governing reductions in payments to employees.	09/23/71
A-49	Use of management and operating contracts	02/25/59
A-50 (Revised)	Executive branch action on General Accounting Office reports.	10/28/71
A-51 (Revised)	Planning and conduct of the United States program in Antarctica.	03/04/71
A-60	Criteria for decentralizing Federal activities from the National Capital region.	07/18/63
A-62	Policies and procedures for the coordination of Federal meteorological services.	11/13/63
A-63 (Revised)	Advisory Committee Management	03/27/74
	Transmittal Memorandum No. 1	07/19/74
	Transmittal Memorandum No. 2	07/19/74
	Transmittal Memorandum No. 3	09/03/75
	Transmittal Memorandum No. 4	02/05/76
	Transmittal Memorandum No. 5	03/07/77
A-64	Position management systems and employment ceilings	06/28/65
	Transmittal Memorandum No. 1	01/02/70
A-67	Coordination of Federal activities in the acquisition of certain water data.	03/28/64
A-70	Legislation on Federal credit programs	02/01/65
A-71	Responsibilities for the administration and management of automatic data processing activities.	03/06/65
	Transmittal Memorandum No. 1	07/27/78
A-72	Federal Employees Occupational Health Service Programs	06/18/65
A-73 (Revised)	Audit of Federal Operations and Programs	03/15/78
A-76 (Revised)	Policies for acquiring commercial or industrial products and services for Government use.	03/30/67
	Transmittal Memorandum No. 1	03/30/67
	Transmittal Memorandum No. 2	10/18/76
	Transmittal Memorandum No. 3	06/13/77

No.	Subject	Date
A-84	Reporting of Federal outlays by geographic location	06/29/67
	Transmittal Memorandum No. 1	08/30/67
	Transmittal Memorandum No. 2	03/26/69
A-89 (Revised)	Catalog of Federal Domestic Assistance	12/31/70
A-90	Cooperating with State and local governments to coordinate and improve information systems.	09/21/68
	Transmittal Memorandum No. 1	09/07/76
A-94 (Revised)	Discount rates to be used in evaluating time-distributed costs and benefits.	03/27/72
A-95 (Revised)	Evaluation, review, and coordination of Federal and federally assisted programs and projects.	01/02/76
A-97	Rules and regulations permitting Federal agencies to provide specialized or technical services to State and local units of governments under Title III of the Intergovernmental Cooperation Act of 1968.	08/29/69
A-99	Direction and control of litigation	06/30/70
A-102	Uniform administrative requirements for grants-in-aid to State and local governments.	08/24/77
A-104	Comparative cost analysis for decisions to lease or purchase general purpose real property.	06/14/72
A-105	Standard Federal Regions	04/04/74
A-106	Reporting Requirements in Connection with the Prevention, Control, and Abatement of Environmental Pollution at Existing Federal Facilities.	12/31/74
A-108	Responsibilities for the maintenance of records about individuals by Federal agencies.	07/01/75
	Transmittal Memorandum No. 1	09/30/75
	Transmittal Memorandum No. 2	03/25/76
	Transmittal Memorandum No. 3	05/17/76
	Transmittal Memorandum No. 4	01/31/78
	Transmittal Memorandum No. 5	08/03/78
A-109	Major Systems Acquisitions	04/05/76
A-110	Uniform adminstrative requirements for grants and other agreements with institutions of higher education, hospitals, and other nonprofit organizations.	07/01/76
A-111	Jointly funded assistance to State and local governments and nonprofit organizations.	07/06/76
A-112	Monitoring Federal Outlays	09/01/76
A-113	Preparation and Submission of Managment Plans, General Information and Policies, General Requirements.	11/17/76
	Transmittal Memorandum No. 1	03/03/77
A-114	Management of Federal Audiovisual Activities	04/13/78
	Transmittal Memorandum No. 1	08/30/78
A-115	Zero-Base Budgeting	05/05/78
A-116	Agency Preparation of Urban Community Impact Analyses	08/16/78

* Executive Order 11609 delegated to the Civil Service Commission the functions in A-30, effective July 22, 1971. OMB will rescind this Circular when CSC issues superseding instructions.

** In accordance with Executive Order 11609, the General Services Administration assumed responsibility for the functions in OMB Circular A-48 (paragraph 3 only) (GSA Federal Travel Regulation, FPMR 101.7, May 1973).

* Executive Order 11893, dated December 31, 1975, transferrred responsibility for certain Federal Management Circulars from the Federal Supply Service of GSA to OMB. The following are the current OMB Circulars in this series.

No.	Subject	Date
FMC 73-3	Cost Sharing on Federal Research	12/04/73
FMC 73-6	Coordinating indirect cost rates and audit at educational institutions.	12/19/73
FMC 73-7	Administration of college and university research gramts	12/19/73
FMC74-3	Cost principles for educational institutions	12/19/73
FMC 74-3	Governmentwide procedures for processing preaward protests against contract award.	08/29/74
FMC 74-4	Cost principles applicable to grants and contracts with State and local governments.	07/18/74
FMC 74-6	Operational effectiveness of decentralized purchasing activities	08/21/74
FMC 75-1	Ensuring consideration of users' experience with Federal agency supply support systems.	02/07/75
FMC 75-2	Compatible land uses at Federal Airfields	09/03/75

[FR Doc. 79-5629 Filed 2-27-79; 8:45 am]

[3110-01-M]

IMPROVING GOVERNMENT REGULATIONS

OHB Directives Covered by Executive Order 12044; Semi-Annual Agenda of Upcoming Action

FEBRUARY 15, 1979.

AGENCY: Office of Management and Budget.

ACTION: Publication of semi-annual agenda of regulations.

SUMMARY: The Office of Management and Budget is publishing the semi-annual agenda of upcoming action on OMB directives covered by Executive Order 12044, Improving Government Regulations. This action is in accordance with OMB's internal guidelines for implementing Executive Order 12044, as published in the FEDERAL REGISTER on February 28, 1979 elsewhere in this Part II of the FEDERAL REGISTER.

ADDRESS AND CONTACT FOR FURTHER INFORMATION:

See agency contact person listed for each entry in the agenda, c/o Office of Management and Budget, 726 Jackson Place, NW., Washington, D.C. 20503.

JAMES T. MCINTYRE, Jr.,
Director.

OFFICE OF MANAGEMENT AND BUDGET AGENDA FOR UPCOMING ACTIONS ON OMB DIRECTIVES

Directive under development	Opportunity for public participation	Anticipated completion date	Reason for review and major issues
Revision of Federal Management Circular 73-8, "Cost principles for educational institutions". *Contact Person:* John J. Lordan, Financial Management Branch/BRD, 395-6823.	1. Draft of revised Circular published in FEDERAL REGISTER March 10, 1978. 2. Approximately 300 comment letters received from Members of Congress, Federal agencies, university administrators, faculty members, professional associations, and members of the public. 3. During December special briefings on a final draft of the Circular were held with university representatives, Federal agencies, and congressional staff members. These meetings were opened to the public.	Revised Circular expected to be issued in January 1979.	1. Circular is being revised at the urging of Congress to clarify existing cost principles in order to "bring spiraling indirect cost rates under control" and on recommendations for changes suggested by the Department of Health, Education, and Welfare. 2. Major issues—adequate documentation of personnel costs; paperwork burden imposed by accountability requirements; methods of allocating indirect costs.
Revision of Circular A-40, Management of Federal Reporting Requirements. This Circular sets forth the requirements for seeking OMB approval for reporting and recordkeeping requirements. *Contact Person:* Stanley Morris, Regulatory Policy and Reports Management, 395-5867.	1. Comments on issues may be received at any time. 2. Publication of proposed circular, March 1979.	June 1979	Circular A-40 is being reviewed in order to reorganize, update, and clarify the existing circular. The circular is based on the Federal Reports Act of 1942. 1. Should guidelines of President's reporting burden reduction program or significant portions of them be incorporated into the circular? 2. Should circular be limited in subject matter to public reporting? 3. Are all terms defined? Are definitions clear?
Revision of Circular No. A-108, Responsibilities for the maintenance of records about individuals by Federal agencies. *Contact Person:* Leslie Greenspan, Information Systems Policy, 395-3785.	1. Comments on issues may be submitted at any time. 2. Proposed revisions will be published in the FEDERAL REGISTER and circulated to interested parties for comment.	July 1979	Circular No. A-108 was issued pursuant to the Privacy Act of 1974, for which OMB has oversight responsibility. This review is part of the Presidential Privacy Initiative, undertaken in response to the recommendations of the Privacy Protective Study Commission. Specific issues to be reviewed are: 1. Extension of the applicable provisions of the Act to certain personal data systems operated by certain recipients of discretionary Federal grants. 2. Strengthening the administration of the routine use provision of the Privacy Act. 3. Assignment of Privacy Act oversight and development of new information systems to one office in each department and agency. 4. Establishment of guidelines on the responsibility, training, and appointment of the system managers required by the Act. 5. Adoption of mechanisms to improve oversight of the privacy implications of new Federal information systems at an early stage in the planning process; and 6. Promulgation of baseline standards for Federal regulations which require private sector recordkeepers to report personal information about their clients, customers, or employees to the government. It should be noted that OMB carries out its Privacy Act oversight through guidelines as well as Circular A-108. The issues listed above may be addressed in guidelines rather than Circular A-108. Public comment will be sought on any revisions or additions to the guidelines.
Revision of Circular A-106, reporting Requirements in Connection with Federal Compliance with Pollution Control Standards. This circular sets forth the procedures to be followed by Federal agencies in carrying out the provision of Sections 1-4 and 1-5 of Executive Order No. 12088 pertaining to the control of pollution from Federal facilities. *Contact Person:* James Lounsbury, Natural Resources, 395-6827	1. Comments may be received at any time. 2. Publication of proposed circular, February 1979.	May 1979	Circular A-106 is being reviewed to clarify the procedures that must be followed by Federal agencies in controlling pollution at Federal facilities pursuant to Executive Order 12088. 1. Are the requirements for agency information on pollution control clear? 2. Does the schedule for agency reporting allow sufficient time for project review? 3. Does the schedule for reporting insure that all projects that are needed will be included? 4. Are the information requirements for EPA's evaluation of agency proposals clear and adequate?
Revision of OMB Circular No. A-102, "Uniform administrative requirements for grants-in-aid to State and local governments." *Contact Person:* John J. Lordan, Financial Management Branch/BRD, 395-6823.	Proposed revision was published for comment in the FEDERAL REGISTER on October 18, 1978.	May 1979	1. Proposed revision will bring the circular into line with Treasury requirements. 2. Major issue—Whether to reimburse recipients only for amounts which have actually been paid to contractors.

OFFICE OF MANAGEMENT AND BUDGET AGENDA FOR UPCOMING ACTIONS ON OMB DIRECTIVES—Continued

Directive under development	Opportunity for public participation	Anticipated completion date	Reason for review and major issues
Revision of OMB Circular No. A-102, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments" to call for coordinated audits, and to incorporate a standard audit guide. *Contact Person:* John J. Lordan, Financial Management Branch/BRD, 395-6823.	1. Comment by Federal agencies requested on December 6, 1978. 2. Publication for comment in the FEDERAL REGISTER expected in April 1979.	May 1979.....	1. Continuation of the long-term goal of grant standardization, and placing greater reliance on State and local governments. 2. Major issues—One guide would replace almost one hundred now in use; emphasis on total audit of an organization, rather than grant by grant audits.
Revision of Procurement Standards attachment to OMB Circular No. A-102, "Uniform Administrative Requirements for Grants-in-Aid to State and local Governments. *Contact Person:* Jack Nadol, Office of Federal Procurement Policy, 395-6166.	1. Public meeting held on January 16, 1979. 2. Published for comment in the FEDERAL REGISTER on December 6, 1978.	May 1979.....	1. Attachment being revised to reduce administrative cost, paperwork, and other factors which contribute to inefficiency and delay in implementing programs. 2. Major issues—Rescinds non-conforming provisions of current agency subordinate regulations; creates a grantee procurement review certification program to reduce Federal agency review of individual procurement.
Revision of Federal Management Circular No. 74-4, "Cost principles applicable to grants and contracts with State and local governments." *Contact Person:* John J. Lordan, Financial Management Branch/BRD, 395-6823.	1. Proposed revision concerning expenses of officials has been circulated for comment to all the major public interest groups. 2. Extensive discussions on the interest issue have taken place with State and local officials and representatives of public interest groups. 3. Input being recieved from 100 largest cities and counties and all the States concerning fiscal impact of interest issue.	April 1979.....	The circular is being revised at the request of State, local and Federal officials. Major issues—1. Whether to recognize travel costs of local legislators and chief executives as an expense when their work directly benefits grant programs; 2. Whether to recognize interest incurred in borrowing to construct building site as a reimbursable cost.
Revision of OMB Circulars No. A-102 and A-110 to include a set of standard legal assurances for grants to State and local governments, universities, hospitals, and other non-profit organizations. *Contact Person:* John J. Lordan, Financial Management Branch/BRD, 395-6823.	Publication for comment in the FEDERAL REGISTER expected in February 1979.	May 1979.....	1. Up-date of assurances in OMB Circular No. A-102 is needed because of the changes that have taken place in Executive Orders and Acts of Congress. Inclusion of standard assurances in OMB Circular No. A-110 will further the goal of standardization and simplification for grantees. 2. Major issues—Standardization of assurance language, assurance formats and forms.
A new OMB circular covering "Principles for determining costs of grants and contracts with certain nonprofit organizations." *Contact Person:* John J. Lordan, Financial Management Branch/BRD, 395-6823.	1. Proposed circular was published for comment in the FEDERAL REGISTER on April 26, 1977. 2. Recirculated to Federal agencies and interested parties in October 1978.	February 1979.	1. Proposed circular was developed to assist non-profit agencies by providing single set of cost principles as part of Federal effort to standardize and simplify grant procedures 2. Major issues—Methods of allocating indirect costs; uniform set of allowable costs

[FR Doc. 79-5630 Filed 2-27-79; 8:45 am]

federal register

WEDNESDAY, FEBRUARY 28, 1979

PART III

CIVIL AERONAUTICS BOARD

AIRLINE DEREGULATION

Expedited Procedures for Licensing and Rates Cases

[6320-01-M]

CIVIL AERONAUTICS BOARD

[14 CFR Parts 201, 211, 302, 312]

[PDR-54C; Docket No. 32466; Dated: February 15, 1979]

AIRLINE DEREGULATION

Expedited Procedures for Licensing and Rates Cases

AGENCY: Civil Aeronautics Board.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This supplemental notice, undertaken on the Board's own initiative to implement the Airline Deregulation Act of 1978, approved October 24, 1978, and expedite consideration of licensing cases, invites public comment on proposed rules to establish expedited simplified procedures as required by the Deregulation Act for processing applications for new or modified route authority by U.S. and foreign air carriers. The new procedures require the submission of all evidence in written form and would, at the applicant's option, dispense with an oral hearing and an initial or recommended decision by an administrative law judge in most route cases; they are also designed to comply with the recently enacted statutory time deadlines. The rules modify those earlier proposed in PDR-54, 43 Fed. Reg. 19406, May 5, 1978.

DATES: Comments by March 19, 1979. Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

ADDRESSES: Twenty copies of comments should be sent to Docket 32466, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Individuals may submit their views without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT:

Gary J. Edles, Deputy General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, 202-673-5233.

SUPPLEMENTARY INFORMATION:

INTRODUCTION

Last Spring the Board proposed to amend Part 302 of its Procedural Regulations to provide for simplified hearing procedures to be used in some licensing and ratemaking cases. See PDR-54, adopted April 18, 1978, 43 FR 19406, May 5, 1978. Comments from the public were received. The proposal was endorsed, in whole or in part, by three Executive Departments (State, Justice, and Transportation), several members of Congress (Senators Bartlett and Bellmon of Oklahoma, Cannon of Nevada, Kennedy of Massachusetts, Pearson of Kansas, Percy of Illinois, and Ribicoff of Connecticut, and Representatives Moss of California and English of Oklahoma), and two carriers (American Airlines and Frontier Airlines). The proposal was opposed, in whole or in part, by the City and Chamber of Commerce of Houston, Texas, the Administrative Law Section of the American Bar Association and sixteen carriers (Allegheny Airlines, Aloha Airlines, Braniff International, Delta Air Lines, Eastern Air Lines, Frontier Airlines, Hughes Airwest, National Airlines, Ozark Air Lines, Pan American World Airways, Piedmont Airlines, Southern Airways, Trans World Airlines, Western Air Lines, and Wien Air Alaska, jointly, and United Air Lines)[1] Professors Michael Cox and Edwin McManus also offered their views. The most strenuous objections to our proposed rule were the purported failure to comply with the numerous requirements of sections 554, 556, and 557 of the Administrative Procedure Act,[2] and the potential for unfairness to parties resulting from shifting the initial decisional function from administrative law judges to the Board, which would be advised by staff components, including, particularly, those bureaus with responsibility for initiating and advocating Board licensing programs.

Thereafter, on October 24, 1978, the President signed the Airline Deregulation Act of 1978, Pub. L. 95-504, 92 Stat. 1705. That Act has a major impact on our proposal to establish new procedural rules. As a result, in addition to disposing of various matters raised in the comments, we will modify our earlier proposal and allow interested persons additional time to comment on our amended proposal. The Deregulation Act requires that we have new expedited procedural rules in effect no later than April 23, 1979, and we intend to issue a final rule before that.[3a]

THE DEREGULATION ACT

In the Airline Deregulation Act of 1978, the Congress has required us to promulgate rules establishing expedited simplified procedures for disposing of applications under sections 401(d)(1), (2), (3), for the modification or transfer of certificates under sections 401(f), (g) and (h), for the processing of foreign air carrier applications under section 402 and, for the processing of restriction removal applications under section 401(e)(7)(B). The Deregulation Act also expressly eliminates any doubt about the applicability of sections 554, 556, and 557 of the APA by removing the notice and hearing requirement, and public hearing requirement, from sections 401 and 402 of the Federal Aviation Act. Furthermore, in domestic cases we are required to issue certificates of public convenience and necessity if the transportation sought in an application is consistent with the public convenience and necessity; the Act establishes a presumption of consistency, and places the burden of proof (at a high level of proof for administrative proceedings—"preponderence of evidence") on the opponents of any application. These changes, coupled with the new emphasis on competition and the encouragement of entry in the Declaration of Policy, indicate Congress' intention to establish a more liberal attitude toward the grant of domestic certificate applications than existed under the standards of the old Act. Finally, the Act creates a zone of reasonableness for passenger fares. Within this zone the Board may not find a fare unjust or unreasonable simply because the fare is too high or too low, except for decreased fares that the Board finds predatory. The new statute, by the end of 1981, eliminates all regulatory barriers to domestic entry by fit, willing, and able carriers and, by 1983, ends most Board regulation over domestic fares and rates.

The statute has affected our earlier proposal in three principal ways. First,

[1] Frontier's position is somewhat unclear. It was one of fifteen carriers to file joint comments opposing the proposed procedures but, in a separate filing, endorsed the Board's proposal, apart from certain time limits, which it argued were a bit too short.

[2] Sections 554, 556, and 557 of the Administrative Procedure Act (former sections 5, 7, and 8) establish the procedural ground rules for cases of "adjudication required by statute to be determined on the record after opportunity for an agency hearing." Whether sections 554, 556, and 557 apply depends on whether the agency's organic statute specifically requires notice and hearing. See generally *Marathon Oil* v. *EPA*, 564 F.2d 1253, note 25 (9th Cir. 1977), and, more specifically, *Eastern Air Lines* v. *CAB*, 185 F.2d 426 (D.C. Cir. 1950), where the court expressly noted that the provisions of the APA did not come into play since section 416 of the Federal Aviation Act imposed no notice and hearing requirement for route authority granted by exemption. The Administrative Procedure Act establishes no fixed procedures for adjudications (including licensing) not required to be decided after notice and hearing.

[3a] We are attaching staff memoranda prepared by the Office of the General Counsel and the Bureau of Administrative Law Judges. Under standard Board operating procedure these memoranda form a part of the public reading file and are freely available to interested persons. Publication is intended to ensure greater convenience, and a broader audience.

it has eliminated a major argument raised by the comments to our earlier notice that our rules were in conflict with the notice and hearing requirements of the Federal Aviation Act and the Administrative Procedure Act. Second, it has substantially lessened the likelihood that numerous fare cases will be the subject of Board examination in a hearing.[3] Finally, the Act establishes express procedural deadlines for Board action in connection with license applications. Specifically, the Board must, within 90 days after the application is filed, (a) dismiss an application on the merits, (b) set an application for oral hearing, or (c) begin to make a determination of the merits of the application under the simplified procedures authorized by statute, (the Board is not authorized to dismiss applications or removal of restrictions under section 401(e)(7)(B) but must, within 60 days, set the application for oral hearing or expedited processing. If the Board determines that an application should be set for oral hearing, an initial or recommended decision by an administrative law judge must be issued within 150 days of such determination. In extraordinary circumstances, the Board may allow a judge to postpone an initial or recommended decision for a period not to exceed 30 days. The Board must make its final determination with respect to the application not later that 90 days after the initial or recommended decision is issued. If the Board begins to make a determination with respect to an application under the simplified procedures established by the Board in regulations issued in conformity with the Act, it is required to reach a final decision with 180 days.

We believe that the Deregulation Act, coupled with recent changes in Board licensing policy, now make it possible to dispose of most licensing applications under the new expedited simplified procedures. In accordance with section 21 of the Deregulations Act, we find that use of expedited, simplified procedures for the consideration of most applications filed under sections 401 or 402 of the Act is in the public interest. As noted above, the statute now establishes a presumption in favor of grant of applications for domestic authority and places the burden on opponents to demonstrate that grant of the application is not consistent with the public convenience and necessity. As a matter of economic regulatory policy, we had concluded, even prior to passage of the Act, that the grant of multiple permissive awards to all qualified applicants is the approach that generally produces the greatest transportation benefits. These matters are discussed in more detail in our recent opinions in *Improved Authority to Wichita Case et al* and *Iowa/Illinois-Atlanta Route Proceeding*, Orders 78-12-106 December 14, 1978, and 78-12-35, December 7, 1978. The statutory standards for decision in international cases are unchanged. Current United States international aviation policy nonetheless advocates "a system of international air transportation that places its principal reliance on actual and potential competition to determine the variety, quality and price of air service,"[4] and the Board, with the approval of the President, has begun to liberalize entry even in international markets. See the *Philadelphia-Bermuda Nonstop Proceeding*, Order 78-12-192, approved by the President December 28, 1978.[5] In light of this statutory presumption, and as a result of the Board's evolving economic regulatory policy, we have been inclined, more and more, toward granting all applications for authority. While we have not adopted a policy of multiple entry on a nationwide or worldwide basis, it is clear that our changing approach has nonetheless reduced the litigable issues and minimized the need for extensive evidentiary submissions and cross-examination in many cases, including international cases. Historically, the issue of need for service has not occupied the detailed attention of the administrative law judges or the Board; the focus of most of the evidentiary hearings, as well as the judges' decisions, was on the issue of carrier selection, and the evidentiary predicates necessary to sustain an award to one among several applicants. Given the trend toward elimination of the issue of carrier selection in many cases, the judges and the Board have increasingly been turning their attention to questions of statutory construction, policy, or discretion—questions which ordinarily do not require detailed evidentiary examination. Even where carrier selection remains an issue, however, we have experience to show that the Board can reach reasonable determinations with procedures far less complicated that employed traditionally.

Applications by foreign carriers for new or amended permits have likewise been increasingly the subject of expedited, non-trial procedures. In view of these developments it is our judgment that most certificate and permit applications can be processed under the expedited simplified procedures authorized by the Deregulation Act. U.S. carrier applicants seeking domestic authority under the expedited procedures should recognize, however, that we plan ordinarily to consolidate all applications for comparable authority and grant them all in the absence of the statutorily required showing of inconsistency with the public convenience and necessity.

We will not, at this time, add fare and rates cases to the category of proceedings subject to expedited, simplified procedures. First of all, the Congress has directed us to establish such procedures for licensing cases and this, quite properly, has occupied our immediate attention. Our proposed rulemaking centered on licensing cases, although it solicitated comments on the inclusion of fare and rate cases; very little in the way of comment about fare or rate cases has been received. Furthermore, changes in the Act, coupled with recent initiatives by the Board, make it unlikely that we will be required to process a substantial number of fare or rate proceedings in the immediate future. Finally, we have already developed workable non-oral hearing procedures for handling fare and rates matters. Our expedited, simplified procedures nevertheless remain available for fare and rate cases on an *ad hoc* basis if necessary.

STANDARDS FOR USE OF EXPEDITED SIMPLIFIED PROCEDURES

A key issue is what standards should be applied in determining when to use the expedited simplified procedures established by Congress.[6] The statutory standard is extremely broad, the Board having authority to use expedited simplified procedures "if the Board determines that the use of such simplified procedures is in the public interest."[7] The Board's original proposal—adopted, to be sure, under a different statutory guideline—assumed that conventional hearings would remain the major procedural vehicle for considering applications, and establishing alternative standards for use of simplified procedures—*i.e.*, (i) where all issues of material fact may be resolved by means of written materials and the

[3] The lower limit of the zone of reasonableness is statutorily set at 50% below the standard fare level but the Board is authorized to widen the zone downward. We did so in PS-80, August 25, 1978, 43 Fed. Reg. 39522, September 5, 1978.

[4] United States Policy for the Conduct of International Air Transportation Negotiations, p. 1, issued August 21, 1978.

[5] Cf: Orders 78-9-2, September 1, 1978, and 78-11-156, November 30, 1978, granting exemptions to several carriers to serve the Benelux countries. Over the past year the United States has negotiated liberalized bilateral agreements with several foreign countries which include multiple designation provisions.

[6] Section 21 of the Deregulation Act states that "The rules adopted by the Board * * * shall, to the extent the Board finds it practicable, set forth in the standards it intends to apply in determining whether to employ such simplified procedures, and in deciding cases in which such procedures are employed."

[7] See section 21 of the Deregulation Act, adding a new section (p)(2) to the Federal Aviation Act.

efficient disposition of the proceeding can be made without oral presentation and without an initial or recommended decision, or (ii) where significant public benefits result from use of expedited procedures, as where staffing and other considerations would result in unreasonable delay before considering the application or investigation, or dismissal of the application if expedited procedures are not used. The Administrative Law Section objects to these standards on two grounds. First, it argues that the use of the *disjunctive, i.e.,* employment of alternate standards, could lead to the use of simplified procedures even in cases where material facts could not be resolved without cross-examination. Second, it is concerned that the words "*may* be resolved by means of written materials" is too broad since this might permit the improper resolution of factual issues; in its judgment, the material question should be whether issues can be *reliably* and *accurately* resolved without full trial procedures. These contentions parallel those set forth by the Board's Chief Administrative Law Judge during the earlier staff debate on the proposed rules. Briefly summarized, his view was that non-oral hearing procedures may not be used—and should not be used—any time material issues of disputed fact are presented.

As noted above, we now believe that expedited simplified procedures can be used to process most applications for certificates and permits. We start from the proposition that the new Act—unlike the old—creates no historical or procedural preference for full evidentiary hearings. We realize that, in the past, the Board has utilized the oral evidentiary hearing process to consider license applications. The mere fact that an agency has once regarded evidentiary hearings as appropriate, however, does not bar it from adopting another policy when changing or new circumstances warrant a new approach. *Bell Telephone Co. of Pennsylvania* v. *FCC,* 503 F.2d 1250 (3d Cir 1974). In the new law Congress has expressly given us two procedural tools—evidentiary hearings and expedited simplified procedures—to be used as the public interest requires.[8]

We are mindful, of course, that constitutional considerations or the public interest may require the use of trial procedures, including cross-examination, in select cases despite a lack of an explicit statutory hearing requirement. We must decide, therefore, the threshold at which due process requires the use of fuller procedures, and what public interest circumstances warrant the use of such procedures. Recognizing that the due process threshold for oral hearings may be lower than the public interest threshold (a standard which failed to meet constitutional minima would, on the other hand, be clearly contrary to the public interest), we nonetheless find the Supreme Court's constitutional test for when oral hearings are needed (in the absence of a statutory hearing requirement) a persuasive starting point for our definition of the mixed constitutional/public interest standard.

In *Mathews* v. *Eldridge,* 424 U.S. 319 (1976), a case establishing the due process threshold for an evidentiary hearing in the absence of an express statutory hearing requirement, a unanimous Supreme Court established a tripartite test for when a hearing is necessary or when some lesser procedure will suffice. The Court said:

> * * * (T)he specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and, finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail * * *. Id at 335.

We turn to an examination of these factors in licensing cases.

1. PRIVATE INTERESTS

Two private interests are ordinarily involved in licensing cases—the applicants, and those supporting the applications, on the one hand, and the opponents, on the other. The legislative history of the Deregulation Act, and the language of the Act itself, make it plain that Congress has struck the public interest balance strongly in favor of applicants, and we think we should ordinarily follow this lead.[9] At times, of course, the principal private interests involve competing applicants. In such circumstances, however, we clearly favor grant of all applications by qualified carriers in both domestic and international cases so that in the absence of a persuasive showing to the contrary, a balancing of the private interests involved in licensing cases leads us to use expedited procedures if selected by one or more of the applicants.

There may, nonetheless, be sufficent reasons for altering this preference. The Board has a public interest responsibility, for example, to insure that applicants are fit, willing and able to provide the service they propose. Where genuine questions of fitness are raised, we may well wish to explore them in an oral hearing. We will not, however, allow the presentation of fitness arguments to be used as a device to frustrate the Congressional mandate for easier entry by new airlines. Similarly, questions of ownership and control of foreign carriers may have to be explored at oral hearings.

2. VALUE OF OTHER PROCEDURES

The Supreme Court's second factor—the risk of erroneous deprivation of a private interest through use of simplified procedures and the probable value of additional or substitute safeguards—is at the heart of the most serious objections raised by the commenters.

Specifically, it is argued that the fairness of our procedures will be undermined by the substitution of the "anonymous staff" for a named decision-maker and the replacement of what is described in the comments as "an independent fact-finder" or a "neutral official" by staff members whose principal mission is the initiation and implementation of substantive licensing policies. The quality of our decisions will also be lowered, it is argued, by eliminating both the potential threat of cross-examination and the intermediate decisional step which now serves as a vehicle for permitting the parties and the Board to focus on the issues and correct errors.

We have no doubt that the comments have rightly alerted us to danger points in our proposal. The requirements recently imposed upon us by the Deregulation Act, however, including the need to dispose of all applications by U.S. carriers within an 11 month period, make changes in our procedures essential despite the risks,[10]

[8] The Senate bill had a two-fold test for deciding when to use expedited procedures; the Board was to hold oral hearings if it determined "that a specific provision of Title IV or the public interest requires a hearing, *and* if the Board determines that there are disputed issues of material fact which require an oral evidentiary hearing to resolve * * *" (emphasis added) See section 1010(b)(2) of S. 2493. The House bill said only that "in determining whether to employ * * * simplified procedures in a particular case, the Board shall give consideration to the magnitude of the potential impact of its decision in the case on the air transportation system." See subsection 401(p), added by H.R. 12611. The Deregulation Act has no express instructions; it leaves the question of standards—apart from a broad public interest standard—to the Board.

[9] Most often opponents of route applications are other carriers likely to be competitively affected by the grant of new authority. Congress does not intend diversion of revenue from incumbent carriers to be a legitimate basis for precluding additional entry in most cases and, in any event, damage by competition is not high on the list of protected private interests and the Constitution does not guarantee protection against such damage through a mandatory hearing requirement. *Eastern Airlines* v. *CAB,* 185 F.2d 426 (D.C. Cir. 1950).

[10] Throughout the 2½ year legislative process leading up to passage of the Deregulation Act, the Board alerted the Congress

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The critical question, it now seems to us, is how to establish the proper standards and procedures to allow expeditious processing of cases which can be decided without trials or judges' decisions but earmark for special handling those cases in which prejudice to parties or an erroneous decision is likely without more elaborate procedures.

Turning, first, to standards, we have re-evaluated our earlier proposal in light of the comments filed. We do not, however, accept in full either the standard offered by the carriers that we order an oral hearing any time material facts are in the issue, or the standard suggested by the Administrative Law Section that we order an oral hearing in all cases involving material factual disputes or questions of expert opinion. Instead, we believe that we should employ expedited, simplified procedures except where there are material issues of decisional fact that cannot be adequately resolved without oral evidentiary hearing procedures.

In the first place, employment of an absolute standard along the lines suggested might continue to require parties to go through expensive or time consuming procedures not expressly required by statute even where the interest at stake is small. Both the House and Senate committees that examined the Board's licensing procedures were extremely troubled by the delay and cost associated with conventional trial-type hearings where those procedures frustrated entry into the industry by smaller carriers or discouraged entry into specific markets, particularly smaller markets, by both new and existing firms. See H.R. Rep. 95-1211, May 19, 1978, pp. 3-4, 15 and 49-50, and S. Rep. 95-631, February 6, 1978, pp. 2-3 and 110-111. Our original proposal was designed to permit us to decide even material factual issues without oral hearing in less controversial cases, and the House Committee, which pointed approvingly to out earlier rulemaking initiative, admonished us to take into account the magnitude of the impact of our decision on the air transportation system when deciding whether to set an application for hearing. The Committee believed that H.R. 12611, "will facilitate the Board's efforts to develop these simplified procedures." H.R. Rep. 95-1211, at 15 and 49-50. It is plainly in the public interest to insure that the procedural burdens imposed on parties are not incommensurate with the likely rewards from the prosecution of applications, even at the risk of making decisions on a less-than-optimum record.

Equally important, the public interest does not require an oral hearing where factual disputes are as well suited to resolution by written submissions as by oral hearings. Under even conventional oral hearing practice, an agency need not conduct oral proceedings where there are no material facts in dispute. Congress would not have needed to legislate new procedures in sections 7 and 21 of the Deregulation Act if it simply wished to perpetuate existing law. Congress clearly intended to give us the power to decide even material factual issues, after interested persons filed written evidence and argument but without oral evidentiary hearings, unless we determine that they cannot be adequately resolved on the basis of the written submissions. See S. Rep. 95-631, at 112. We note, in this regard, that neither the House nor the Senate versions of the Deregulation Act, although they contained more explicit instructions to the Board on when expedited procedures should be used than was ultimately included in the legislation, required oral hearings simply because material facts were in issue. As the Board's earlier notice of proposed rulemaking made clear, and as the House Committee expressly recognized, we routinely decide scores of important regulatory matters—including even those requiring the resolution of disputed facts—without either an oral hearing or an intermediate decision. See H.R. Rep. 95-1211, at p. 15. Procedures akin to those now expressly authorized by the Congress, and proposed here, have been successful in licensing cases in the past.[11] As the Board moves increasingly toward multiple permissive entry, and questions of law, policy or discretion replace questions of fact as decisionally critical, the ability to reach reliable and accurate decisions without full-blown trials, sifting of detailed evidence, or preliminary analysis by an administrative law judge should be enhanced.

Turning, next, to procedures, we have decided, after reviewing the comments, to retain more or less the scheme we earlier proposed. The principal criticism—as noted above—is that our proposal injects our operating bureaus into the substantive decision-making process, thus allegedly compromising the objectivity of that process, discouraging the responsibility which goes with personal involvement, and eliminating the fail-safe accorded by the preparation of an intermediate decision. By way of background, we should mention that the Board for its entire history has relied on its operating bureaus for recommendations concerning how to proceed in licensing cases. Our policy bureaus have also been actively involved in the processing of numerous non-hearing adjudicatory matters, such as exemptions or service suspensions, replete with factual issues. Such recommendations were historically coordinated with the Office of General Counsel. By and large, this system worked well even at a time when failure of a bureau to recommend affirmative action on an application could mean that the application would not be heard at all. In contrast, under the Deregulation Act, all applications must be disposed of on the merits. Thus, the potential for prejudice to interested persons resulting from a bureau's policy preference appear to us far less than has been the case under the Board's historic practice.

At the present time, the Bureau of Pricing and Domestic Aviation is expeditiously processing numerous applications for new route authority through recommendations to the Board that we issue tentative conclusions granting all applications. While we have not, to date, disposed of most of these cases, they do appear to be providing a fair and reasonable means of determining whether or not genuine litigable issues are presented, strongly suggesting that the bureau's participation in the processing of applications is not resulting in prejudice to any parties.

To protect the process even further, we have required that all recommendations over whether or not to use expedited procedures be made jointly by the bureau, the Office of General Counsel, and the Chief Administrative Law Judge. We appreciate that one of the commenters urges us to leave the decision concerning the procedures to be used in a given case exclusively to an administrative law judge. Section 7 of the Deregulation Act, of course, directly charges the Board itself with that responsibility and, while we could

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of the drawbacks to imposition of fixed procedural deadlines. The obvious dangers, we pointed out, were (1) a decline in the quality of Board decisions, (2) a substantial increase in potential litigation, (3) a constraint on the ability of the Board to deal with emergencies; and (4) the potential that unqualified carriers might enter the field as a result of the Board's failure to act within the time limits prescribed. See, for example, Presentation of the Civil Aeronautics Board before the Subcommittee on Aviation, House Committee on Public Works and Transportation, May 13, 1976. Quite simply, the Congress struck the public interest balance in favor of procedural expedition and grant of domestic licensing applications.

[11] The Board cited three cases—*Service To Crossville, Service to Saipan*, and *Service to Richmond*—as examples of the successful use of non-trial simplified procedures. More recently, the technique was used in the *Philadelphia-Bermuda Nonstop Proceeding*, Order 78-12-192, approved by the President December 28, 1978. The recent *Chicago-Midway Low-Fare Route Proceeding*, Order 78-7-40, served July 12, 1978, was decided on a certified record without a judge's decision, although an oral hearing was held. The court has recognized that the use of verified pleadings can be sufficient even where there is an allegation of disputed facts, *Eastern Air Lines* v. *CAB*, 185 F. 2d 425, note 4 and accompanying text.

delegate such authority to a judge, subject to review by the Board, we will not do so. The choice of procedures involves, among other things, an evaluation of what issues remain critical under prevailing Board policies, as well as an examination of the availability of staff resources to process particular applications—matters on which we must have the advice of our principal bureaus. We also want the views of our Office of the General Counsel, which, by virtue of its involvement in drafting Board decisions in formal cases, has responsibility for insuring uniformity between instituting and scoping orders in new cases, and final decisions in cases already processed. The judges' perspective on procedural issues, which is, as the commenters note, valuable, will be available to the Board by virtue of the Chief Judge's participation in the recommendation process.

In sum, we think that, at the instituting stage, risk of harm to affected interests from potential prejudice flowing from a bureau's policy preferences is less—and the protections afforded are greater—than under the Board's historic procedures. We shall, in this connection, modify the rule as suggested in the comments to effectuate our earlier intention to expressly name the Chief Judge or his delegate as an equal participant in the threshold recommendation phase.

We have much less trouble than the commenters with the argument that we are substituting "the anonymous staff" for a named individual with decisional responsibility. Each recommendation to the Board will be made by the three named senior staff members responsible for the recommendation, or their delegates: While they will, of course, have staff assistance available, the responsibility for any recommendation will rest with the three individuals. As a matter of course, these recommendations will be released to the public and, as is our practice, will ordinarily be discussed at open meetings. In short, the potential for evil flowing from anonymity which may have characterized Board procedures at an earlier stage of its history is no longer a serious threat.

We carefully evaluated the concern of the carriers and the Administrative Law Section that our staff bureau may not be as "independent" as an administrative law judge in the sense that a judge is not an active initiator and proponent of Board licensing policies. Individual judges, nonetheless, have their own independent views on statutory interpretation, economic policy, and procedures and can be, in that sense, proponents of economic policy. While judges, by virtue of their role, training and experience, approach economic policy issues in light of their statutory responsibilities, we cannot assume that our staff is unable or unwilling to analyze matters objectively, separate fact from opinion, and apply the Board's policy as it is rather than what a particular bureau might like it to be—should there be a difference. Moreover, as even the draftsmen of the Administrative Procedure Act recognized, there are public benefits which flow from having an agency's policy staff directly available for advice in licensing case.[12] In such cases, after all, the agency does not stand by as a disinterested arbitrator of a private dispute—an independent factfinder simply applying the law as it finds it. Rather, the agency has broad discretion to evolve an economic regulatory policy consistent with general statutory guidelines and apply that policy to the facts of record in a given case. In such circumstances, an agency can benefit both from the dispassionate application of law and policy which the judge brings to a given set of facts and from the policy involvement which the bureau brings.

We do not agree that parties will no longer be under the threat of cross-examination when they prepare their materials for submission to the Board. In any given case those materials may well be subject to cross-examination, upon request. The threat of adversarial scrutiny therefore remains.

At the initiating stage, we will have before us the views of the affected private parties as well as the bureau. We also expect both the Chief Judge and the General Counsel to bring their particular perspectives to the issues so that at the Board level we can decide the procedural issues with diverse inputs. While we anticipate that many cases can be disposed of relatively routinely, especially given our narrow domestic licensing mandate over the next three years, we nonetheless welcome presentations by affected parties in individual cases as to why cross-examination or an intermediate decision should be allowed. We believe that decisions concerning potential prejudice to parties, or potential benefits from additional procedures for other reasons, can and should be made in each case at the time we decide what procedures to use.

We are persuaded in this connection that an intermediate decision may aid sound decision making in certain cases. Under our current rules, reconsideration lies with respect to any Board decision. In a wide variety of non-hearing matters that come before the Board, reconsideration represents the parties' only opportunity to address a specific Board opinion. While we are unaware that such procedure has lead to any serious deficiency in decision-making in that wide band of matters where it is employed (at least no-one has so suggested), we are prepared to offer affected parties one unincumbered right to confront an intermediate decision in cases in which they can demonstrate that this is necessary to a reliable decisional process. In such cases, the intermediate decision can easily be made by an administrative law judge.

Taken together, these considerations lead us to conclude that there will be value in additional procedures (a) where there is a likelihood that critical facts will not be properly decided without oral exploration and where oral hearings are more suited to the discovery of those facts, as where credibility or viracity of the witneses is likely to be determinative, or (b) where the issues are such that failure to assign the case to an administrative law judge is likely to lead to a lack of fairness.

3. ADMINISTRATIVE BURDENS

The final factor—namely the administrative burdens that full hearings and a judge's decision necessarily entail—involves an analysis of several considerations. First, it is unassailable that the flexibility now given us by the Congres to divide the processing of licensing cases between two groups—administrative law judges and senior advisory staff—will speed the disposition of applications.[13] Second, it should ordinarily take less time to process an application if the trial stage, briefs to the judge, and the preparation of an initial or recommended decision are eliminated.[14] Third, there are costs Associated with full hearings which should not be associated with expedited, simplified procedures—*i.e.*, witness and travel costs differences in legal and consultings fees, and time away from the office for witnesses, counsel, and the Board's staff. These are administrative burdens which must be considered. Given the Congressional mandate for speedier decision-making in licensing cases, and our general inclination to reduce costs and burdens on outside parties, we believe that the optimum administrative resolution is to divide our caseload in some meaningful way,

[12] See Attorney General's Manual on the Administrative Procedure Act (1947) at pp. 50-53.

[13] We reiterate that the senior advisory staff, unlike the judge, will not be a decision-maker, however.

[14] The trial itself takes very little time but necessarily involves getting the judge, counsel, and all witnesses together at a a convenient time. This is not a problem where the evidence is submitted in writing. The preparation of two sets of briefs and two decisions—one by the judge, another by the Board—necessarily adds time to the process. Time may be saved, of course, if the Board can simply affirm judges' decisions without further procedures.

sensitive, always, to the desirability of minimizing procedural burdens on the parties.

In sum, we believe that an applicant should ordinarily be intitled to processing under the expedited, simplified procedures if it wishes. We think the following public interest standard represents the best blend of all three relvant considerations:

Criteria for Use of Oral Hearing Procedures or Assignment of a Case to an Administrative Law Judge.

The Board shall assign an application made under § 302.1703, or sought to be consolidated under § 302.1710, for consideration under the expedited, simplified procedures of this subpart and order the record presented directly to the Board for decision unless it appears that:

(a) Use of expedited, simplified procedures will prejudice a party;

(b) Material issues of a decisional fact cannot adequately be resolved without oral evidentiary hearing procedures; or

(c) Assignment of an application for oral evidentiary hearing procedures or an initial or recommended decision by an administrative law judge is otherwise required by the public interest.

One final matter requires comment. Despite the manner in which we have drafted our proposal, we propose to continue the current show cause procedure, where requested by the applicant, as an alternative method of processing applications. Based on recent experience, our Bureaus of Pricing and Domestic Aviation and International Aviation believe that the current Show Cause procedures are the most efficient way to process such applications that are not hotly contested or highly controversial. The types of pleadings now used have been practically standardized, the staff is able to process applications quickly, and the Bureaus believe that the affected interests have come to accept the procedures as fair. Although Show Cause recommendations go directly from the Bureau to the Board, the Office of the General Counsel and the Chief Administrative Law Judge receive an opportunity to comment on the bureau's recommendation. In light of the changes brought about by the Deregulation Act, and our recent experience with use of Show Cause procedures, we invite comments on the Board's intention to continue to rely on Show Cause procedures for applications which request Show Cause processing.

PROCEDURAL DEADLINES

Congress has imposed on the Board strict deadlines for the processing of all applications. Specifically, the Board must, within 90 days after the application is filed, make a determination as to how to proceed (we must make that determination within 60 days if applications seek the removal of restrictions). If we decide to use expedited simplified procedures to consider an application, we must reach a final decision on the merits within 180 days. If the Board determines that an application should be set for oral hearing, an initial or recommended decision must be issued within 150 days and the Board must thereafter make its final determination not later than 90 says after the judge's decision is issued.

To meet these deadlines, we have decided to establish three procedural tracks—one for ordinary applications by U.S. carriers, a second for restriction removal applications, and a third for foreign carrier permit applications. In the first type of case, we want to retain the ability to scope proceedings so that more than one application, and more than one market, can be included where desirable. Under our plan, once an application comes in parties will have 21 days to seek consolidation of applications or expansion or contraction of the case, and an additional 7 days to file any further information on the issue of scope. We expect to issue an order outlining the scope of the case as soon as possible thereafter, based on a recommendation from our operating bureau and the concurrence of the Office of the General Counsel. Once the scope of a proceeding is announced, we will give interested parties an opportunity to file amendments to their applications, and additional information, in conformity with the scope of the case. All such information will be due within 28 days. We will then issue a decision announcing which procedures we intend to employ, based on a recommendation by the Director of our operating bureau, the General Counsel, and the Chief Administrative Law Judge. In restriction removal cases and foreign carrier permit cases, we will eliminate the scoping phase and, following the receipt of all information, proceed directly to deciding which procedures to use.[15]

We recognize that the time limits contained in our proposed rule are both tight and inflexible insofar as U.S. carrier applications are concerned. We see no option in view of the statutorily imposed deadlines. While we could, in the usual case, give interested parties additional time to file by eliminating the scoping phase of the case, we believe that would be undesirable. We want to be able, in proper cases, to consider more than one application or more than one market; we do not want the size or scope of each proceeding to be determined solely by the request in the application. As the substantive criteria for decision change, the evidentiary requirements will necessarily change and we hope that the change in economic regulatory climate will bring with it a commensurate reduction in the amount of evidentiary material necessary for proper decision. Very little attention was paid in the earlier comments to the actual rule itself. We urge the public now to comment on preferable means of achieving our objectives while minimizing the burdens on outside parties.

Member O'Melia filed the attached separate statement:

O'MELIA, MEMBER, SEPARATE STATEMENT

In April of 1978, the Board, on its own initiative, issued a Notice of Proposed Rulemaking (NPRM) seeking to expedite established procedures for processing licensing and rates cases; this was to be done essentially by dispensing with both the oral evidentiary hearing and with an initial or a recommended decision by an administrative law judge, and by substituting in their place so-called "documentary procedures" and the issuance of an "agency decision" by the Board itself. Although that action was, in form, no more than an invitation for comments, the fact that a majority of the Board Members tentatively adopted it gave the NPRM a greater sense of finality, a greater aura of authority than the idea itself merited or needed to have. Consequently, I attached a Separate Statement to reserve my position, and to make known my fears that the proposed procedures suffered from substantial legal and policy deficiencies; I noted that the proposal posed the danger of converting our regulatory agency into a rubber-stamping production line in which the real decisions would not be made by the Board but by unnamed and non-accountable staff elements. My reservations at that time were not to the objectives of reducing delay, costs and administrative burdens, which I explicitly endorsed, but to the undesirable and unwarranted elimination of procedural safeguards.

As set forth in the Deputy General Counsel's Memorandum to the Board (Case Memorandum 7884A, February 8, 1979), as a result of intervening developments there are now three new grounds for reviewing the Board's procedures for licensing cases, all three given life by the Airline Deregulation Act of 1978: first, in that Act Congress specifically prescribed the establish-

[15] Congress has authorized us to use expedited simplified procedures to process applications by foreign air carriers but has imposed no statutory time limits. While we plan to process these applications promptly, we have the added flexibility to extend procedural deadlines where necessary. Thus, our rules provide, in such cases, that responsive documents will be due within a fixed time after the "due date" for the filing of initial documents; if the due date is extended, the date for filing responses will be automatically extended. We cannot do the same when processing applications by U.S. carrier applicants.

ment by the Board of "expedited simplified procedures" which "need not provide for oral evidentiary hearings"; second, that Act dramatically shifted the presumptions for establishing need in licensing certificates for domestic transportation; and, third, that Act established procedural deadlines for final action on licensing applications which force the Board to re-examine the processing time required by its present rules and practices. Therefore, the Board once again, this time no longer moved by its own independent volition but under Congressional mandate, must propose and obtain comments on what would be desirable by way of "expedited simplified procedures."

While both fully supporting this supplemental solicitation of comments and the search for quicker and less burdensome solutions, I must again raise my voice to suggest that our basic legal constraints have not changed as a result of the new legislation and that we have the same obligation today as we had last April—not removed by Congress but rather reiterated by Congress—to adopt and follow rules that give recognition to those time-honored concepts of procedural fairness which give due regard to established norms of propriety in government agency decision-making. In making this statement, I am not, like the last man with a three-cornered hat, clutching nostalgically at a by-gone era. The fact that we are to be decommissioned five years hence does not mean that we should proceed today to abandon ship. We still have a highly important, a quasi-judicial duty to perform which does not justify corner-cutting. The Board is still vested with the responsibility to award certificates of public convenience and necessity, albeit on a modified basis. For whatever its reason, Congress provided that domestic route certification would be required through the end of 1980 and *no* statutory change had been made in the international arena; the one conclusion we cannot draw is that Congress contemplated that we would discharge our responsibility over certificates in some slap-dash manner. The Board is still required to make a finding of "fit, willing and able," and Congress went to great pains in the Deregulation Act to emphasize the paramount priority on a continuing basis that is to be given to "fitness" issues. And we should not forget that there are still national demands for safe, effective and dependable air transportation for which this Board, as the primary regulatory agency, is today uniquely and unmistakably responsible.

This leads me to the key point that I want to bring out in this statement, and that is that there is a difference of views within the staff, and perhaps even within the Board itself, over a particular issue that I consider critical to the proposed rulemaking. Indeed, it is critical to our total deregulation effort and to the transitional measures that are to transport us into the deregulated mode. I am gratified that the Board agreed to attach to this Supplementary Notice internal memoranda that set forth this issue, including the comprehensive paper of the General Counsel's Office on *Due Process Requirements for Licensing Cases at the Civil Aeronautics Board* and the counterpoint note of the Bureau of Administrative Law Judges on the use of expedited procedures where material facts are at issue. The issue is simply this: whether the proposed non-oral hearing procedures are only to be used when there are no "Substantial issues of material fact" involved, or whether that traditional standard is to be replaced by one requiring oral evidentiary hearings only when there are present "material issues of decisional fact that cannot adequately be resolved without oral evidentiary hearing procedures."

There appears no need for me to add to the substantive discussion of this issue contained in the accompanying memoranda. I only want to say that in my opinion this difference of views epitomizes the dilemma we repeatedly face in seeking to accommodate due process requirements with the urge to simplify and expedite licensing procedures. I consider it a critical issue to our total deregulation effort because our treatment of licensing cases today will characterize and set the stage for the deregulated industry we are anticipating. I consider it critical to our transition period because it will help decide whether we will continue for this phase to make careful judgments on matters of public convenience and necessity and on questions of fitness, or whether we will simply devote our energies to churning out pro forma findings and awards until the day of deregulation comes. It is in part because I consider this issue to be critical that I urge interested parties to give particular attention to it in their comments.

One final comment—I recognize that the issue I have singled out is not the only issue of significance in this rulemaking. The many other issues—the use of show cause procedures, the role of our operational bureaus, the decisional standards to be used, etc.—must, of course, also be addressed. My overriding concern is that on all these issues where hard choices must be made we must not consider our sole function to be that of a disinterested caretaker, involved only in hastening deregulation. If deregulation is to bring great public interest benefits, and I earnestly hope it will, I would think that its chances of success would be greatly affected by how we launch our industry into that new environment. It is not enough to whisper the word "competition" into the ears of our carriers; surely as they leave their regulated home they should be inculcated with concepts of fitness, of providing dependable services; and of charging reasonable prices.

We have yet to see even a glimmer of deregulation benefits, although some measures already taken—for example, cargo deregulation, freer entry and exit from specific markets, multiple permissive authority, greater pricing freedom—are certainly characteristic of a less regulated, if not a non-regulated, regime. It is a bit embarrassing that none of these are yet bearing fruit. In cargo, although many changes are taking place, the general rate structure has gone up and the overall quantum of services has not, perhaps because of aircraft limitations, substantially increased. Our new entry and exit policy is most notoriously heralded by a spate of carrier notices announcing suspension of service at the less-lucrative markets and an alarming diminution of service at intermediate points on abandoned routes. Civic parties wail not only at the thought of more multiple permissive authority but at the reluctance of the Board to compel carriers to fulfill the statutory notice period in full before suspension. And greater tariff freedom has brought forth showy deep-discount fares almost always as introductory or promotional gimmicks, and then *only as a direct result of regulatory prodding.* There has certainly been no reduction in the level of normal economy fares across the board. Surely this is not a foretaste of the deregulated air transport world Congress intended and envisaged. To avoid a sterile or unwanted result, to properly launch the industry into deregulation, the Board must, in my opinion, make the most, not the least, of the transition period, and should certainly not curtail it beyond what the Act contemplated. The procedures we select for licensing and rates cases for these few remaining years must reflect the more essential preoccupation of the Act and of the Board. A preoccupation not only to simplify and expedite, but even more to bring about qualitative improvements. This can only be done by demanding the highest standard of fitness by certificated carriers, by demanding a devoted concern to provide dependable air service, and by demanding a non-predatory determination to establish a consumer-oriented pricing structure. That is why I urge that we think carefully before the Board diminishes the role of oral evidentiary hearings and limits the use

of initial or recommended decisions on a full record.

/s/ RICHARD J. O'MELIA.

APPENDIX

Approved, Civil Aeronautics Board, Phil Bakes, Jr., General Counsel, February 8, 1979.

Memorandum for Board Action 7884A

TO: The Board.

FROM: Deputy General Counsel.

SUBJECT: Docket 32466, Part 302, *Expedited Procedures for Licensing and Rate Cases:* Supplemental Notice of Rulemaking.

REFERENCE: PDR-54, April 18, 1978.

Introduction

Last Spring the Board issued a notice of rulemaking proposing to establish expedited procedures for processing applications for new or modified route authority by U.S. and foreign air carriers and for handling certain rates cases. Under the proposed procedures all evidence would be submitted in written form, oral hearings and an initial or recommended decision by an administrative law judge would be eliminated, and the Board would decide the case itself in the first instance based on a joint recommendation by the line bureau (BPDA or BIA), the General Counsel's Office, and the Office of Economic Analysis. (The simplified procedures were intended to be flexible; where a given issue needed cross-examination, for example, that issue could be the subject of an oral hearing, with a judge deciding a given factual matter or the hearing transcript certified to the Board; similarly, judges could be asked to write initial or recommended decisions even if no oral hearing were held.) The expedited procedures were to be used in selected licensing and rates cases, with conventional hearings in all others.

Comments were received from a number of interested persons. By and large, the executive departments and members of Congress who responded supported the proposal. On the other hand, most of the carriers, the City and Chamber of Commerce of Houston, Texas, and the Administrative Law Section of the American Bar Association opposed. Their objection was grounded principally on two factors—first, that the proposal violated the hearing requirements of the Administrative Procedure Act and second, that there was a potential for unfairness to parties from shifting the initial decisional function from the administrative law judges to other staff components including, particularly, an action bureau (BPDA or BIA) with responsibilities for initiating and advocating Board programs.

Passage of the Airline Deregulation Act on October 24, 1978, has three important effects on the Board's earlier proposal. First, it has eliminated the legal objections based on an alleged failure to comply with the various requirements of the Administrative Procedure Act (APA). Sections 554, 556, and 557 of the APA (former sections 5, 7, and 8) establish the procedural ground rules for cases of "adjudication required by statute to be determined on the record after opportunity for an agency hearing." Whether the express requirements of the APA are applicable depends on whether the agency's *organic statute* requires notice and hearing. See generally *Marathon Oil Co.* v. *EPA*, 564 F.2d 1263 (9th Cir. 1977), note 25, and, more specifically, *Eastern Air Lines* v. *CAB*, 185 F.2d 426 (D.C. Cir. 1950), a case involving grant of an exemption under section 416 of the Federal Aviation Act, where the court expressly noted that the various adjudication provisions of the APA did not come into play since section 416—unlike section 401—imposed no notice and hearing requirement for exemption authority. Congress, in the Deregulation Act, has now expressly taken the statutory hearing requirement out of those portions of section 401 and 402 dealing with applications.[1] Indeed, Congress went further. It specifically authorized—and, in fact, mandated—the establishment of so-called "expedited simplified procedures," which, in the words of the statute "shall provide for adequate notice and an opportunity for any interested person to file appropriate written evidence and argument, but need not provide for oral evidentiary hearings. * * *" See Section 21 of the Airline Deregulation Act.

Second, the Act radically altered the nature of the licensing process insofar as entry is concerned and fundamentally undercut the argument that the formal hearing process should be the principal procedural vehicle for new entry. It has, of course, abolished the need for the Board to make any public convenience and necessity determination for domestic and overseas service after 1981. As the Board has observed, its rather narrow economic regulatory role in domestic route cases is now—

"* * * to determine the proper manner and pace for phasing out regulatory barriers to entry—or, more specifically, to decide whether all qualified applicants should be licensed in any given market or whether on or more of them should be given a head start of three years or less." *Improved Authority to Wichita Case et al.*, Order 78-12-106, December 14, 1978, p. 6.

The Congress has also created statutory mechanisms (automatic entry, cargo deregulation, statutory fill-up authority, the 56-seat commuter exemption, dormant authority) which allow immediate entry under certain circumstances. An essential predicate for the earlier comments was that formal CAB licensing was to remain indefinitely as the principal vehicle for entry into the industry. Plainly the formal licensing process is no longer the cornerstone of the statutory entry program.[2]

Third, the Act has established procedural deadlines for Board action on all applications, whether for domestic, overseas, or international authority. Congress has determined that the Board, first of all, must now dispose of all applications on the merits and, second, must do so within 11 months.

The Deregulation Act has not abolished the formal hearing process, however, nor eliminated a basic requirement that the new expedited simplified procedures be consistent with due process and fundamental notions of fairness. The key issues for the Board, therefore, are to determine when particular procedures should be used and what minimum standards should be established to insure that all Board procedures remain fair. In Appendix A we have set out for the Board's information our analysis of the due process requirements which attach where the Congress—as here—no longer imposes a statutory hearing requirement. In Appendix B we have summarized the basic objections of the parties to the earlier notice of rulemaking, except that we have not included those objections predicated on the Board's alleged failure to comply with the requirements of sections 554, 556, and 557 of the Administrative Procedure Act.

We believe that the ground rules for the Board's proposal have changed sufficiently to warrant publishing a supplemental notice of rulemaking. First of all, as noted above, the comments and responses to the original notice were in large part directed to the statutory questions which are now rendered moot under the Deregulation Act. Second, those comments were filed at a time—last June—when it appeared that Board domestic licensing jurisdiction would continue indefinitely; public reaction might be quite different now that a major part of the Board's mission is to manage a three-year transition to domestic entry deregulation. Third, the parties spent very little time discussing the details of the Board's proposal. Those details in any event must be modified in light of the statutory time limitations imposed by the Deregulation Act. Congress has mandated that the Board have its rules in effect no later than April 24.

WHAT PROCEDURES TO USE

Under the provisions of the Deregulation Act the Board is *required* to establish "expedited simplified procedures". We are also required to establish standards for when such procedures will be used and, what substantive standards the Board will use in deciding each expedited case on the merits.[3] The Board is authorized to use simplified procedures "*in any case* if it determines that the use of such procedures *is in the public interest*" (emphasis added). Under such a broad standard we believe the Board could continue to employ full trial procedures in most cases, could use the newly authorized expedited simplified procedures in virtually all cases (subject only to constitutional limitations), or employ some mix of simplified and conventional hearing processes.[4] Given the

[1] We do not address here the separate question of what procedures are needed when the statute contains a hearing requirement. What constitutes a "hearing" may be different depending upon the circumstances. The Supreme Court—in *United States* v. *Florida East Coast RR*, 410 U.S. 224 (1973)—indicated that the opportunity to submit written material is sufficient to satisfy even a statutory hearing requirement in certain circumstances.

[2] In the last month the Board awarded route authority in close to 300 nonstop markets under the dormant authority provisions, and dozens of new routes are likely to be awarded when the automatic entry provisions of the Act take place in early 1979. Similar route activity would have taken a decade or more under conventional (*i.e.*, pre-1977) Board entry programs.

[3] Section 21 of the Deregulation Act states in part "the rules adopted by the Board . . . shall, to the extent the Board finds it practicable, set forth the standards it intends to apply in determining whether to employ such simplified procedures, and in deciding cases in which such procedures are employed.

[4] The Senate bill had a two-fold test for deciding when to use expedited procedures; the Board was to hold oral hearings if it determined "that a specific provision of Title IV or the public interest requires a hearing, *and* if the Board determines that there are disputed issues of material fact which re-

Footnotes continued on next page

Board's 2½ year administrative and legislative effort to establish procedures to decide route cases without a full oral hearing, we could not at this stage follow the traditional pattern (*i.e.*, pre-1977 pattern) of setting virtually all route cases for full hearing. This would be a major retreat from the Board's current policy, which involves a markedly expanded use of show cause procedures. A continued reliance on conventional hearing procedures in most cases would also be totally inconsistent with the spirit of the Deregulation Act. Finally, we simply could not process all (or even a substantial number) of applications by conventional means under the statutorily imposed deadlines.[5]

We favor a mix, and believe that the Board, in deciding what standards to adopt, must take into account two principal considerations—first, constitutional limitations and, second, the public interest ingredients of section 102 of the Act and the underlying congressional themes favoring the grant of applications and the expeditious consideration of applications.

We propose a plan which would in the first instance leave to applicants the choice of procedures to be followed. Parties opposing an initial applicant's choice of procedures would be entitled to request employment of alternate procedures. (The reasons for our plan, including the pros and cons, are not included here since they are developed in detail in our draft supplemental notice of rulemaking.)

The strongest contention raised in the comments is the argument by the carriers, the Administrative Law Section of the ABA, and the Houston Parties, that the replacement of the administrative law judge by other staff components—particularly the operating bureaus with substantive responsibility for initiating and promoting Board licensing policies—will compromise the objectivity of the licensing process and the quality of the Board's decisions. (See particularly pp. 6-13 of Appendix B) Given the dramatic change in entry policy wrought by the Deregulation Act, however, it may be that some of the concern of last spring is no longer present (many applicants, it may turn out, will now simply want some reasonable assurance of expedited processing of their applications). Whatever concerns develop can best be handled, we believe, on a case-by-case basis. The Board's proposal provided that recommendations on how to proceed—*i.e.*, whether to use expedited procedures or full trials, and whether or not to have a judge write an initial or recommended decision—should be made jointly by the Bureau Director, the General Counsel, and the Chief Judge, or their delegates, after all interested parties in each case have had a chance to put forth their views. If, based on all the material submitted by the parties and the recommendation of that trio, the Board is prepared to go forward with expedited simplified procedures, we doubt that a serious claim of prejudice will result.

A further problem is whether the Board should in its procedural rules attempt to outline the substantive standards it intends to apply in deciding cases under expedited procedures. There is an argument that the procedural rules ought not to include a substantive decision-making component. Rather, the Board's licensing policy should be articulated either in case law or in a more general rulemaking. On the other hand, it is clear that the Board, with congressional approval, has been awarding multiple permissive authority in virtually all domestic cases, and the new statute creates a rebuttable presumption in favor of granting any application for domestic authority. The Board could, therefore, announce that carriers filing applications under the expedited simplified procedures should anticipate that the Board will liberally consolidate applications for comparable authority and award authority to all fit, willing, and able applicants at the end of the proceeding, subject only to a showing that such awards would be incompatible with the public interest.

We have not included substantive standards in our proposed rule. First of all, we doubt that the substantive standards in expedited cases should be any different from those in conventional hearing cases. Furthermore, the development of special standards—if necessary—would be a major effort and would seriously delay a procedural project that is already well along; in fact, it is not clear that we could include substantive criteria and still get the rule in place by mid-April as required by statute. Finally, the substantive decisional standards are changing rapidly and, in any case, are somewhat different for domestic and international cases; placing the decisional standards in the rule would therefore be unwieldly.

Finally, we wish to call the Board's attention to two specific matters which arose during the informal review of our proposal by the Bureau of Pricing and Domestic Aviation and the Bureau of Administrative Law Judges. In the first place, the Bureau of Pricing and Domestic Aviation had originally planned that the expedited, simplified procedures would replace the current Show Cause mechanism once the new rules were in place. Based on its recent experience, the Bureau now believes that the current Show Cause procedures are the most efficient way to process route applications that are not highly controversial or hotly contested. The types of pleadings used are by now practically standardized throughout the industry, the BPDA staff is able to process applications quickly, and the Bureau believes the carriers have come to accept the procedures as fair. In preparing our revised rule we felt bound by the Board's earlier proposal, which involved a joint recommendation by the bureau, the General Counsel, and the Chief Judge, particularly since the commenters raised some concern over vesting substantial decisional responsibility at the threshold stage of a case in the Board's line bureaus. Nevertheless, the changes effected by the Deregulation Act and the Bureau's recent experience with Show Cause procedures make it desirable, it seems to us, to request specific comments on whether the Board could continue to rely on Show Cause procedures, with recommendations processed by the line bureau under procedures now in effect, for applications which request Show Cause processing. We do not view Show Cause and expedited, simplified procedures as necessarily an either-or proposition, it should be mentioned. Show Cause orders may be useful to "smoke out" genuine factual controversies which may be resolved through some other procedures.

Second, the Bureau of Administrative Law Judges has urged us to recomend a standard which would embrace the notion that oral hearings must be used whenever there are substantial issues of material fact. "Substantial," the Bureau asserts, means that they cannot be resolved without oral procedures; "material" means that they are necessary to reach a decision. We believe that the standard we have proposed—*i.e.*, that oral hearings will be used where material issues of decisional fact cannot adequately be resolved without oral evidentiary hearing procedures—arrives at the same place, albeit with a few more words.

We have no doubt that the Board could adopt BALJ's proposed standard; it is arguably a legitimate reading of the public interest. The Bureau believes that use of its proposed standard is preferable because it is a known quantity, with historic acceptance by the courts, and allows for less chance of abuse that the Board might—incorrectly—conclude that a given factual matter can be adequately resolved without oral hearings. We believe our choice of words is preferable.

In our judgment, the Congress clearly intended that the Board would decide even important material issues of fact without oral procedures—and even if that increased the potential for incorrect decision-making. Throughout the legislative effort, the Board argued that strict procedural deadlines on Board action, if unaccompanied by some fail-safe mechanism for complex or controversial cases, would inevitably result in a decline in the quality of the Board's decision-making—*i.e.*, the Board might be forced to reach decisions on a less than complete record. Congress understood the danger and concluded that the need for expeditious decision-making in the licensing area was a higher public interest priority. The legislative history is clear on this point and comports with the plain meaning of the statute itself, namely that written evidentiary procedures are sufficient in most cases, and probably preferable. BALJ believes that such construction of the Deregulation Act calls its constitutionality into question. Given the nature of the interest being regulated, the likelihood that we can reach reasonable results in most licensing cases without oral procedures, and the paramount public interest in insuring expeditious handling of applications, we believe, on the contrary, that the Congressional judgment easily meets all constitutional requirements and should be respected.

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quire an oral evidentiary hearing to resolve. . . ." (emphasis added) See section 1010(b)(2) of S. 2493. The House bill said only that "in determining whether to employ . . . simplified procedures in a particular case, the Board shall give consideration to the magnitude of the potential impact of its decision in the case on the air transportation system." See subsection 401(p), added by H.R. 12611. The Deregulation Act has no express instructions; it leaves the question of standards—apart from a broad public interest standard—to the Board.

[5] As of the end of 1978, there were almost 300 domestic route applications awaiting action. These would translate into roughly 75-100 domestic routes cases. Note that the Board's historic policy of setting all "route cases" for hearing did not mean setting all "applications" for hearing. Throughout its history the Board established hearing priorities and, with judicial approval, dismissed—or refused to take up—many applications for which it had no available hearing resources. Many applications went unconsidered under conventional procedures—an option which the Congress plainly intended to eliminate in the Deregulation Act.

We also see considerable benefit—not detriment—in having a new standard to apply, one which does not carry with it a long history of judicial construction in other settings. That construction grew up primarily when the courts were evaluating when an agency could dispense with the hearing elements otherwise required by the Administrative Procedure Act. The Deregulation Act deliberately abandons these elements and, instead, charges the Board with the responsibility for developing new procedures which are both fair and efficient; use of the "substantial issue of material fact" language would simply reintroduce a concept explicitly eliminated by the Congress. We prefer not to tie ourselves to an old—though venerable—standard applicable to all administrative and judicial proceedings governed by different statutory standards. We believe the new Congressional mandate is met where we limit the use of oral procedures to those cases in which material issues of decisional fact cannot be adequately resolved without oral hearing procedures. These matters are more fully developed in our draft notice.

FEBRUARY 7, 1979.

GARY J. EDLES,

Attachments

COORDINATION:

DONALD A. FARMER, Jr.,
Director, Bureau of International Aviation.
MICHAEL E. LEVINE,
Director, Bureau of Pricing and Domestic Aviation.
see note
Chief Administrative Law Judge.

APPENDIX A TO MEMORANDUM 7884A

DUE PROCESS REQUIREMENTS FOR LICENSING CASES AT THE CIVIL AERONAUTICS BOARD

Introduction

Due process requires fundamental fairness from government. The position of the Supreme Court may be indicated as follows: "one may not have a constitutional right to go to Baghdad, but the government cannot prohibit one from going there except by means consonant with the due process of law." [1] A rulemaking which is adopted in the interest of the community and is reasonable not only does not offend due process but is due process.[2] The requirements of fairness applicable to an agency change with changing circumstances.[3] Due process changes to accommodate these different circumstances. Fundamental fairness "inescapably imposes (on the court) an exercise of judgment upon the whole course of the proceedings in order to ascertain whether they offend those canons of decency and fairness which express the notions of justice of English speaking peoples * * *." [4]

Requirement of An Oral Hearing

Due process requires fairness rather than any particular form of procedure.[5] It is well established, in this connection, that the various procedures expressly required by sections 554, 556, and 557 of the Administrative Procedure Act where a statutory hearing is mandated—*e.g.*, the maintenance of a separation of functions, the limitation on who may preside, the need for an initial decision—are not necessarily required by due process considerations.[6] Agency action is instead analyzed to determine what specific procedural protections are required in light of the issues to be resolved. The factors to be considered in this determination are (i) the nature of the interest to be protected, (ii) the probability of an erroneous result, and the value of additional procedural safeguards, and (iii) the difficulties imposed upon the government by additional procedural safeguards.[7]

CAB licensing cases are not within the category of proceedings which ordinarily give rise to a constitutional—*i.e.*, non-statutorily conferred—oral hearing right. In the first place, the interest to be protected in most cases is an incumbent's right to retain its monopoly or preferred status. The Act is clear that grant of a certificate confers no proprietary interest[8] and the courts have held that freedom from competition is not an "entitlement" protectable by a hearing requirement.[9] Congress has determined, in the Deregulation Act, that the notice and hearing requirement of most of sections 401 and 402 should be eliminated; such a public interest determination is entitled to weight. Second, the Board concluded in its earlier notice of rulemaking that the risk of an erroneous decision due to the lack of a trial-type hearing and a judge's decision was ordinarily quite small, and several Board cases lend support to that conclusion.[10] Finally, there are clearly administrative advantages to having the agency proceed without full hearings or a judge's decision in at least some cases; apart from the time that can be saved in individual cases, the Board's licensing workload can be distributed between its staff lawyers and its administrative law judges.

Necessary Elements of Fair Procedures

Due process nonetheless requires some form of fair procedure in licensing cases. The issue is what procedural elements are necessary. In *Mullane* v. *Central Hanover Trust Co.*, 339 U.S. 306 (1950), a case often invoked in later opinions, the Supreme Court articulated the basic concept that "* * * at a minimum [the words of the due process clause] require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing *appropriate to the nature of the case.*" Id. at 313 (emphasis added) Summed up more recently by Professor Davis:

"* * * [E]ach agency for each function must work out procedures that will be both efficient and fair—procedures that may include some of the elements of a trial and not others * * *" Davis, *Administative Law of the Seventies*, Cumulative Supplement issued July, 1977, pp. 88-90.

In the landmark case of *Mathews* v. *Eldridge*, 424 U.S. 319 (1976), the Court, citing *Goldberg* v. *Kelly*, 397 U.S. 254 (1970), pointed to six basic procedural elements—some or all of which, depending on the circumstances, may be necessary to satisfy due process requirements. They are:

1. Timely and adequate notice of agency action;
2. Effective opportunity to defend by confronting adverse witnesses and presenting argument and evidence orally;
3. Right to counsel;
4. Impartial decision-maker;
5. Decision based on legal rules and evidence of record; and
6. Statement of the reasons for the decision and the evidence relied on.

Items 1, 3, 5 and 6 pose no problem in cases processed under expedited simplified procedures since they will be accorded to the same degree as if a full trial-type hearing were held and a judge's decision prepared. The only elements arguably altered from what would be available under traditional Board hearing procedures are the op-

[1] *Cafeteria Workers* v. *McElroy*, 367 U.S. 886 at 894 (1961).

[2] *Rasulis* v. *Weinberger*, 502 F.2d 1006 (7th Cir. 1974) and cases cited therein. *Gooding* v. *State of Oklahoma ex. rel., Oklahoma Rehabilitation Services*, 436 F. Supp. 583 (W. D. Okla. 1977); *West Coast Hotel Co.* v. *Parrish*, 300 U.S. 379 (1937).

[3] *Arnette* v. *Kennedy*, 416 U.S. 134 (1975); *Hannah* v. *Larche*, 363 U.S. 420, reh'g denied 364 U.S. 855 (1960).

[4] *U.S. ex rel Parson* v. *Anderson*, 354 F. Supp. 1060 (D. Del. 1972), aff'd 481 F.2d 94 (3d Cir.), *cert denied*, 414 U.S. 1072 (1973), quoting from *Malinski* v. *New York*, 324 U.S. 401, 416 (1945).

[5] *Dohany* v. *Rogers*, 281 U.S. 362 (1930); *Arnette* v. *Kennedy*, 416 U.S. 134 (1974).

[6] See generally *Marathon Oil Co.* v. *EPA*, 564 F.2d 1263 (9th Cir. 1977), note 25 and *Lincoln Transit Co.* v. *United States*, 256 F. Supp. 990 (S.D.N.Y. 1966).

[7] The leading case on the subject is *Mathews* v. *Eldridge*, 424 U.S. 319 (1976), involving pre-hearing termination of disability benefits.

[8] See Section 401(i) of the Act.

[9] *Eastern Air Lines* v. *CAB*, 185 F.2d 426 (D.C. Cir. 1950). We need not here resolve the issue of whether a carrier's license may be revoked or amended against its will, without trial-type procedures. Congress has specifically authorized involuntary amendments of certificates under section 401(g) by expedited, simplified procedures. But the courts have held that continued possession of licenses—once issued—may be of sufficient value as to require a hearing, at least where possession of the license is essential to the pursuit of a livelihood. *Bell* v. *Burson*, 402 U.S. 535 (1971) (suspension of drivers license) and *Alaska Airlines* v. *CAB*, 178 U.S. App. DC 116, 545 F.2d 194 (1976) (revocation of exemption originally conferred without hearing). The proposed rules, in any event, do not cover involuntary amendments under section 401(g).

[10] In two cases—the *Service to Saipan Case* and *Philadelphia-Bermuda Nonstop Proceeding*—the Board's decisions, issued following non-trial procedures and without a judge's initial or recommended decision, were sufficient to command Presidential approval. A third case went to court when Eastern challenged the Board's grant, on reconsideration, of an award to Allegheny in the Richmond-New York market, *Service to Richmond Case*. The Board had originally denied all awards, following a hearing, but the elapsed time between the original decision and reconsideration rendered the earlier record obsolete. The Board did not remand for further hearings; rather, it authorized the filing of new direct and rebuttal exhibits but decided the case without further cross-examination or a supplemental initial decision. Eastern challenged the Board's reversal of its original decision, and the decision on reconsideration was sufficient at least to pass muster under a request for judicial stay and summary reversal (Eastern dropped the judicial review proceeding following the court's denial of the stay and summary reversal request).

portunity to present one's case effectively and the requirement of an impartial decision-maker. We believe that these two elements are sufficiently satisfied.

Presentation of the Case

An affected party ordinarily has a consitutional right to present its case before the government takes action.[11] The ability of a party to effectively present its case does not demand a full trial-type hearing in all circumstances, however. Cross-examination is not necessary simply to resolve peripheral matters not material to decision,[12] to resolve issues of law, policy or discretion,[13] to resolve so-called "legislative" fact issues,[14] or to draw inferences from established facts.[15] Due process does not require an oral hearing where factual disputes are as well suited to resolution by documentary proofs and written submissions as by oral hearings.[16] One court, for example, has concluded that rulemaking procedures (which excluded an adversarial trial and oral cross-examination) satisfied constitutional requirements in a rates case even though the agency was required to resolve many disputed issues of what the court described as "'pure fact,' assign values to rate components based on a combination of fact and policy decisions regarding which components to include, where to include them, and how they should be included." [17] Another court concluded that oral hearings were not required where the opportunity to present oral evidence is not particularly valuable where technical financial data is at issue.[18]

The Board must nonetheless be sensitive to examine each proceeding to insure that fact questions that need examination by trial are not cast aside. A line of cases has concluded that parties are entitled to a trial-type hearing on issues of "adjudicative" as opposed to "legislative" facts.[19] As a general matter, adjudicative facts are those about parties and their activities; businesses and properties; such facts usually answer the questions of who did what, where, when, how, why, and with what motive or intent. Legislative facts, on the other hand, are general facts which help a tribunal decide questions of law, policy or discretion.[20]

Where to draw the line between adjudicative and legislative facts is difficult. Some courts appear to first decide whether the overall proceeding could be classed as adjudication; if it is, they require a trial on all fact issues; if it is not, they allow notice and comment, even to resolve fact issues.

The difficulty in distinguishing between adjudicative and legislative facts, and the respective procedural requirements, is shown in cases raising the question of whether tenants in Federal Housing Administration-regulated housing projects have a right to be heard prior to FHA approval of rent increases. In *Hahn* v. *Gottlieb*, 430 F. 2d 1243 (1st Cir. 1970), the First Circuit concluded that the type of material tenants seek to put forward was "legislative" since a general rent increase proceeding was rate making, and not adjudication. Judge Friendly, writing for the Second Circuit in *Langevin* v. *Chenango Court, Inc.*, 447 F. 2d 296 (2d Cir. 1971), concluded, on the contrary, that "the material the tenants sought to develop before the FHA constituted what Professor Davis terms 'adjudicative facts,' that is 'facts about the parties and their activities, businesses, and properties,' as distinguished from 'general facts which help the tribunal decide questions of law and policy and discretion * * *'" Id. at 300. He found, nonetheless, that the Government's interest in the proceeding was limited since the Government did not, itself, increase the rents but only allowed the landlord to do so. In such circumstances, Congress could decide, without running afoul of the due process clause, that some procedure less than a trial was satisfactory even as to adjudicative facts. Judge Leventhal, writing for a panel of the D.C. Circuit, agreed both that the tenants had a right to be heard and that the facts to be decided were "adjudicative" but found that, given the administrative burdens of providing for oral hearings for a large class of tenants, the hearing right would be satisfied by permitting the filing of comments along the lines provided for in APA rulemaking proceedings. *Thompson* v. *Washington*, 497 F. 2d 626, 639 (D.C. Cir. 1973). Both the Second Circuit's and the D.C. Circuit's opinions are, in our view, examples of the flexibility in due process which avoids artificial semantic distinctions but nonetheless requires agencies to work out procedures that are both fair and efficient—procedures that need not include all of the elements of the trial even as to adjudicative facts.

Courts have nevertheless required an oral evidentiary hearing in certain circumstances even when no hearing was required by statute. An oral hearing was required, for example, where the antitrust issues presented were unusually complex, requiring painstaking assessment of many relevant considerations, and thus particularly well suited to resolution by evidentiary hearing.[21] Similarly, courts will monitor the proper use of non-hearing procedures. One court refused to allow a state to deny applicants governmental benefits without an opportunity for an oral hearing even where no facts were in issue and the case turned on policy considerations where it appeared that the potential for an erroneous determination was substantial and the state agency was using the "fact/policy" distinction to avoid hearings in cases which genuinely required them.[22]

The expedited simplified procedures provide for the submission of evidence and argument in written form and accord parties a right to request additional procedures. Absent a showing that there is a high risk of erroneous decision-making because the Board is unable to resolve genuine issues of fact, or that the Board is using the simplified procedures to avoid necessary hearings, the procedures satisfy constitutional requirements in the ordinary licensing case.

Impartial Decision-Maker

The Board will be the decision-maker in cases processed under expedited simplified procedures and no one can seriously suggest that the parties will be deprived of an impartial ultimate decision-maker. Furthermore, even assuming there were a hearing requirement, there is no separation of functions violation since no staff component or member will participate as an active on-the-record litigant *and* advisor in the same case. The more serious claims are that the mixture of advocacy responsibility and advisory responsibility by the same bureau in the same *class* of cases violates basic concepts of fairness, and that the elimination of the intermediate decision compromises the quality of the Board's decision-making.

The bureaus will participate at two stages—first, when the threshold decision is made as to which procedures (simplified or hearing) should be used and, second, in advising the Board on the merits of the case. Under long-standing Board practice, the action bureaus have participated at the instituting stage (including, the drafting of instituting orders) in cases in which the bureau will later become a formal on-the-record party. This practice was expressly recognized in *Chicago Midway Low-Fare proceeding*, Order 76-12-149, December 28, 1976, note 4. Professor Davis sees nothing improper in such a procedure, Davis, *Administrative Law Treatise*, § 13.10, vol. 2, pp. 237-240, and the Supreme Court has recently cited with approval his comment that even the APA does not—and probably should not—forbid the combination of judging with instituting cases. See *Withow* v. *Larkin*, 421 U.S. 35, note 24 and accompanying text (1975).

At the decisional phase, constitutional considerations do not disqualify a bureau from advising the Board simply because it is advocating or expressing opinions in other proceedings. The courts have held, for example, that "no basis for disqualification arises from the fact or assumption that a member of an administratve agency enters a proceeding with advance views on important economic matters in issue." [23] Nor is disqualification required simply because an underlying philosophy or strong convictions on questions of law or policy are expressed in advance of a particular case.[24] The test for disqualification is whether a disinterested observer could conclude that a decision-

[11] In emergencies, of course, administrative action may be taken without according a party any opportunity to challenge the action. See, for example, *Fahey* v. *Mallonee*, 332 U.S. 245 (1947).

[12] *Citizens for Allegan County* v. *FPC*, 414 F. 2d 1125 (D.C. Cir. 1969).

[13] *Storer Broadcasting* v. *United States*, 351 U.S. 192 (1956).

[14] *American Airlines* v. *CAB*, 359 F. 2d 264 (D.C. Cir.), *cert. denied*, 385 U.S. 843 (1966).

[15] *B'nai B'rith* v. *FCC*, 403 F. 2d 169 (D.C. Cir. 1968), *cert. denied*, 394 U.S. 930 (1969).

[16] *Mattern* v. *Weinberger*, 519 F. 2d 150 (3d Cir. 1975), vacated and remanded for further consideration, 425 U.S. 987 (1976); *Allied Van Lines Co.* v. *United States*, 303 Fed. Supp. 742 (C.D. Cal. 1969) (3 judge court).

[17] *Shell Oil Co.* v. *FPC*, 520 F. 2d 1061 (5th Cir. 1975).

[18] *Burr* v. *New Rochelle Municipal Housing Authority*, 479 F. 2d 1165 (2d Cir. 1973).

[19] See, for example, *Patagonia Corp.* v. *Federal Reserve System*, 517 F. 2d 803 (9th Cir. 1975) and *Coral Gables Convalescent Home* v. *Richardson*, 340 F. Supp. 646 (S.D. Fla. 1972).

[20] Davis, *Administrative Law Text*, 160 (1972).

[21] *United States* v. *CAB*, 511 F. 2d 1315 (D.C. Cir. 1975).

[22] *Yee-Lit* v. *Richardson*, 353 F. Supp. 990 (N.D. Cal.), aff'd without opinion 412 U.S. 924 (1973).

[23] *Skelly Oil Co.* v. *FPC*, 375 F.2d 6, 13 (10th Cir. 1967), modified on other grounds sub nom. *Permian Basin Area Rate Cases*, 390 U.S. 747 (1968).

[24] *FTC* v. *Cement Industries*, 333 U.S. 683 (1948).

maker had adjudged the facts of a particular case in advance of hearing it.[25]

The case law is clear that the combination of judging even with prosecuting or investigating (let alone simply advocating) is not a denial of due process, although a few exceptions can be found. See Davis, *Administrative Law Text*, § 13.02 (1972). The leading case is *Marcello* v. *Bonds*, 349 U.S. 302 (1955), holding that due process is not violated in a deportation case by combining in a single unit adjudicating and investigatory and prosecutory functions. The APA had been interpreted in *Wong Yang Sun* v. *McGrath*, 339 U.S. 33 (1950), so as to bring deportation proceedings within the class of cases "required by statute to be decided on the record after an opportunity for agency hearing." Thus, the separation of functions requirement of the APA attached to deportation hearings. In subsequent legislation, Congress expressely exempted such cases from the notice and hearing requirement and the Supreme Court, in *Marcello* v. *Bonds*, declined to set aside that Congressional judgment on constitutional grounds.[26] Indeed, such Congressional determination is entitled to weight. As the Court of Appeals for the D.C. Circuit recently explained when discussing the regulations of toxic substances through EPA rulemaking procedures, the failure of Congress to make the separation of functions provisions of the APA applicable to rulemaking proceedings was deliberate, and represents, Congress' view that "the need for flexibility in rulemaking outweighed the advantages of rigid staff divisions." *Environmental Defense Fund* v. *EPA*, No. 77-1091 *et seq.* (D.C. Cir., November 3, 1978), 12 ERC 1353, 1363. The same can now be said for Congress' decision in the Deregulation Act to expressly remove CAB licensing cases from the notice and hearing procedures of the APA.[27]

It is also clear that the elimination of an initial or recommended decision by the presiding officer does not ordinarily compromise the effectiveness of the decisionmaking process so as to rise to constitutional levels. *Morgan* v. *United States*, 298 U.S. 468 (1936). If it did, the APA itself could never provide for certification of the record directly to the agency without an initial or recommended decision. There may nonetheless be cases where a decision by the presiding officer is required. In *Canadian Pacific Railway Co.* v. *United States*, 158 F. Supp. 248 (D. Minn. 1958) (3 judge court), the court stated:

"In controversies which present doubtful fact issues, the determination of which must turn on credibility of witnesses and the weight of evidence, we have no doubt that the parties are entitled to an examiner's report; but in cases where the basic facts are definitely established * * *, and where the parties have been afforded full opportunity to present their evidence and their arguments, and where the only questions for decision are what inferences and conclusions shall be drawn from the facts by the agency which under the law is required to make the decision, we think the failure to have the hearing examiner make a report is not error requiring a reversal or vacation of the agency's order." Id. at 257.

Most Board licensing cases will not turn on the credibility of witnesses. (Those that do should be the subject of a trial and a judge's decision.) Rather, they will turn on policy judgments, inferences, and economic theory. Intermediate decisions are not required in such circumstances. As the court in *Canadian Pacific* indicated, citing, with approval *Colorado Interstate Gas Co.* v. *FPC*, 209 F.2d 717 (10th Cir. 1954), reversed on other grounds, 348 U.S. 492 (1955):

"* * * The difference between the parties involved differences of opinion and the inferences and deductions to be drawn from established basic facts. These issues arose in specialized fields calling for the opinion of experts. It was not a question of the credibility of the expert witness but rather a question of the weight to be accorded to their opinions. The Commission was as competent to pass on these questions without the examiner's intermediate report as with it because these questions were plainly within the Commission's expert competency. Id. at 257.

APPENDIX B

SUMMARY OF COMMENTS[1]

EXECUTIVE DEPARTMENTS

The *Departments of State, Justice* and *Transportation* support the proposed procedures. The *Department of State* asserts that the Board's ability to act quickly on certificate and permit applications enhances the competitive environment by assuring that rights negotiated for U.S. carriers are used without delay and permitting to United States, as part of its inter-governmental negotiation, to assure foreign governments of prompt action for their carriers. The *Department* assumes that the Board will continue to use the highly expedited Show Cause procedures even after enactment of the new simplified procedures.

The *Departments of Justice* and *Transportation* emphasize that many issues now presented to the Board in licensing cases do not require full oral adjudicatory procedures for proper resolution. Both departments stress that even certain factual issues—such as traffic forecasts or projected costs—are based on historic data and concern the inferences to be drawn from, or economics intuition to be applied to, known facts. Both Departments argue that the Board's limited hearing resources should be reserved for cases that genuinely require their use. *DOT suggests that this involves only two possible factual settings—i.e.*, where resolution of a dispute turns on witness credibility or where antitrust considerations are raised; even in such cases, trial procedures could be limited to those issues.

DOJ claims that reliance on full hearing procedures stifles competition because applicants must reveal their marketing plans in minute detail, thus alerting potential competitors to what to expect; lengthy hearing procedures also discourage new entry by increasing the risk that economic conditions favorable to entry will change by the time an application is finally considered.

DOJ argues that the APA's separation of functions rule is no bar to use of the new procedures. The operating bureaus' initial screening and scoping functions are not investigative or prosecutorial functions and do not bar having that bureau recommend a final Board decision.

DOT urges the Board to modify the proposal to allow answers to petitions for expedited processing to contain requests for oral presentation and/or initial or recommended decision, and provide for convening a discretionary informal conference prior to determining whether to use expedited procedures. The conference would determine whether there are likely to be genuine disputes over factual issues which can only be resolved by cross-examination. A Board member or a staff member would preside, determine the precise boundaries of any controversy as to material fact, and submit a recommendation to the Board. This would insure against a misapplication of expedited procedures to situations genuinely requiring trial-type procedures.

MEMBERS OF CONGRESS

Senators Bartlett, Bellmon, Cannon, Kennedy, Pearson, Percy, and *Ribicoff,* and *Representatives English and Moss,* suport the proposal. *Senators Percy* and *Ribicoff* take no position on the details of the proposal but stress that the proposal is fully consistent with the important goal of reducing regulatory delay; the Board should insure that the procedures actually reduce delay while protecting the rights of all parties to an impartial and objective decision. *Senators Cannon, Kennedy and Pearson* argue that the proedural reforms are necessary to alleviate what they describe as chronic administrative delay. By shortening the time to process applications, carriers can also be more responsive to changes in public demand, more applications can be heard, and a greater threat of entry assured to spur performance by incumbents. They emphasize that most Board hearings involve predictions from historic data which are not materially assisted by cross-examination or decisions by administrative law judges; it is likely, in addition, that the record would be substantially shortened if no trials were held. *Senators Bartlett and Bellmon, and Representative English,* view the proposal as a means of assisting communities in obtaining prompt Board decisions, but urge the Board to insure adequate protection against deprivation of due process rights.

Senators Kennedy, Cannon and Pearson urge two modifications. First, the Board should build in time limitations on itself, including a firm deadline for final decision. Second, the Board should combine use of the new procedures with the elimination of the provision calling for dismissal of applications after three years; in short, all applications should now be heard.

Congressman Moss endorses the proposal but suggests a variety of changes. Funda-

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[25] *Cinderella Career & Finishing Schools* v. *FTC*, 425 F.2d 583 (D.C. Cir. 1970).

[26] Even in the *Wong Yang Sun* case, it should be noted, no one questioned the constitutionality of the hearing actually provided. See Justice Reed's dissenting statment, 399 U.S. at 53.

[27] Such a determination is broadly consistent with the general exception to the separation of functions prohibition contained in section 554(d) of th APA for cases involving applications for initial licenses. Such cases, which include requests for certificates of public convenience and necessity and permits, and amendments to those certificates or permits sought by applicant (as opposed to those imposed by the agency), often involve policy making considerations where the views of the agency's staff were deemed important. See Attorney General's Manual on the Administrative Procedure Act (1947), pp. 50-53.

[1] Summary does not include arguments directed to the legality of the proposed procedures under the requirements of sections 554, 556 and 557 of the Administrative Procedure Act.

mentally, Congressman Moss indicates that Congress intended Federal agencies to use expedited-type procedures except where cross-examination is necessary for a full and fair disclosure of the facts, the interests of a party will be prejudiced, applications are mutually exclusive, or a case becomes adversary in nature.

First, the new procedures should become the normal means of processing applications, not the exception; such change in emphasis should reduce the number of times the Board will be called upon to decide procedural issues at the outset of a case. Second, the Board should not use the term "documentary" to describe the new procedures; "documentary evidence" is a term of art which does not include affidavits and written evidence. Third, further review is needed concerning rates cases. The Board may only change existing or carrier-proposed passenger or property fares or rates if, after notice and hearing, it finds the rates will be unlawful. Since such procedures tend to be accusatory in nature, written evidence procedures are not appropriate. Fourth, the Board should allow motions to set for hearing to be filed as well as motions to dismiss; the Board could then set certain applications, or trial, if necessary, and avoid the necessity for refiling. Finally, the Board should assign applications to a single bureau; this approach is similar to that employed by other Federal agencies when the original APA was adopted and eliminates the need to duplicate effort by staff members in the General Counsel's office, and perhaps other bureaus as well.

LAW SCHOOL PROFESSORS

Professor Michael Cox, University of Oklahoma, suggests that the public should choose, in a particular case, which procedures it wishes. Documentary procedures should not be employed where a substantial number of interested persons have requested oral hearing procedures. *Professor Edwin McManus*, Georgetown University Law Center, applauds the Board's attempt to obviate the need for adjudication in certain cases but urges the Board not to attempt to legislate genuinely adjudicative situations.

AMERICAN AIRLINES

American fully supports the Board's proposal. With the change in substantive standards, there is no longer a need for the complex and dilatory hearing procedures that have characterized past Board route cases. Few genuine factual issues remain for decision in routes cases. The establishment of a zone of reasonableness for passenger fares likewise eliminates most factual issues in fare or rates cases. If significant factual issues nonetheless remain, they can easily be handled by oral, legislative hearings before the Board, in the same manner as oral argument.

FRONTIER AIRLINES

Frontier supports the Board's proposal except insofar as it permits only 30 days for the filing of responses to an application. An additional 15 days should be added.

SECTION OF ADMINISTRATIVE LAW, AMERICAN BAR ASSOCIATION [2]

The *Section* questions whether the Board's hearing resources are, in fact, inadequate; challenges the notion that the hearing is a major contributor to delay, but observes that the most disturbing feature of the proposed rule is the substitution of the internal Board staff for the administrative law judge's decision. Without challenging the idea that the hearing process can be streamlined, the Section believes that the Board has overlooked other causes of delay and has improperly focused solely on hearing procedures. It urges the Board to take a hard look at its own internal procedures, as the report of the Advisory Committee on Procedural Reform suggested, to determine whether eliminating the hearing and the judge's decision will really contribute to expedition.

The use of vague criteria to eliminate the trier of fact and avoid intermediate decision creates serious due process problems and reflects a serious misunderstanding of the contribution of the intermediate decision to the quality of the Board's ultimate decision. In hearing or non-hearing cases the judge's decision contributes to the sharpening of the issues, instills public confidence in the fairness of the procedures, and gives the parties a chance to address perceived errors and the Board to correct such errors before a decision becomes final. Use of "anonymous" staff, rather than an independent fact-finder (the ALJ) or a political appointee (Board Members) dilutes public responsibility. In a real sense, the Section believes, the procedures would constitute an abdication of decision-making by the Board to its staff. The end product of coordination between the Bureaus (BIA and BPDA), OGC, and OEA will be that no one will be left within the Board to advise the members regarding the wisdom of the staff's recommendation; the process will be devoid of internal checks and balances, impervious to the views of affected parties, and immune to public scrutiny.

The Board should adopt a form of procedure similar to that used by the ICC, assuring the parties access to an independant fact-finder; the public issuance of an intermediate decision; recourse to an appellate panel composed of Board members and, in truly important cases, recourse to the entire Board. Since the Board has no statutory authority to establish "employee Boards," however, the preparation of the intermediate decision should be the responsibility of the judges or individual Board members. Preparation of an intermidiate decision by a named official is essential.

The criteria for use of expedited procedures are inadequate. To begin with, use of alternative criteria mean that the Board would be empowered to deny an oral hearing even if a case contained issues of material fact that could not be properly resolved without cross-examination. Staffing and workload considerations can never be sufficient justification for dispensing with a trial where trial procedures are necessary for the proper resolution of genuine fact issues; the "staffing and workload" criterion should be eliminated totally. Furthermore, use of the criterion "may be resolved by means of written materials" could permit use of non-oral hearing procedures even where factual issues cannot be reliably or accurately resolved. This would be improper. Finally, cross-examination is useful not merely where its use if essential—as where questions of demeanor or credibility are concerned—but also where expert opinion needs to be tested, and bias, illogic, or ignorance revealed. Cross-examination serves to maintain public credibility in the fairness of the administrative process and disciplines witnesses by confining them to statements and assumptions than can withstand cross-examination.

The Chief Administrative Law Judge or his designee should be a formal part of the process of determining whether non-trial procedures should be used.

The time limits imposed on objecting parties deprive them of an effective opportunity to challenge; employment of shortened time tables will result in tying up the Board's route cases in endless litigation and result in judicial reversal due to insufficient records.

U.S. CERTIFICATED CARRIERS [3]

The carriers oppose the proposed rules. The carriers' fundamental objection is the substitution of an internal staff recommendation for a decision by an administrative law judge. The judge's decision insures that when the Board renders its decision it has before it a neutral summary and review of the evidence, prepared by one fully familiar with the facts, and subjected to detailed criticism in light of the record by those whose fundamental interests are at stake. Furthermore, absent the safeguard of a visible deciding officer, a clear record, and a transcript of proceedings, the public cannot be assured that the case was decided on the factual record presented rather than on a variety of extra-record "facts," beliefs, or opinions, and there is no effective way for the affected parties to reach the decision-maker.

It is not clear that expedited procedures will actually produce faster results. The hearing phase of a case accomplishes more in less time than any other discrete phase of the case (in recent months, for example, judges have held prehearing conferences and the parties have submitted direct exhibits before the Board's scoping order has been issued) so that non-hearing procedures may well slow down more cases than it expedites. The Board can better achieve its desired goal of expedition by narrowing and focusing the issues and clearly identifying in advance the facts on which it will rely to decide a case or class of cases. Irrelevant material can then be excluded. Parties should also be permitted to seek summary determination of issues or cases where no genuine dispute exists over material facts. The responsibility for summary judgment should rest with an administrative law judge who is a neutral official. The Board should also consider permitting a party to move for decision on the basis of documents where it can be demonstrated that an oral hearing would serve no purpose. Finally, the Board should encourage the parties and the judges to use innovative hearing procedures. All of these procedures could be effectuated without compromising the basic rights of parties.

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[2] Views have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, should not be construed as representing the position of the ABA, but are presented on behalf of the Section of Administrative Law.

[3] Allegheny Airlines, Aloha Airlines, Braniff International, Delta Air Lines, Eastern Air Lines, Frontier Airlines, Hughes Airwest, National Airlines, Ozark Air Lines, Pan American World Airways, Piedmont Airlines, Southern Airways, Trans World Airlines, Western Air Lines, Wein Air Alaska.

THE HOUSTON PARTIES

Houston endorses the proposal but only in cases that do not involve complex or disputed factual issues. The new procedures should not be used in multi-carrier, multi-market route proceedings but should, in most cases, provide for a judge's decision.

Shortening the process of gathering, testing, and weighing evidence, and shifting the responsibility for preparing a Board decision to a staff unit without intermediate adversary input, increases the risk of an erroneous conclusion. Furthermore, it compromises a party's ability to know what the Government proposes to do and be heard before a proposal becomes a final Government command, in contravention of basic due process rights.

Houston urges the Board to include at least the minimum procedural protections contained in the ICC's modified procedures, (i) a two-stage decisional process allowing for narrowly-focused adversarial argument following issuance of the preliminary decision, and (ii) a separation of functions.

HUGHES AIRWEST

Airwest supports in principle the adoption of procedural rules that will eliminate delay but opposes the Board's proposal because it will seriously dilute important due process rights and substitute inferior procedures. The proposal, if permissible, would be available only where no material facts are in issue.

The proposal, to begin with, would not insure expeditious decision by the Board. An oral hearing constitutes but a minor part of the total decisional time while most of the historic delay has occurred (i) waiting for an application to be set for hearing and (ii) waiting for final Board decision following issuance of a judge's decision. The shift of additional responsibilities to the BPDA and BIA staffs would slow the process further.

The proposal would also institutionalize decision-making so much that it would create the appearance of unfairness. The Bureau's staff would totally control the case, isolated from public scrutiny. The oral hearing and the judge's decision are the only independent check on policy positions advocated by the Board's staff. Parties critical of these policies are entitled to have them subjected to rigorous examination in an adversary hearing. The Board should reserve non-hearing procedures and elimination of a judge's decision for cases not involving disputed issues of material fact.

More reasonable alternatives are available to the Board. Cases with no genuine factual issues can be dealt with by Show Cause or other summary procedures. Expedition of more complicated cases can be achieved through an expansion of existing Subpart M or N procedures. The Board should also fix a specific deadline for its own decision.

UNITED AIR LINES

United believes that the Board's specific proposal is not good and offers an alternative. Administrative law judges do not impede the processing of cases; rather, they improve the quality of decision-making. Without the threat of cross-examination, the quality of proceedings may deteriorate.

United proposes that all matters to be considered at a hearing be assigned to the judge. Parties should be required to submit their questions in the form of written interogatories during the exchange of exhibits and, at the end of this process, parties can file a motion that the written record be stipulated. The judge would decide whether the record was complete or whether cross-examination were necessary. Such procedure will meet all statutory requirements and improve the handling of cases.

The most fruitful source of expedition is the Board's emerging policies. To the extent that changing policies remove carrier selection from route cases, the hearing process will be streamlined. A reduction in the necessary evidence will also result as the Board articulates specific standards concerning the public convenience and necessity. Articulation of new policies and the promulgation of policy statements concerning substantive issues will bring about much more expedition than changes in procedures.

BALJ NOTE

The BALJ views the OGC memorandum and proposed rule as premised upon the assumption that the statute and existing case law on the constitutional and APA requirements permit use of expedited procedures where material facts are at issue.[1] This is simply not true; the BALJ knows of no case where a court has held that a necessary fact to the decision could be arbitrarily resolved and the decision itself found to be sound. Nor has any case been found where a contested material issue between parties, particularly where turning on credibility, has been found resolvable on paper submissions. Be that as it may, even if the courts could be convinced to affirm such arbitrary decision making by rejecting the "material fact at issue" the Board is being asked to weaken the existing legal requirement for no apparent legal or practical gain (see the prior memorandum of BALJ published as a part of the Board's proposed rulemaking last Spring (43 C.F.R. 16511, April 19, 1978)). As set out below, the BALJ does not believe that there is any practical reason to do so, even assuming that the Board legally could so proceed, to change the key standard for determining when a party should receive an oral hearing.

The standard "material facts at issue" has been used by both the courts and administrative agencies as the appropriate standard for determining when an oral hearing is required. This has not been done in order to slow up or to expedite proceedings. Rather, it has been recognized that if the facts are "material", *i.e.*, important to the decision, and "at issue", *i.e.*, contested or disputed, a resolution other than by an oral hearing is not acceptable. Nor is there any reason to suggest a new standard since the existing standard has worked quite well. Roughly 85 percent of ICC motor carrier cases were traditionally handled as non-oral hearing cases under this standard, and the recent change in the ICC views as to what is the applicable standard of proof for entry has resulted in 95 percent of those cases being handled by non-oral hearing cases.

1. *Material Facts at Issue*

Turning from the general considerations to a critique of the specific documents at hand, the BALJ does not agree that the standard proposed by OGC for determining when oral evidentiary hearing procedures will be used "arrives at the same place" as the standard we propose.

The standard we propose would require that an oral evidentiary hearing be held whenever there are "substantial issues of material fact." *Substantial* means genuine, non-frivolous issues. Insubstantial issues may be dismissed or rejected because they pose no real question that deserves consideration. Issues—real issues—denote a controversy raised by the pleadings. *Material* facts are facts that matter—facts that are not only relevant, but have decisional weight. *Facts* are the actual conditions, actions, or events or explanations of theories that are in dispute, as opposed to matters of law, policy or philosophy.

In our view, "substantial issues of material fact" cannot be resolved without an oral evidentiary hearing, because there is a genuine controversy about facts necessary to a decision, and without the confrontation of cross-examination there is no way to explore the minds of the witnesses for the parties to the dispute to determine (1) whether they believe their allegations to be true or (2) the underlying bases for their beliefs. Thorough, probing, oral cross-examination can reveal that the witness is biased or lying; that his premises are mistaken, unsound, or insufficient; that his methodology is faulty, or that his analysis is deficient. Generally, with sophisticated witnesses, only immediate follow-up questions can lay bare discrepancies or deficiencies in the testimony.

The foregoing exposition demonstrates why, when there are substantial issues of material fact, non-oral "hearings" based upon the submissions of papers are just not an adequate basis for the factual record upon which the Board is to determine controversies. It is not merely a notion, as OGC would have it, that where sharply controverted issues of fact are involved to get at the truth of a matter reliable, probative and substantial evidence is needed; that facts and witnesses are elusive; and that non-oral hearings are not an adequate substitution for direct confrontation. This is a far different standard than the OGC formulation, which would use oral evidentiary hearings when "material issues of decisional fact cannot *adequately* be resolved" on a paper record. Sad to say, in this context "adequately" is a weasel word apparently meaning that the presence of substantial issues of material fact *may* be a ground for an oral evidentiary hearing if a tripartite committee fails to conclude that a paper record will be so likely to be unreliable that inaccurate results would follow *and* that non-oral "hearings" are not more suitable.

It is far from clear how the determination can be made that a paper record will do, when the conflicting written statements are the only source for assessing the material issue of fact. Under the draft rule, the burden would be on those parties attempting to respond to allegations they believe to be untrue or unsound, and the presence of a dispute over substantial issues of material fact would be but one factor to be weighed against administrative burdens and time constraints. How are these factors to be weighed? Would it be perceived that the policy predilections of members of the troika, including the possible lack of belief by some of the members in the efficacy of the process of fact determinations, influ-

[1] The legal memorandum (appendix A) is basically an argument, *e.g.*, the assumption throughout is that "economics theory" is not subject to enlightenment through the questioning of the theorist (p. 13) or the reliance on the cases cited in the footnote on page 3A.

enced the determination? Given a genuine dispute over a fact necessary to a decision on the merits, what confidence can be placed in that decision when a party's request for a rigorous examination of an adverse witness is denied? The BALJ cannot believe that the Congress has consciously decided that any crucial factual controversies arising in licensing cases that must be decided by the Board after public hearings during the period of transition to a free market can be resolved on the basis of documents over the objections of a party that requests the right to confront the adverse witness. Nor did Congress change the needs in the international area, particularly where carrier selection is still mandated. It is recognized that there are time constraints making the Board's task more difficult and that affording due process and APA rights may be both time-consuming and administratively burdensome is conceded, but the BALJ believes that these are prices which must be paid to assure a fair hearing. Procedural determinations based on standards which contemplate any less will be invalid, will be so found by the courts, and will in the end cost more time and prove more burdensome for the Board.

2. *Fitness Discussion.*

We agree that the Board has a public interest responsibility to insure that all applicants are fit, willing and able. We do not agree that where genuine questions of fitness are raised, the Board "may well wish" (and decide) not to explore those questions at a formal hearing. We raise that matter now because of the language change from an earlier draft, which in place of the quoted phrase stated that opponents raising fitness issues ought ordinarily to have the opportunity to present their case in the branch of their choosing. Here, surely, if material issues of fact are raised, the public interest requires that an oral evidentiary hearing be the forum for their resolution. Fitness "arguments", standing alone, may not necessitate a hearing on a record; fitness facts do, for there is no congressional mandate for easy entry by unfit carriers.

3. *Interplay Between Show Cause Procedures.*

A most curious aspect of the memoranda is the suggestion at page 24(a) alluding to the various Bureaus' activities in individually determining when "show cause" procedures should be used. The truth of the matter is that the current Board practice of using show cause orders is, in fact, an ersatz non-oral hearing procedure and that any process which has the instituting Bureaus make a first determination as to whether a party had made a case warranting a hearing, oral or otherwise, is a total denigration of the system. The BALJ is unable to determine why the troika should not be functioning on all applications at the time the parties make their presentation as to their need for full process. Any system which has an initial determination made by what the late Senator Dirksen referred to as the "little green men on the other side of the moon" as a part of the system, creates a prescription for abuse and a statement of built-in opportunity for bias. All proceedings should be given the same degree of procedural fairness, not merely those determined by the Bureaus to be worthy of it.

NAHUM LITT,
Chief Administrative Law Judge.

PROPOSED RULE

Accordingly, the Civil Aeronautics Board proposes the following amendments of Title 14, Code of Federal Regulations:

PART 302—RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

A. Amendments to Part 302.

It is proposed to add a new Subpart Q to Part 302, *Rules of Practice in Economic Proceedings*, as follows:

1. The table of contents of Part 302 would be amended by adding a new Subpart Q, to read:

Subpart Q—Expedited Procedures for Processing Licensing Cases

Sec.
302.1701 Applicability.
302.1702 Subpart A Governs.
302.1703 Filing of Applications.
302.1704 Contents of Applications.
302.1705 Service of Documents.
302.1706 Computation of Time.
302.1707 Verification.
302.1708 Joint Pleadings.
302.1709 Definition of Parties.
302.1710 Economic Data and Other Facts.
302.1711 Continuances and Extensions of Time.
302.1712 Oral Presentation and/or Initial or Recommended Decision.
302.1713 Preliminary Procedures for Rejection of Nonconforming Applications.
302.1720 Procedures in Certificate Cases.
302.1730 Procedures in Restriction Removal Cases.
302.1740 Procedures in Foreign Air Carrier Permit Cases.
302.1750 Disposition of Applications—Orders Establishing Further Procedures.
302.1751 Oral Evidentiary Hearing.
302.1752 Briefs to the Administrative Law Judge.
302.1753 Administrative Law Judge's Initial or Recommended Decision.
302.1754 Exceptions to Administrative Law Judge's Initial or Recommended Decision.
302.1755 Briefs Before the Board.
302.1756 Oral Argument Before the Board.
302.1757 Final Decision of the Board.
302.1758 Petitions for Reconsideration.
302.1760 Internal Procedures.
302.1770 Criteria for Use of Oral Evidentiary Hearing Procedures and/or Assignment of a Case to an Administrative Law Judge.
302.1780 Standards for Deciding Cases in which Expedited, Simplified Procedures are Employed.

AUTHORITY: Sec. 204, 401, 402, 1001, Federal Aviation Act of 1958, as amended by Pub. L. 95-504, as amended, 72 Stat. 743, 754, 757, 788, 92 Stat. 1723, (49 U.S.C. 1324, 1371, 1481), Administrative Procedure Act (5 U.S.C. 551 et seq.)

2. Amend Part 302 by adding a new Subpart Q which reads:

Subpart Q—Expedited Procedures for Processing Licensing Cases

§ 302.1701 Applicability.

This subpart sets forth the rules applicable to proceedings on (a) applications for certificates of public convenience and necessity and renewals, amendments, modifications, suspensions and transfers of certificates under sections 401(d)(1), 401(d)(2), 401(d)(3), 401(g), and 401(h) of the Act; (b) applications under section 401(e)(7)(B) of the Act for the removal or modification of a term, condition, or limitation attached to a certificate; and (c) applications for foreign air carrier permits, and renewals, alterations, amendments, modifications, suspensions, and transfers of such permits under sections 402(c) and 402(f) of the Act.

§ 302.1702 Subpart A governs.

Except as modified by this subpart, the provisions of Subpart A of this part continue to apply.

§ 302.1703 Filing of applications.

Any person may file an application of the type described in § 302.1701. Applications for foreign air carrier permits shall be filed as specified in § 211.2 of this chapter. The Board will publish in the FEDERAL REGISTER a weekly list of applications filed under this subpart.

§ 302.1704 Contents of applications.

(a) Applications under this subpart (including applications filed under § 302.1720(c) or conforming applications filed under § 302.1730(d)) shall indicate how the applicant proposes that its application be processed (See § 302.1750). Certificate applications shall contain the information required by Part 201 of this chapter and foreign air carrier permit applications shall contain the information required by Part 211 of this chapter. Applications shall include:

(1) Statement of economic data and other matters which the applicant desires the Board to notice officially;

(2) Written evidence establishing the facts that the applicant relies on to establish its fitness and to show that the grant of the relief requested is consistent with or required by the public convenience and necessity, or is in the public interest, as applicable; and

(3) The applicant's opening argument, in the form of a trial brief or otherwise.

(b) Each application shall be accompanied by an Environmental Evaluation in conformity with Parts 312 and 313 of this chapter unless a waiver or exemption has been granted under § 312.6.

(c) Later filed competing applications shall conform to the base and

forecast years used by the original applicant and need not contain traffic and financial data for markets for which data have already been submitted by another person.

(d) Applications shall include a list of the names and addresses of all persons that have been served.

§ 302.1705 Service of documents.

(a) *Persons to be served.* (1) In certificate proceedings involving applications described in § 302.1701(a), all documents filed before the issuance of the scoping order (§ 302.1720(f)) shall be served on the persons listed in paragraph (b) of this section, and on any other person who has filed a pleading in the docket. After the scoping order has been issued, documents need only be served on the persons listed in the service list accompanying the scoping order.

(2) In certificate proceedings involving applications described in § 302.1701(b), all documents shall be served on the persons listed in paragraph (b) of this section and on any other person who has filed a pleading in the docket.

(3) In foreign air carrier permit proceedings described in § 302.1701(c) applicants shall serve on the persons listed in § 302.1705(b) a notice that such an application has been filed and, upon request, shall promptly provide those persons with copies of the actual documents. All later documents shall be served on any person that has filed a pleading in the docket.

(b) Documents shall be served, for each point applied for, on the following:

(1) All certificated air carriers authorized to engage in the type of air transportation (scheduled or charter) at one or more of the points for which the applicant seeks authority;

(2) All other carriers operating at least five flights per week to or from the point according to the "Official Airline Guide" or "Air Cargo Guide";

(3) The aviation regulatory agency of the State, territory or possession of the United States in which the point is located or, if there is no aviation regulatory agency, the Governor or other chief executive of the State, territory, or possession;

(4) The mayor or other chief executive of the point;

(5) The airport authority of each airport that the applicant proposes to serve; and

(6) In the case of an application sought to be consolidated, all persons served by the original applicant.

(c) *Additional service.* The Board may, in its discretion, order additional service upon such persons as the facts of the situation warrant. Where only notices are required, parties are encouraged to serve copies of their actual pleadings where feasible.

§ 302.1706 Computation of time.

All time periods prescribed in this subpart are stated in terms of calendar days. Intermediate Saturdays, Sundays and holidays shall be included in the computation. If the last day of a period is a Saturday, Sunday, or legal holiday for the Board, the period runs until the following day if that is a working day for the Board. Otherwise the period ends on the preceding working day. In all other respects, § 302.16 applies.

§ 302.1707 Verification.

The facts asserted in any pleading filed under this subpart shall be sworn to by persons having knowledge of them and this fact shall be stated in an affidavit in support of the pleading. Such persons shall be those who will appear as witnesses to substantiate the facts asserted if an oral hearing becomes necessary. The original of any pleading filed under the simplified procedures shall show the signature and capacity of the person administering the oath and the date administered.

§ 302.1708 Joint pleadings.

Parties having common interests shall, to the extent practicable, arrange for the joint preparation of pleadings.

§ 302.1709 Definition of parties.

Notwithstanding the provisions of §§ 302.14 and 302.15, any person may participate in proceedings under this Subpart. Petitions for leave to intervene are not required. Any person may become a party by filing a pleading in the docket except that, in proceedings governed by § 302.1720, persons who fail to file a timely notice of intent to participate under § 302.1720(e) shall not participate in any further procedures.

§ 302.1710 Economic data and other facts.

Whenever economic data and other facts are provided, such information shall include enough detail so that final results can be obtained, without further clarification. Sources, bases, and methodology used in constructing exhibits, including any estimates or judgments, shall be provided.

§ 302.1711 Continuance and extensions of time.

The procedures described in § 302.17 will apply to proceedings under this subpart. The filing deadlines in certificate proceedings will be strictly enforced and extensions will be granted only in extraordinary circumstances. Extensions in foreign air carrier permit cases will be granted for good cause shown.

§ 302.1712 Oral presentation; initial or recommended decision.

(a) *Cases to be decided on written submissions.* Applications under this subpart will be decided on the basis of written submissions unless the Board, on petition or on its own initiative, determines that an oral presentation or an administrative law judge's decision is required by the public interest.

(b) *Petitions for oral presentation or judge's decision.* Any party may file a petition for oral evidentiary hearing, oral argument, an initial or recommended decision, or any combination of these. Petitions shall demonstrate that one or more of the criteria set forth in § 302.1770 are applicable to the issues for which an oral presentation or judge's decision is requested. Such petitions shall be supported by a detailed explanation of the following:

(1) Why the evidence or argument to be presented cannot be submitted in the form of written evidence or briefs, including an estimate of the time required for the oral presentation and the number of witnesses whom the petitioner would present;

(2) Which issues should be examined by an administrative law judge and why such issues should not be presented directly to the Board for decision; and

(3) If cross-examination of any witness is desired, the name of the witness, the subject matter of the desired cross-examination, what the petitioner expects to establish by the cross-examination, and an estimate of the time needed for it.

(c) *Stipulations.* Where a stipulation of disputed facts would eliminate the need for an oral presentation or judge's decision, parties shall include in their petitions an offer to withdraw the request should the stipulation be made.

§ 302.1713 Preliminary procedures for rejection of nonconforming applications.

Within 14 days after the filing of any application under this subpart (including an application which is sought to be consolidated or a conforming application), the Bureau of Pricing and Domestic Aviation, or the Bureau of International Aviation, as appropriate, may, on behalf of the Board, reject any application that does not comply with this subpart. Such a rejection shall be without prejudice to the refiling of the application in another docket. Petitions for review of the staff action may be filed in accordance with Subpart B of Part 385 of the chapter.

§ 302.1720 Procedures in certificate cases.

(a) *Applicability.* This section applies to the certificate cases described in § 302.1701(a).

(b) *Notice on cover page.* Applications to which this section applies shall include a notice on the cover page stating that any person that wishes to support or oppose the application must file a notice of intent to participate under 14 CFR 302.1720(e) indicating briefly that person's position, and serve that notice on all persons served with the application. The notice shall also state the due date for notices of intent to participate.

(c) *Motions to modify scope.* Any person may file in the same docket an application for the same authority as sought in an application filed under § 302.1701(a). Requests to modify the issues to be decided, along with applications filed in other dockets, shall be filed as a motion. Motions and applications under this section shall include economic data, other facts, and any argument in support of the person's position and must be filed within 21 days after the original application is filed.

(d) *Answers to Scoping Motions.* Any person may file an answer within 28 days after the filing of the original application. Answers shall set forth the basis for the support of or opposition to the motion, including any economic data or other facts relied upon. They may argue that an application should be dismissed. They shall not, however, propose the consideration of any additional markets.

(e) *Notices of intent to participate.* Any person (including applicants) wishing to take part in a proceeding shall file a notice of intent to participate no later than 28 days after the filing of the original application. The notice may be included in an application, answer, or other document. The notice shall include a brief statement of the person's position on each of the applications. If the person has no position on a particular application, he shall so state. The failure of a person to file a timely and proper notice of intent to participate will be considered as a waiver by that person of (1) the right to participate further in the proceeding, except that an applicant may continue to participate in support of its own application; and (2) all other procedural steps short of a final Board decision on any application that is not opposed.

(f) *Scoping order.* As soon as possible after the due date for the filing of answers to scoping motions, the Board will issue an order establishing the scope of the issues to be considered, or dismissing all or any part of any of the applications. Any dismissal, including a dismissal without prejudice, will be a decision on the merits and, as such, immediately appealable under section 1006 of the Act. The Board may establish more than one proceeding to consider the issues raised in the applications. Attached to the scoping order will be a list of parties to be served with all further documents filed in each proceeding. Petitions for reconsideration of the scoping order will not be entertained.

(g) *Amendments to applications.* Within 7 days after the service date of the scoping order, parties that have filed applications may amend them consistent with the scope of the proceeding. Such amendments shall include the information prescribed in § 302.1704. Amended applications are automatically consolidated into the proceeding.

(h) *Answers to applications.* Any party may file an answer in support of or in opposition to any application. Answers must be filed no later than 21 days after the service date of the scoping order and shall include the economic data, other facts, and argument upon which the party relies to support its position.

(i) *Petitions for oral presentation or Judge's Decision.* Any party may file a Petition for Oral Presentation or Petition for Initial or Recommended Decision within 21 days after the service date of the scoping order. The petition shall conform to the requirements of § 302.1712.

(j) *Replies to answers.* Any party may file a reply to an answer to an application within 28 days after the service date of the scoping order. The reply shall set forth the economic data, other facts, and argument upon which the party relies to support its position. No further pleading shall be made by any person except by permission of the Board.

(k) *Answers to petitions.* Any party may file an answer to a Petition for Oral Presentation or a Petition for an Initial or Recommended Decision within 28 days after the service date of the scoping order.

(l) *Order establishing further procedures.* Within 90 days after the filing of the original application, the Board will issue an order establishing further procedures for processing the case.

§ 302.1730 Procedures in restriction removal cases.

(a) *Applicability.* This section applies to the certificate cases described in § 302.1701(b).

(b) *Applications.* Each application to which this section applies shall be limited to a single city-pair market unless a waiver of this requirement has first been obtained under paragraph (c) of this section. If the restriction in question does not apply to city-pair markets, applications shall be limited to a single restriction. All restriction removal applications (including conforming applications under paragraph (d) of this section) shall include a notice on the cover page that any person may support or oppose the application by filing an answer and serving a copy of the answer on all persons served with the application. The notice shall also state the due date for answers. Any application that does not conform with this paragraph will be rejected unless a waiver has been granted before the application is filed.

(c) *Waivers.* The Board may, upon the filing of a motion, grant such waivers of the limitations contained in paragraph (b) of this section as it shall find to be consistent with the public interest and the proper dispatch of the Board's business.

(d) *Conforming applications.* The issues in any proceeding under this section will be limited to those raised in the original application. Motions to modify the scope of the proceeding will not be entertained. Any person may file an application conforming to the scope of the proceeding within 14 days after the filing of the original application. Conforming applications are automatically consolidated. Nonconforming applications will be rejected under § 302.1713.

(e) *Answers to applications.* Any person may file an answer in support of or in opposition to any application. Answers shall be filed within 28 days after the filing of the original application and shall include any economic data, other facts, and argument upon which the person relies to support its position. The failure of a person to file a timely answer will be considered as a waiver by that person of (1) the right to participate further in the proceeding, except that an applicant may continue to participate in support of its own application; and (2) all procedural steps short of a final Board decision.

(f) *Petitions for oral presentation or Judge's Decision.* Any party may file a Petition for Oral Presentation or a Petition for Initial or Recommended Decision within 28 days after the filing of the original application. The petition shall conform to the requirements of § 302.1712.

(g) *Replies to answers.* Any person may file a reply to an answer to an application within 42 days after the filing of the original application. The reply shall include any economic data, other facts, and argument upon which the person relies to support its position. No further pleadings shall be made by any person except with permission of the Board.

(h) *Answers to petitions.* Any party may file an answer to a Petition for Oral Presentation or a Petition for Initial or Recommended Decision within 42 days after the filing of the original application.

(i) *Order establishing further procedures.* Within 60 days after the filing of the original application, the Board will issue an order establishing further procedures for processing the case.

§ 302.1740 Procedures in foreign air carrier permit cases.

(a) *Applicability.* This section applies to the foreign air carrier permit cases described in § 302.1701(c).

(b) *Notice on cover page.* Applications to which this section applies shall include a notice on the cover page stating that any person may support or oppose the application by filing an answer and serving a copy of the answer on all persons served with the application. The notice shall also state the due date for answers; time limits shall be calculated from the date of filing with the Board's docket section. Amendments to applications shall be deemed new applications for the purpose of calculating the time limitations of this subsection.

(c) *Answers to applications.* Any person may file an answer in support of or in opposition to any application. Answers shall be filed within 14 days after the filing of the application and shall include any economic data, other facts, and argument upon which the person relies to support its position. Unless good cause is shown, the failure of a person to file a timely answer will be considered as a waiver by that person of all procedural steps short of a final Board decision.

(d) *Replies to answers.* Any person may file a reply to an answer to an application within 14 days after the due date for answers. The reply shall include any economic data, other facts, and argument upon which the person relies to support its position. No further pleadings shall be made by any person except with permission of the Board.

(e) *Executive departments.* The views of the Department of State and the Federal Aviation Administration's evaluation of the applicant's operational fitness shall be filed within 14 days after the due date for Answers. Any other governmental entity shall comply with the procedural deadlines applicable to other persons.

(f) *Petitions for oral presentation or Judge's decision.* Any party may file a Petition for Oral Presentation or a Petition for Recommended Decision within 14 days after the filing of the application. The petition shall conform to the requirements of § 302.1712.

(g) *Answers to petitions.* Any party may file an answer to a Petition for Oral Presentation or a Petition for Recommended Decision within 14 days after the due date for Petitions.

(h) *Order establishing further procedures.* Within 30 days after the date that Replies are due, the Board will issue an order establishing further procedures for processing the case.

§ 302.1750 Disposition of applications—orders establishing further procedures.

Within the time limits established in §§ 302.1720(l), 1730(i), or 1740(h), as applicable, the Board will issue an order establishing further procedures in each case. With respect to each application, the Board will announce that it has decided to take one of the following actions:

(a) Set the application for oral evidentiary hearing. In this event, all of the procedures set forth in § 302.1751 through § 302.1758 will apply. The Board may limit the scope of the issues to be decided in an oral evidentiary hearing. In that event, the procedures set forth in Rules 1751 through 1758 will apply to the oral evidentiary hearing phase of the case, and the Board will indicate what procedures will be employed in deciding the other issues in the case.

(b) Dismiss the application on the merits. This action constitutes a final Board order subject to judicial review. Petitions for reconsideration of such an order will be entertained. This option will not be used in restriction removal cases under § 302.1730.

(c) Announce that the Board has begun to make a determination with respect to the application under simplified procedures without oral evidentiary hearing. In this event, the Board will indicate which of the procedural steps set forth in §§ 302.1752 through 302.1758 will be employed. The Board may also indicate that other non-oral evidentiary hearing procedures will be employed. For example, the Board may decide to issue a tentative decision under the procedures established in §§ 302.29 and 302.30 or call for the filing of additional evidence before the issuance of a final decision.

§ 302.1751 Oral evidentiary hearing.

If the Board determines, under Rule 1750(a), that an oral evidentiary hearing should be held, the application or applications will be set promptly for oral hearing before an administrative law judge of the Board. No prehearing conference will be held. The issues will be those set forth in the order establishing further procedures. Unless the administrative law judge finds that additional evidence is necessary to assure a party a fair hearing, the hearing shall be limited to

(a) Introduction into evidence of the applications, answers, replies, and (in the case of a foreign air carrier permit application) the documents filed by the Department of State and Federal Aviation Administration under § 302.1740(e); and

(b) Oral testimony on cross-examination of any witness sponsoring evidence described in paragraph (2) of this section.

§ 302.1752 Briefs to the administrative law judge.

Briefs to the administrative law judge shall be filed within:

(a) 14 days after the close of the oral evidentiary hearing established under § 302.1750(a), unless the administrative law judge determines that, under the circumstances of the case, briefs are not necessary or that the parties will require more time to prepare briefs; or

(b) 14 days after the issuance of the order establishing further procedures if no oral evidentiary hearing is called for, unless the Board determines that some other period should be allowed.

§ 302.1753 Administrative law judge's initial or recommended decision.

(a) In a case that has been set for oral evidentiary hearing under § 302.1750(a), the administrative law judge shall issue an initial or recommended decision within 150 days after the issuance of the order establishing further procedures unless

(1) The Board, having found extraordinary circumstances, has by order delayed the initial or recommended decision by a period of not more than 30 days; or

(2) An applicant has failed to meet the procedural schedule adopted by the Board in the order establishing further procedures. In this case the administrative law judge may, by notice, extend the due date for the issuance of an initial or recommended decision for a period not to exceed the period of delay caused by the applicant.

(b) In a case in which some of the issues have not been set for oral hearing under § 302.1750(a), the administrative law judge shall issue an initial or recommended decision within the time established by the Board in the order establishing further procedures, except that that due date may be extended in accordance with paragraph (a)(2) of this section.

(c) Unless exceptions are filed under § 302.1754 or the Board issues an order to review on its own initiative, an initial decision shall become effective as the final order of the Board 14 days after it is served. Where exceptions are timely filed or the Board takes action to review on its own initiative, the effectiveness of the initial decision is stayed until further order of the Board.

(d) In all other respects, the provisions of § 302.27 shall be applicable.

§ 302.1754 Exceptions to administrative law judge's initial or recommended decision.

(a) *Time for filing.* Within 7 days after service of any initial or recom-

mended decision of an administrative law judge, any party may file exceptions to the decision with the Board.

(b) *Form and content of exception.* Exceptions shall comply with § 302.30(b).

(c) *Effect of failure to file timely and adequate exceptions.* The provisions of § 302.30(c) shall apply.

(d) *Review is automatic.* If timely and adequate exceptions are filed, Board review of the initial or recommended decision is automatic.

§ 302.1755 Briefs before the Board.

The provisions of § 302.31 shall apply to briefs before the Board, except that:

(a) In a case in which an initial or recommended decision has been issued and exceptions have been filed, any party may file a brief to the Board in support of or in opposition to any exceptions. Such briefs shall be filed within 21 days after service of the initial or recommended decision.

(b) In a case in which an initial or recommended decision has been issued and no exceptions have been filed, briefs to the Board shall not be filed unless the Board has taken review on its own initiative and specifically provided for the filing of briefs to the Board.

(c) In a case in which an initial or recommended decision will not be issued, briefs to the Board may be filed only if specifically provided for in the order establishing further procedures, and only upon the issues specified in that order. Such briefs may be filed by any party within 14 days after service date of the order establishing further procedures, unless that order established a different due date.

§ 302.1756 Oral argument before the Board.

If the order establishing further procedures provides for an oral argument, all parties will be advised of the date and hour set for that argument and the amount of time allowed each party. The provisions of § 302.32(b) shall also apply.

§ 302.1757 Final decision of the Board.

In addition to the provisions of § 302.36, the following provisions shall apply:

(a) In the case of a certificate application that has been set for oral evidentiary hearing under § 302.1750(a), the Board will issue its final order within 90 days after the initial or recommended decision is issued. If an applicant has failed to meet the procedural schedule established by the Board, the Board may by notice, extend the date for a final decision for a period equal to the period of delay caused by the applicant.

(b) If the Board does not act in the time period established in paragraph (a) of this section

(1) In the case of an application for a certificate to engage in interstate or overseas air transportation, the initial or recommended decision shall become the final decision of the Board and shall be subject to judicial review under section 1006 of the Act; and

(2) In the case of an application for a certificate to engage in foreign air transportation, the initial or recommended decision shall be transmitted to the President under section 801 of the Act.

(c) In the case of a certificate application that has been processed under § 302.1750(c), the Board will issue its final order within 180 days after the order establishing further procedures. If an applicant has failed to meet the procedural schedule established by the Board, the Board may, by notice, extend the due date for a final decision for a period equal to the period of delay caused by the applicant.

§ 302.1758 Petitions for reconsideration.

The provisions of § 302.37 shall apply to petitions for reconsideration, except that:

(a) Petitions for reconsideration of any final order under this subpart shall be filed within 10 days after service of the order.

(b) Answers to a petition for reconsideration shall be filed within 10 days after the due date of petitions.

§ 302.1760 Internal procedures.

(a) In deciding which of the procedures set forth in § 302.1750 will be used for each case under this subpart, the Board will receive a joint recommendation from (1) the Director of the Bureau of Pricing and Domestic Aviation (in cases involving interstate or overseas air transportation) or the Director of the Bureau of International Aviation (in cases involving foreign air transportation); (2) the General Counsel; and (3) the Chief Administrative Law Judge; or their designees. If there is disagreement in that group, separate recommendations will be submitted to the extent necessary to reflect their views.

(b) In deciding each case under this subpart on the merits, the Board will receive a joint recommendation from (1) the Director of the Bureau of Pricing and Domestic Aviation (in cases involving interstate or overseas air transportation) or the Director of the Bureau of International Aviation (in cases involving foreign air transportation); (2) the General Counsel; and (3) the Director of the Office of Economic Analysis; or their designees. If their is disagreement among that group, separate recommendations will be submitted to the extent necessary to reflect those views.

§ 302.1770 Criteria for use of oral evidentiary hearing procedures and assignment of a case to an administrative law judge.

The Board will assign applications made under §§ 302.1701, 1720(c), 1730(d) and 1740 for consideration under the expedited procedures of this subpart (§ 302.1750(c)) and order the record presented directly to the Board for final decision unless it determines that:

(a) use of expedited procedures will prejudice a party;

(b) material issues of decisional fact cannot adequately be resolved without oral evidentiary hearing procedures; or

(c) assignment of an application for oral evidentiary hearing procedures or an initial or recommended decision by an administrative law judge is otherwise required by the public interest.

§ 302.1780 Standard for deciding cases in which expedited, simplified procedures are employed.

The decisional standards employed in deciding cases under § 302.1750(c) shall be the same as the standards applied in cases decided under § 302.1750(a). These are the standards set forth in the Federal Aviation Act of 1958, as amended, as interpreted and expanded upon in the Board's decisions.

B. Further amendments to Part 302:

§ 302.12 [Amended]; §§ 302.908 and 302.911 [Reserved]

1. Sections 302.12(d), 302.12(e), 302.908, and 302.911, and Subparts M and N would be revoked and reserved.

§ 302.18 [Amended]

2. In § 302.18, *Motions,* paragraph (a-1) would be amended by deleting "after notice and hearing" from the first sentence and revising the third sentence to read: "In cases where exceptions are filed to recommended, initial, or tentative decisions, or where the Board orders review of an initial or recommended decision on its own initiative, such motions shall be filed on or before the date that briefs are due under § 302.31 or § 302.1755, as applicable.

3. In § 302.22, the last sentence of paragraph (c) would be amended by adding "or exceptions to", so that it would read:

§ 302.22 Administrative law judges.

* * * * *

(c) * * * The Administrative law judge's authority in each case will terminate either upon the certification of the record in the proceeding to the

Board, or upon the expiration of the period within which petitions for discretionary review of or excpetions to his initial or recommended decision may be filed, or when he shall have withdrawn from the case upon considering himself disqualified.

* * * * *

4. In § 302.29, paragraph (b) would be amended by adding a sentence at the end, to read:

§ 302.29 Tentative decision of the Board.

* * * * *

(b) * * * The Board may also, in its discretion, omit a tentative decision in proceedings under Subpart Q.

5. Section 302.33 would be amended by adding "or exceptions to", so that it reads:

§ 302.33 Waiver of procedural steps after hearing.

The parties to any proceeding may agree to waive any one or more of the following procedural steps provided in §§ 302.25 through 302.32: Oral argument before the administrative law judge, the filing of proposed findings and conclusions for the administrative law judge, the filing of proposed findings and conclusions for the administrative law judge or for the Board, a recommended decision of the administrative law judge, a tentative decision of the Board, exceptions to a tentative decision of the Board, a petition for discretionary review of or exceptions to an initial decision or recommended decision, the filing of briefs with the Board, or oral argument before the Board.

§ 302.901 [Amended]

6. In Subpart I, § 302.901, *Applicability,* would be amended by replacing "Subpart A" by "Subparts A and Q".

PART 201—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

C. Amendents to Part 201, *Application for Certificates of Public Convenience and Necessity:*

In § 201.4, paragraph (a) would be amended and a new paragraph (e) would be added, to read:

§ 201.4 General provisions concerning contents.

(a) The statements contained in an application shall be restricted to significant and relevant facts.

* * * * *

(e) Applications covered by Subpart Q of Part 302 of this chapter shall also contain the following facts and projections:

(1) For scheduled carriers only: Present and proposed schedules by type of aircraft;

(2) Number of departures, plane-miles, passengers, and passenger-miles;

(3) Estimate of self-diversion or diversion from other carriers, if applicable;

(4) Anticipated operating revenues;

(5) Estimate of impact of proposal on operating expenses. For local service carriers, the estimate shall be computed according to Subpart K of Part 302 of this chapter;

(6) For local service carriers only: Estimate of allowance for return on investment and taxes, computed according to Subpart K of Part 302 of this chapter; and

(7) For local service carriers only: Increase or decrease in subsidy requirements.

PART 211—APPLICATIONS FOR PERMITS TO FOREIGN AIR CARRIERS

D. Amendments to Part 211, *Applications for Permits to Foreign Air Carriers:*

1. In § 211.5, the lead paragraph would be amended by deleting the second sentence, which now reads "They shall be free from argumentation or from expressions of opinion, except as may be required by this part."

2. Also in § 211.5, a new paragraph (f) would be added, to read:

§ 211.5 General provisions regarding contents.

* * * * *

(f) A set of exhibits fully responsive to the evidence request contained in the Appendix to this part.

3. The following appendix would be added:

APPENDIX TO PART 211

REQUEST FOR EVIDENCE

All weights, measures and monetary units must be expressed in U.S. terms and all exhibit material must be submitted in English. In the case of a renewal, or if there have been prior proceedings, the applicant may incorporate by reference and update any docket in which the following requested information was previously submitted. The applicant should make every effort to comply with this Evidence Request fully and, if an oral hearing is convened, to make available a witness who is competent and able to testify to the truth and accuracy of the statements and documents requested. If the applicant is unable to respond to an item, it shall note such circumstances in its submission, furnish the reason for its inability to respond, supply substitute information most closely approximating the evidence requested, and adequately explain the basis for its answer.

1. Submit a statement by the applicant setting forth:

a. The names, residence and business addresses, and citizenship of the officers, directors, and key management personnel of the applicant.[1]

b. The name, address, and citizenship of each person holding five percent or more of the entire capital stock or capital, as the case may be, of the applicant, the number of shares held by each, and the percentage of total stock held by each. If any of the above shares are being held for the benefit of another person, give name, address, and citizenship. If any of those persons are related by blood or marriage, state the relationship. If five percent or more of the applicant's stock is held by a corporation or partnership, set forth the name, address, and citizenship of each person holding five percent or more of the entire capital stock or capital, as the case may be, of that corporation or partnership and the respective interest of each; if any of such stock is being held for the benefit of another person, give the name, address, and citizenship. If five percent or more of the applicant's stock is subject to a voting trust, irrevocable proxy or similar arrangement, give complete details, including citizenship of holder. Identify all of the above persons who are air carriers, foreign air carriers, persons engaged in the business of aeronautics, common carriers, or whose principal business is the holding of stock in or control of any air carrier foreign air carrier, person engaged in the business of aeronautics, or common carrier If the applicant is wholly owned or substantially owned by the Government, indicate which governmental department has jurisdiction over and responsibility for managerial decisions.

c. A description of the shares of stock or other interests, held by such applicant, for its account, in persons other than itself.

d. If applicant is not wholly owned by the Government, provide a statement under oath by each officer, director, manager and stockholder included in a, b, and c above, describing any stock or other interest held either directly or indirectly (through holding companies) in any U.S. or foreign air carrier, common carrier, or person engaged in the business of aeronautics.

e. If applicant is not wholly owned by the Government, state in detail whether any of tha applicant's officers, directors, or other key managerial personnel are employed by any other air carrier (U.S. or foreign) common carrier, person engaged in the business of aeronautics, or holding company. Indicate whether any major policy decision of the applicant (such as route expansion, aircraft lease or purchase, share redemption dividend payment, etc.) requires unanimous approval by the applicant's Board of Directors.

2. Submit proof of incorporation. This should be shown, if possible, by certified copies of the Government decree, parliamentary action, or articles of incorporation which, under the laws of the country, are evidence of the incorporation of the applicant. Also indicate the relationship between the applicant and the Government. Submit a narrative statement describing the applicant's present authority from its Government, the expiration date of this authorization, and the manner in which it is expected to be renewed.

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[1] Specifically include the President, General Manager, Director of Operations, Director of Maintenance, chief pilot and chief inspector.

3. Indicate whether applicant's stock has been given as collateral to secure advancement of loans or purchase of aircraft; if so, indicate the secured party and explain. If applicant has given pledges of its stock or signed proxies to another party in connection with the borrowing of funds or purchase of aircraft, indicate the secured party and the extent of the secured interest. Supply copies of all agreements.

4. Supply a detailed description of the applicant's insurance coverage, including the name(s) of its insurance carrier(s), the amount, and liability limits of its insurance policies.

5. Supply copies of all licenses issued to the applicant by its Government, together with a certified copy of the official diplomatic note designating the carrier under the applicable air transport services agreement. If the foreign air transportation proposed is not covered by an air transport services agreement, supply a copy of the official note transmitting the application to the U.S. Government accompanied by evidence of the applicant's operating authority from its Government.

6. Supply a general description of the services proposed to be operated if the application is granted. For direct air carriers, this statement should include:

a. The frequency of service planned at the start of operations; whether the service proposed is to be scheduled, nonscheduled or charter, and whether it is proposed to carry passengers, and/or property and mail; and the type of equipment used;

b. The points proposed to be served in the United States; and

c. A service schedule detailing the manner in which the service will be operated (*e.g.*, nonstop or multi-stop, and identity of intermediate traffic and non-traffic points).

7. Submit an estimate showing the total traffic and the financial results of the proposed services for the forecast year and the supporting data employed to calculate the financial forecast.

8. In narrative form specifically enumerate each of the elements of reciprocity/comity relied upon for the requested authority. Applicants for authority to operate as indirect air carriers (*i.e.*, air freight forwarders and charter organizers) should specify whether the applicant's Government permits United States freight forwarders or charter organizers to operate in its country on the same basis as nationals of that country.

9. Supply a specimen foreign air carrier permit and order granting the requested authority—describing the terms, conditions, and limitations which should be attached.

10. Applicants for direct operating authority should submit the following additional information:[2]

a. Supply applicant's balance sheets and profit and loss statements for the two most recent available years (calendar or fiscal), supplemented by a statement describing its plans, if any, for new financing contemplated if the application is granted. Profit and loss statements shall identify separately, the applicant's total passenger and cargo revenues for the periods indicated above. Any significant financial relationship between the applicant and any other direct or indirect air carrier should be specifically identified in an attachment to the balance sheets. Describe the amount and reason for financial assistance received or expected from the applicant's Government, if any. State whether, for the preceding three years, the applicant has been unable to meet its current financial obligations, has defaulted on its transportation commitments, or has been refused, in whole or in part, debt financing (long-term and short-term) by a financial institution (all extensions of credit are embraced by this information request). Itemize any judgements entered against the applicant by any court or other judicial authority of the United States or any state, county or municipality, or of the applicant's country, or by any international or third-country court.

b. Describe the operating history of the applicant. Include the types of transportation services rendered, points served, etc. from the beginning of operations to present. Briefly describe the business experience of each officer, director, and key management personnel, emphasizing the air transportation or transportation experience, if any, that each may have had.

c. State whether any operating authority held by the applicant has ever been suspended, revoked, canceled, or otherwise terminated; if so, furnish details. Submit a list of all safety and tariff violations in which the applicant has been involved in the past five years. Also submit a statement as to whether, for the preceding three years, the applicant has been refused insurance, either in whole or in part.

d. Set forth a list of the aircraft owned, leased and/or operated by the applicant. Indicate each aircraft registration number and the country of registration. If owned, state the amount of indebtedness secured thereby and the name, address, and citizenship of the creditor(s) of secured parties. If leased, supply copies of all lease contracts and the address and citizenship of each lessor. Describe any plans for the acquisition or lease of additional aircraft if the present permit application is granted as proposed. If any of the listed aircraft will not be used exclusively by the applicant, explain its proposed use. State whether any aircraft is wet leased.

e. Indicate where and by whom the maintenance of the aircraft is or will be performed. The applicant must show that it has a maintenance program for its aircraft that is equivalent to a continuous airworthiness maintenance program currently being used by: (1) U.S. air carriers certificated under section 401 of the Act (see 14 CFR Part 121, Subchapter L); or (2) foreign air carriers from a country which is a contracting State to the Chicago Convention. Moreover, the applicant must show to the satisfaction of the Board that it complies with the provision of I.C.A.O. Pilots and Airmen Annexes 1; 6 (Part 1), and 7 or any differences acceptable to the Board, unless the applicant is from a country that is a contracting State to the Convention on International Civil Aviation.[3]

f. Submit a detailed description or copies of *all* agreements, understandings, and cooperative working arrangements, both oral and written, entered with and between the applicant or on behalf of the applicant, on the one hand, and any United States or foreign air carrier, on the other hand, affecting air transportation which are not on file with the Board. If there are no such agreements, so state.

g. State the policy of the applicant's Government with respect to U.S. charter carriers and U.S. scheduled carriers for charter (off-route and on-route) and scheduled flights. Specifically state whether the Government grants Fifth Freedom traffic rights to U.S. carriers.

h. If the permit is granted, will the applicant voluntarily accept the following conditions in the permit?

[1] "This permit shall be subject to the conditions that the holder shall keep on deposit with the Board a signed counterpart of Agreement C.A.B. 18900, an agreement relating to liability limitations of the Warsaw Convention and the Hague Protocol approved by the Board Order E-23680, dated May 13, 1966, and a signed counterpart of any amendment by the Board and to which the holder becomes a party."

[2] For permits authorizing the foreign air transportation of passengers (and their accompanying baggage), property and mail:

"The holder (1) shall not provide foreign air transportation under this permit unless there is in effect third-party liability insurance in the amount of $1,000,000 or such other amounts as the Board may require by regulation to meet potential claims which may arise in connection with its operations under this permit, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the third-party liability insurance provided, and (2) shall not provide foreign air transportation of persons unless there is in effect liability insurance sufficient to cover the obligations assumed in C.A.B. Agreement 18900, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the third-party liability insurance provided. Upon request the Board may authorize the holder to supply the name and address of an insurance syndicate in lieu of the names and addresses of the member insurers."

[3] For permits authorizing the foreign air transportation of property only or of property and mail:

"The holder shall not provide foreign air transportation under this permit unless (1) there is in effect third-party liability insurance in the amount of $1,000,000 or such other amounts as the Board may require by regulation to meet potential liability claims which may arise in connection with its operations under this permit, (2) there is in effect minimum liability insurance coverage for bodily injury to or death of cargo handlers in the amount of $75,000 per cargo handler, and (3) there is on file with the Docket Section of the board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the insurance provided under (1) and (2) above. Upon request, the Board may authorize the holder to supply the name and address of an insurance syndicate in lieu of the names and addresses of the member insurers."

[4] "The initial tariff filed by the holder shall not set forth rates, fares, and charges lower than rates, fares, or charges that may

[2] This does not apply to applicants for authority to operate as air freight forwarders or tour operators.

[3] In addition to the copies submitted to the Board, two copies of items 1(a), 5, 6, and 10(b)(c)(d)(e) must be transmitted to the Federal Aviation Administration, c/o Curtis McKay, Chief, Air Carrier Division, AFS-200, 800 Independence Avenue, SW, Washington, DC 20591.

be in effect for any U.S. air carrier in the same foreign air transportation; *however*, this condititon shall not preclude the holder from filing any subsequent (other than "initial") tariff, regardless of the level of the rates, fares, and charges set forth, for effectiveness either prior or subsequent to commencement of the service authorized."

[5] "The holder shall not operate any aircraft under the authority granted by this permit, unless the holder complies with the operational safety requirements at least equivalent of Annex 6 of the Chicago Convention."

i. Submit an environmental evaluation pursuant to Part 312 of the Board's Regulations and the fuel consumption information required by Part 313 of the Regulations. If operations at an airport are likely to be *de minimis* (less than one daily flight average at a large hub airport and consumption of less than 10 million [10,000,000] gallons of fuel annually) no evaluation need be prepared, but a statement to that effect must be made.

* * * * *

PART 312—IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT, INCLUDING THE PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS

E. Amendment to Part 312, *Implementation of the National Environmental Policy Act, Including the Preparation of Environmental Impact Statements:*

In § 312.12, paragraph (a)(1) would be amended to read:

§ 312.12 Filing of environmental evaluations by applicants.

(a) * * *

(1) Applications under Subpart Q of Part 302 of this chapter shall be accompanied by an environmental evaluation.

* * * * *

(Sec. 204, 401, 402, 1001, Federal Aviation Act of 1958, as amended by Pub. L. 95-504 as amended, 72 Stat. 743, 754, 757, 788, 92 Stat. 1723 (49 U.S.C. 1324, 1371, 1481), Administrative Procedure Act, (5 U.S.C. 551 et seq.))

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-5943 Filed 2-27-79; 8:45 am]

federal register

WEDNESDAY FEBRUARY 28, 1979
PART IV

THE REGULATORY COUNCIL

CALENDAR OF FEDERAL REGULATIONS

[6560-24-M]

THE REGULATORY COUNCIL

AGENCY: The Regulatory Council.

ACTION: Calendar of Federal Regulations.

SUMMARY: The Regulatory Council is publishing the Calendar of Federal Regulations in order to provide a comprehensive catalog of important regulations under development. The Calendar will increase public participation in the regulatory process. It will also identify areas of potential duplication, overlap or inconsistency.

ADDRESS: The Regulatory Council, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

For information about specific regulations: Please refer to the "Agency Contact" listed at the end of each entry.

For information on the Calendar and the Council:

Peter J. Petkas
Director
The Regulatory Council
Washington, D.C. 20460
202/395-5167

SUPPLEMENTARY INFORMATION:

The President directed the creation of the Regulatory Council on October 31, 1978 to help coordinate Federal regulatory activities and to expand efforts to manage the regulatory process more effectively. The Council—composed of 35 departments and agencies with significant regulatory responsibilities—will help those responsible for major regulatory programs do a better job of achieving regulatory goals at the lowest feasible cost. The October 31 directive also mandated that a calendar of upcoming important Federal regulations be published semi-annually.

The first edition of the Calendar of Federal Regulations represents the newest and one of the most promising tools for the President, the Congress, the regulators, and the public to understand and shape the way we implement national regulatory policy goals. For the first time, we will have a comprehensive catalog of important Federal regulations while they are under development and a preview of information on:

- Objectives and benefits;
- The sectors of the economy affected;
- Economic implications; and
- Major alternatives under study.

Most important, we will have this information much earlier in the regulatory process, at one time and in one place. We hope it will be useful to the Congress, agencies, and particularly the public by pointing out opportunities for earlier and more informed participation in regulatory decisions.

In addition, the Calendar will help the Council members to:

- Identify areas of potential duplication, overlap, or inconsistency among regulations under development in different agencies and find ways to minimize such problems.
- Identify selected economic sectors facing multiple regulatory activity and analyze the extent and nature of the impacts upon them.
- Develop consistent analytical and decision-making methods to aid agencies in dealing with the same or similar problems under different laws.
- Better assess the benefits of regulation.

Calendar entries are organized into functional areas paralleling the Council's committee structure:

- Health and Safety
- Human Resources
- Natural Resources
- Trade and Commerce
- Transportation and Communications

(A Banking, Finance, and Insurance section will appear in the next edition.)

These categories also represent a convenient way to identify areas where regulatory activity may be planned; in addition, they will aid the user in learning of future regulatory activity in areas of interest.

The first edition of the Calendar was produced in a remarkably brief period of time by a team of men and women drawn from a number of agencies under the able direction of Mark Schoenberg, Calendar Coordinator. It would not have been produced without considerable cooperation from department and agency heads and their staffs. Agencies had wide latitude in determining what regulatory activities were significant enough for inclusion. I am pleased with the result. The Calendar goes far beyond our initial expectations about the quantity of useful information that could be assembled in less than two months. Nevertheless, this edition of the Calendar, in many respects, is a prototype of what we except to be a more comprehensive and refined edition to be published in the fall.

Dated: February 22, 1979.

DOUGLAS M. COSTLE,
Chairman, The Regulatory Council.

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THE COUNCIL

The Regulatory Council is composed of the thirty-five Federal departments and agencies listed below. Sixteen Executive agencies are participating members. In addition, nineteen independent regulatory agencies contribute to the activities of the Council in various capacities, including observer status. The extent of an independent regulatory agency's activity in any Council project is determined by the independent agency.

For a variety of reasons, fifteen agencies have not submitted entries for this edition of the Calendar. These and several other agencies have filed individual comments in Appendices II and III.

The twenty agencies contributing entries to this first edition of the Calendar are identified with an asterisk in the list below.

Executive Agencies

Administrative Conference of the United States
*Department of Agriculture
*Department of Commerce
*Department of Energy
*Department of Health, Education and Welfare
*Department of Housing and Urban Development
*Department of the Interior
*Department of Justice
*Department of Labor
*Department of Transportation
*Department of the Treasury
*Environmental Protection Agency
*Equal Employment Opportunity Commission

General Services Administration
National Credit Union Administration
*Veterans Administration

Independent Regulatory Agencies

*Civil Aeronautics Board
Commodity Futures Trading Commission
*Consumer Product Safety Commission
Federal Communications Commission
Federal Deposit Insurance Corporation
Federal Election Commission
*Federal Energy Regulatory Commission
Federal Home Loan Bank Board
*Federal Maritime Commission
Federal Mine Safety and Health Review Commission
Federal Reserve System
Federal Trade Commission
*Interstate Commerce Commission
National Labor Relations Board
*Nuclear Regulatory Commission
Occupational Safety and Health Review Commission
*Postal Rate Commission
Securities and Exchange Commission
United States International Trade Commission

Regulations Included In This Edition

This edition of the Calendar includes all regulations under development for which submitting agencies have indicated they will prepare a regulatory analysis. The Calendar also includes other regulations submitted by agencies because, in the opinion of the agency, they set important policy precedents or because they will be of particular interest to the public, even though the agency may not intend to prepare a regulatory analysis.

Agencies select regulations for regulatory analysis according to criteria they have established in response to the general guidelines in Executive Order 12044, *Improving Government Regulations* (43 FR 12661 (March 14, 1978)). These guidelines, which apply to Executive agencies and those independent agencies choosing to follow them, cover all regulations that: (a) have an annual effect on the economy of $100 million or more, or (b) impose a major increase in costs or prices for individual industries, levels of government or geographic regions, or (c) the agency head otherwise determines that a regulatory analysis is appropriate.

Description Of Entries

Category—Each calendar entry contains the following categories of information	Description—The following information is available in each category
1. Title	Self-evident.
2. Objectives and Benefits	A discussion of the regulation's major objectives and its expected benefits.
3. Legal Authority	Citation of the statutory authority under which the regulatory action is taken.
4. Major Alternatives Under Study	A presentation of the range of options that an agency is considering. These options may include different levels of control, coverage, and dates of implementation.
5. Sectors Affected	An identification of those sectors of the population or economy that will be affected by the regulation.
6. Estimate and Summary of Economic Effects.	Available information about the economic effects of the regulation and the types of costs imposed.
7. Related Regulations or Actions	A description of other regulations or actions, either within or outside the agency, that are related to the regulation under consideration.
8. Active Federal Collaboration	A list of Federal agencies with whom the issuing agency is consulting in developing the regulation.
9. Available Documents	A list of background documents directly related to the regulation under consideration.
10. Timetable	A chronological listing of the major steps in developing the regulation.
11. Agency Contact	The name, address and telephone number of a person in the agency who can respond to questions about the regulation.

How To Use This Calendar

This edition of the Calendar has been organized to help users locate information about regulations of interest to them. The Calendar contains five chapters, two indices, and three appendices.

● Each chapter contains regulations which we have categorized into one of five major areas of regulatory activity: Health and Safety, Human Resources, Natural Resources, Trade and Commerce, and Transportation and Communication. Regulations within each chapter are organized alphabetically by issuing agency. Each agency's regulations are then organized alphabetically by legal authority.

● Regulations are organized alphabetically, first by agency and then by agency division, in both indices:

●● The Index of Primary Objectives and Effects identifies regulations by both the objective of the regulation and the sectors the agencies expect each regulation to affect.

●● The Index of Date of Next Regulatory Action provides a chronological listing of the following regulatory actions: Advanced Notice of Proposed Rulemaking, Notice of Proposed Rulemaking, Final Rule, and Other Actions.

Agencies prepared submissions for this edition of the Calendar to give the public the earliest possible notice of their schedules for proposing and promulgating regulations. They have tried to predict their future plans accurately, but dates and schedules are still tentative. Some regulations listed may be withdrawn, and some not listed may be proposed or promulgated. The regulations included that are going to be proposed or promulgated may be developed at an earlier or later date than listed in the Calendar. This Calendar does not create a legal obligation on submitting agencies to adhere to schedules within it or to confine their regulatory activities to those regulations that appear.

The information in this edition is accurate as of February 1, 1979. If an Advanced Notice of Proposed Rulemaking or Notice of Proposed Rulemaking has been issued prior to February 1, 1979, it will be listed under the heading "Available Documents." If an agency expects to publish either notice after February 1, 1979, it will be listed under the heading "Timetable".

Data Limitations

This first edition of the Calendar contains a substantial amount of useful information. Nonetheless, caution should be exercised in using this information in order to insure that it does not lead to misinterpretation. For example, the cost data cannot be added in a way which will provide an accurate assessment of the aggregate cost of the regulations in this edition.

For the next edition, we will attempt to obtain consistent cost data from the submitting agencies. We will also attempt to obtain fuller descriptions of the benefits to be derived from specific regulatory actions.

List of Abbreviations

The following abbreviations appear in this Calendar:

ANPRM: The Advanced Notice of Proposed Rulemaking is a preliminary notice that an agency is considering a regulatory action. It is issued before the agency develops a detailed proposed rule. It usually describes the general area subject to the regulation, lists the alternatives that are under consideration and asks for public comment in developing a proposed rule.

NPRM: The Notice of Proposed

Rulemaking is the document issued by an agency and published in the Federal Register that solicits public comment of a proposed regulatory action. Under the Administrative Procedure Act, it must include, at a minimum:

- A statement of the time, place and nature of the public rulemaking proceedings.
- Reference to the legal authority under which the rule is proposed.
- Either the terms or substance of the proposed rule or a description of the subjects and issues involved.

USDA United States Department of Agriculture

AMS Agricultural Marketing Service

FNS Food and Nutrition Service

DOC Department of Commerce

EDA Economic Development Administration

NOAA National Oceanic and Atmospheric Administration

DOE Department of Energy

BCS Buildings and Community Systems

ERA Economic Regulatory Administration

RA Resource Application

HEW Department of Health, Education and Welfare

HCFA Health Care Financing Administration

HUD Department of Housing and Urban Development

FHA Federal Housing Administration

FIA Federal Insurance Administration

HOUS Office of the Assistant Secretary for Housing

DOI Department of the Interior

BLM Bureau of land Management

FWS Fish and Wildlife Service

LBR Land Bureau of Reclamation

OSM Office of Surface Mining

DOJ Department of Justice

DOL Department of Labor

ESA Employment Standards Administration

ETA Employment amd Training Administration

MSHA Mine Safety and Health Administration

OSHA Occupational Safety and Health Administration

DOT Department of Transportation

FAA Federal Aviation Administration

FHWA Federal Highway Administration

FRA Federal Railroad Administration

NHTSA National Highway Traffic Safety Administration

USCG United States Coast Guard

Treasury Department of the Treasury

EPA Environmental Protection Agency

OANR Office of Air, Noise, and Radiation

ORD Office of Research and Development

OTS Office of Toxic Substances

OWWM Office of Water and Waste Management

EEOC Equal Employment Opportunity Commission

VA Veterans Administration

CAB Civil Aeronautics Board

CPSC Consumer Product Safety Commission

FERC Federal Energy Regulatory Commission

FMC Federal Martime Commission

ICC Interstate Commerce Commission

NRC Nuclear Regulatory Commission

PRC Postal Rate Commission

Request For Comment

Comments and suggestions about the organization, scope and quality of this document would be helpful to the Regulatory Council and the departments and agencies represented in this Calender as they prepare the next edition. We would like your comments on possible ways that we can improve the document. How can we:

- Organize the document to make it more useful?
- Improve the indices?
- Improve the content of the entries?
- Expand the information we provide?

Each agency and department is responsible for the accuracy, quality, and completeness of its own submissions. Therefore, comments about specific regulations should be addressed to the submitting agency.

Copies of comments to agencies, as well as general comments about the Calendar and the Council, should be sent to:

Peter J. Petkas
Director
The Regulatory Council
Washington, D.C. 20460
202/395-5167

CHAPTER 1—HEALTH AND SAFETY

U.S. DEPARTMENT OF AGRICULTURE

NATIONAL SCHOOL LUNCH ACT AND CHILD NUTRITION AMENDMENTS OF 1977

Regulation by the Secretary of Agriculture of food sold on school premises in competition with the National School Lunch Program 11391

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

MEDICARE-MEDICAID ANTI-FRAUD AND ABUSE AMENDMENTS

Uniform reporting systems for health services facilities and organizations 11393

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Life Safety Code in hospitals, nursing facilities and intermediate care facilities 11394
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DEPARTMENT OF LABOR

FEDERAL MINE SAFETY AND HEALTH ACT OF 1977

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Requirements to provide self-contained (oxygen-generating) self-rescuers to underground metal and nonmetal miners 11396
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DEPARTMENT OF TRANSPORTAION

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PORT AND TANKER SAFETY ACT OF 1978

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CLEAN AIR ACT

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Pesticide registration guidelines 11411

NOISE CONTROL ACT OF 1972

Noise emission standards for newly manufactured motorcycles 11412
Noise emission standards for newly manufactured wheel and crawler tractors 11413

RESOURCE CONSERVATION AND RECOVERY ACT OF 1976

Hazardous waste regulations: Core regulations to control hazardous solid waste from generation to final disposal 11414

SAFE DRINKING WATER ACT

Control of organic chemicals in drinking water 11415

TOXIC SUBSTANCES CONTROL ACT

Standards and rules for testing chemical substances and mixtures 11416
Rules and notice forms for premanufacture notification of new chemical substances 11417

URANIUM MILL TAILINGS RADIATION CONTROL ACT OF 1978

Environmental standard for inactive uranium mill tailings 11418

CONSUMER PRODUCT SAFETY COMMISSION

CONSUMER PRODUCT SAFETY ACT

Blade contact standard for walk-behind power lawn mowers and proposed certification rule 11418

EMERGENCY INTERIM CONSUMER PRODUCT SAFETY STANDARD ACT OF 1978

Proposed amendment to cellulose insulation standard, proposed labeling rule for cellulose insulation, proposed certification rule 11420

FLAMMABLE FABRICS ACT

Upholstered furniture cigarette flammability standard 11421

NUCLEAR REGULATORY COMMISSION

ATOMIC ENERGY ACT OF 1954

Decommissioning of nuclear facilities 11422

ENERGY REORGANIZATION ACT OF 1974

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Decommissioning and site reclamation of uranium and thorium mills 11423

USDA-FNS

Title

Regulation by the Secretary of Agriculture of foods sold on school premises in competition with the National School Lunch Program

Objectives and Benefits

The objective is to improve children's diets and to improve the effectiveness of the $3 billion school lunch program.

The lunch program, which was initiated in 1946, makes an important contribution to the well-being of children. The "Type A" meal pattern, which is the basis for Federal reimbursement, requires that meals served to children include specified minimum quantities of food components: meat and meat alternates, vegetables and fruits, bread and bread alternates, and fluid milk. Local schools have considerable flexibility in making up the menus that meet this minimum Federal requirement. In addition to offering foods that meet the Type A requirement, schools may sell other foods on an *a la carte* basis.

"Competitive foods" are those foods sold in competition with the Type A meals that schools are required to serve in order to qualify for Federal reimbursement. These competitive foods can be soups, salads, candies, chips, or other foods, and may be available at *a la carte* or alternative lunch lines or from vending machines or snack counters. At issue is which competitive foods to approve.

Over the last 8 years, legislation has treated competitive foods in a variety of ways. In 1970, Congress gave the Secretary authority to regulate competitive foods; regulations put into effect the then existing departmental policy that limited food items sold in the schools to those which either contributed to the required Type A meal pattern or were served as an additional item with the Type A lunch.

Between 1972 and 1977, few states or localities restricted the sale of competitive foods in schools. The reasons appear to be varied. It may have been

a question of priorities; it may have been opposition from school fund-raising organizations and/or industry; it may have been a conscious choice, or simply that the issue was not addressed. Whatever the reasons for the lack of local action, the 95th Congress took another look at the issue. In 1977, regulatory authority was returned to the Secretary of Agriculture. Like the one in 1970, the 1977 authority covers schools which participate in programs covered under the Child Nutrition Act and the National School Lunch Act.

The legislative history offers some guidance to the Secretary on how to implement the law. Senator George McGovern, Chairman of the Subcommittee on Nutrition, Committee on Agriculture, Forestry and Nutrition, stated: "The Secretary would have the authority, however, to regulate the sale of foods of limited nutritional value. The general category of foods that have limited nutritional value include gum, candy, pop, and foods that, even though they may be fortified with vitamins, are too high in sugar and caloric content to be wholesome."

In addition, both House and Senate committee reports dealt with the competitive foods and nutrition education amendments as companion issues, one reinforcing the other.

In designing any proposed regulation, the legislative intent, the public view, and standards must be considered. The regulation and the standards on which it is based should be intelligible, feasible, and enforceable.

To achieve the objective, alternative approaches will be evaluated in terms of their relationships to four main factors:

1. Nutrition Education—The National School Lunch Program serves an educational role by providing model meals to children. Regulation of competitive foods may emphasize the importance of this role by providing examples of nutritious snacks.

2. Health—The causes of diseases such as heart disease, diabetes, cancer, stroke, hypertension, dental cavities, and associated conditions such as obesity are not fully understood. However, there is scientific evidence of an association between these diseases and various components of the diet, including excessive consumption of fat, cholesterol, sugar, and salt. Regulation of certain competitive foods may help reduce consumption of these components.

3. Eating Habits—For some children, snacks eaten in lieu of a full lunch, or between meals, make up a significant portion of the diet. If children are to have the opportunity to snack in the schools, it may be important to determine what foods should be available to ensure good health and the development of good eating habits.

4. Local Administration and Impact—Local and state officials will carry out whatever Federal regulation is promulgated. Therefore, the regulation must be both locally feasible and enforceable while accomplishing the intent of the law. To achieve this end, the regulation must be based on rational nutritional standards, and it must reflect consideration of other local concerns.

Legal Authority

The National School Lunch Act and Child Nutrition Amendments of 1977, § 17, 42 U.S.C. § 1779 (1977).

Major Alternatives Under Study

The Department had initially proposed to prohibit the sale of soda water, frozen desserts, candy, and chewing gum to children on school premises until after the last lunch period. In view of the fundamental questions raised by commentors, both in favor and opposed to the published proposal, the Department decided to provide additional opportunity for comprehensive public participation in the rulemaking process. The Department then published a notice of withdrawal of the proposed regulations, an announcement of three public meetings, and supplementary information. The public was asked to address the competitive foods issue as it relates to the four factors identified above and to consider the following alternative regulatory approaches:

1. Food Composition Standard—The Department could set maximum levels for one or more of ingredients such as sugar, salt, fat, etc., and restrict the sale of particular foods that exceed these levels.

2. Nutrient Standard—This approach is similar to the food composition standard except that minimum levels would be set for nutrient content, including vitamins, minerals and protein; and only particular foods meeting these levels would be approved for sale.

3. Meal Standard—This approach could allow the sale of any food served as part of a meal, including desserts. For example, if a school served cookies or ice cream as dessert items with a meal, it could also sell these items as competitive foods. Such a standard was used between 1970 and 1972 in conjunction with a previous authority for the Secretary to regulate the sale of competitive foods (The Child Nutrition Act of 1966, 42 U.S.C. § 1779). It effectively eliminated soft drinks and, to a lesser extent, candy sales from most schools.

The Department intends to use public comments received on these alternative approaches to select one or a combination of approaches to be developed subsequently into a proposed regulation.

Sectors Affected

The primary group affected by this regulation will be the 45 million students who have access to low cost nutritious lunches through the National School Lunch Program, which is available in all 50 states, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, American Samoa, and the Trust Territories. Local school officials, parents and teachers will also be affected. Manufacturers and vendors of competitive foods are the main groups which could be adversely affected.

Estimate and Summary of Economic Effects

Estimates of the potential market losses, if any, relating to foods that could be restricted are unavailable for the different approaches. Once the Department selects an approach, it will attempt to make economic estimates for the regulation it proposes. Furthermore, there is no information on the extent to which foods approved for competitive sale might increase in market volume if other foods are restricted.

Related Regulations or Actions

Internal: Congress intends the regulation to apply to schools which participate in programs carried out under the Child Nutrition Act and the National School Lunch Act.

External: A Federal regulation will not preclude local schools and states from continuing with or developing their own stricter rules.

Active Federal Collaboration

None

Available Documents

Federal Register Notice—43 FR 17476 (April 25, 1978).

Federal Register Notice—43 FR 58780-58788 (December 15, 1978).

Timetable

Public Meetings:

Detroit, Michigan—February 6, 1979.

Seattle, Washington—February 13, 1979.

Written Comments Due—February 16, 1979.

Publication of Reproposed Regulation—March 1979.

Final Rule—July 1979.

Agency Contact

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Washington, D.C. 20250
202/447-8130

HEW-HCFA

Title

Uniform reporting systems for health services facilities and organizations

Objectives and Benefits

These regulations would establish uniform reporting systems for all health services facilities and organizations which participate in the Medicare and Medicaid programs, including hospitals, skilled nursing facilities, intermediate care facilities, home health agencies, and health maintenance organizations.

The law specifically requires regulations to establish a uniform system of reporting for the following types of information for each type of health services facility or organization:

1. The aggregate cost of operation and the aggregate volume of services;
2. The cost and volume of services by functional account;
3. Rates by category of patient and class of purchaser;
4. Capital assets, as defined by the Secretary of Health, Education, and Welfare, including (as appropriate) capital funds, debt services, lease agreements used in lieu of capital funds, and the value of land, facilities, and equipment, and;
5. Discharge and bill data.

Implementation of uniform reporting requirements will be accomplished through several separate regulations rather than by implementing all facets of uniform reporting through one regulation.

These systems will enable the Department to obtain uniform comparable data necessary for reimbursement, effective cost containment and policy analysis, assessment of alternative reimbursement mechanisms and health planning. Adequate and comparable data is not presently available to support these objectives.

Legal Authority

Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977, § 19, 42 U.S.C. §1121.

Major Alternatives Under Study

Within the legislative mandate certain options are available. Timing and scope are limited by a timetable and objectives specified in the legislation. Other factors which affect the scope of the regulations include the Department's concern with minimizing reporting burden and eliminating duplicate and overlapping data requirements placed on the provider, while meeting the intent of the legislation.

For the regulation implementing reporting of data on cost, utilization, and capital assets for hospitals, the major options chosen were:

1. To merge, to the extent possible, departmental data collection activities (e.g., Medicare and Medicaid cost reporting, hospital facilities components of the Cooperative Health Statistics Systems funded by the Public Health Service) in order to coordinate reporting requirements and minimize burden;
2. To reduce cost reporting requirements for small facilities (less than 4,000 admissions annually) in order to minimize the burden on such facilities;
3. To limit, to the exent possible, the level of detail required to ascertain the cost of services provided (e.g., sub-classification of salaries, employee benefits, supplies) for specified cost centers, in an effort to decrease the reporting burden.

For the regulation implementing the collection of hospital bill and discharge data, the major areas under consideration are:

1. Confidentiality considerations regarding data collected on non-federally financed patients and the physicians treating them;
2. Method of collecting and processing the bill and discharge data.

Sectors Affected

Sectors of the economy affected by these regulations are all hospitals, skilled nursing facilities, intermediate care facilities, home health agencies, health maintenance organizations and other types of health services facilities and organizations participating in the Medicare and Medicaid programs.

Estimate and Summary of Economic Effects

The Health Care Financing Administration (HCFA) is developing firm estimates of the cost of implementing the uniform reporting system for all health services facilities and organizations. Cost estimates specifically for the regulation implementing uniform reporting of costs for hospitals have been made. For the 6,000 affected hospitals, based on the experience of states that have similar systems, it is estimated that the total cost to the industry and government to implement the hospital cost reporting segment will be between $35 million and $75 million. The Federal government will cover approximately 40 percent of the cost through Medicare and Medicaid reimbursement. Industry costs will range between $21 million and $45 million.

Operational costs for maintaining this system are estimated at an average of $1,000 per hospital or $6 million per year. The Federal government will also share approximately 40% of this cost through Medicare and Medicaid reimbursements.

HCFA has already awarded a contract to an accounting firm to determine the actual cost and burden of implementing the hospital cost reporting system, as well as the possible savings that may result from refinements in the current Federal reimbursement system for hospitals. The results of this study will be available in April 1979, well before the publication of final regulations on hospital cost reporting.

It is HCFA's belief that general cost savings will result from implementation of standard bill and discharge reporting systems. Cost savings derived from the bill and discharge portions of § 19 are expected to offset costs associated with the cost and utilization reporting regulations.

Uniform reporting systems are being designed with the intent of reducing and eliminating costly multiple collection and processing of the same data. Data collected via the uniform reporting systems will be provided to a variety of users eliminating the need for many duplicative systems. Data collected through these systems are expected to result in further cost savings by providing the basis for reimbursement reform, better health policy analysis, and improved health planning.

Related Regulations or Actions

Internal: Medicare and Medicaid cost reports, and National Center for Health Statistics, Cooperative Health Statistics Systems reporting requirements are in effect now. These will be incorporated in the uniform reporting systems.

On January 23 the NPRM for collecting cost, utilization and capital assets data was published. HCFA is developing similar regulations for long-term care facilities, home health agencies and health-maintenance organizations. Other regulations under development pertain to discharge and bill data.

External: None.

Active Federal Collaboration

None.

Available Documents

NPRM—44 FR 4741-44 (January 23, 1979).

"Uniform Reporting Systems for Health Services Facilities and Organizations," System for Hospital Uniform Reporting, HEW draft Manual, September 1978.

Timetable

Hospital Cost and Utilization Reporting, Final Rule—November 1979.

NPRMs for the following are still being prepared and no dates are available:

Long-term Care Cost and Utilization Reporting
Home Health Agencies Cost and Utilization Reporting
Health Maintenance Organizations Cost and Utilization Reporting
Hospital Bill and Discharge Data

Agency Contact

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HEW-HCFA

Title

Life Safety Code in hospitals, nursing facilities and intermediate care facilities

Objectives and Benefits

In order to participate in the Medicare and Medicaid programs, hospitals, nursing homes and intermediate care facilities (ICFs) are required to meet a number of conditions. One of the conditions requires facilities to meet the Life Safety Code (LSC) provision of the National Fire Protection Association (NFPA). This code contains a detailed set of standards, mostly related to safety aspects of the physical plant, such as structure, fire prevention systems, hazard alarms, etc. Since older facilities often incurred considerable costs attempting to meet these standards, efforts were initiated to develop a rating system that would assess a facility's life safety provisions without requiring vigorous adherence to each detailed standard.

Under a contract with the Department of Health, Education, and Welfare (HEW), the National Bureau of Standards developed "A System for Fire Safety Evaluation of Health Care Facilities." The system was approved by the Department of Commerce in December 1978. Under this new LSC evaluation system, safety provisions are assigned numerical values. Therefore, two facilities with differing safety provisions could still be rated as having equivalent levels of life safety.

Legal Authority

Title XVIII (Health Insurance for the Aged and Disabled) of the Social Security Act, 42 U.S.C. § 1302.

Major Alternatives Under Study

The major alternative to the development of less costly equivalencies is to continue to require facilities to meet all the standards of the Life Safety Code of NFPA.

Another complementary approach is to use our Secretarial authority to waive some of the LSC requirements so that progress can be made on this matter without having to wait for a final regulation.

Sectors Affected

Hospitals, skilled nursing facilities (SNFs) and ICFs participating in Medicare and Medicaid will be affected. Additional sectors of the economy that will be interested in these changes are manufacturers, insurance industries and several health professional organizations.

Estimate and Summary of Economic Effects

Depending upon which major alternative is chosen, estimated savings will vary. Estimated savings have not been calculated for the major alternatives. In addition, the age of a facility may determine its level of cost savings. For instance, older facilities generally will save more money by the new method of evaluating LSC by equivalencies than will newer facilities.

Related Regulations or Actions

Internal: The Department has determined that in keeping with the goals of "Operation Common Sense" (the HEW-wide operation to make regulations clear, concise, and understandable to the general public), the proposed revisions of the LSC regulations should be incorporated into the following two regulations: Conditions of Participation for Hospitals, and Conditions of Participation for SNFs and ICFs. Both regulations are currently under revision. Thus, we will be able to set forth for public review all of the certification requirements for facilities participating in Medicare and Medicaid in the same set of regulations.

External: None.

Active Federal Collaboration

The Department of Commerce (National Bureau of Standards) and the Veterans Administration are collaborating.

Available Documents

NPRM—42 FR 4966 (January 26, 1977).
"Life Safety Code in Hospitals, SNFs and ICFs."
Briefing paper on LSC issues.
Operating Objectives of the LSC Unit.

Timetable

Conditions of Participation for Hospitals, Final Rule—November 1979.
Conditions of Participation for SNFs and ICFs, Final Rule—September 1979.

Agency Contact

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HEW-HCFA

Title

Conditions of participation for skilled nursing facilities and intermediate care facilities

Objectives and Benefits

In order to participate in the Medicare and Medicaid programs, hospitals, nursing homes, and intermediate care facilities are required to meet a number of physical plant, staffing, and medical care conditions. Skilled nursing facilities (SNFs) and intermediate care facilities (ICFs) are surveyed annually by state governments under contract with the Department of Health, Education, and Welfare (HEW). Based on information collected in the surveys, the Federal government regional offices certify institutions for participation in the programs. (If the institution wishes to participate in Medicaid only, the state makes the certification decision.) Presently, there are approximately 8,000 SNFs and 7,300 ICFs certified.

The objectives of the revised regulations are to simplify the requirements, to consolidate requirements where feasible, and to place increased emphasis on the quality of care provided to the patient. No specific cost estimates have been prepared regarding the impact of these proposed revised regulations.

Legal Authority

Title XVIII (Health Insurance for the Aged and Disabled) and Title XIX (Grants to States for Medical Assistance Programs) of the Social Security Act, 42 U.S.C. § 1302, § 1395F, § 1395K, § 1395I, § 1395x, § 1395z, § 1395bb, § 1395cc, and § 1395hh.

Major Alternatives Under Study

A series of public hearings were held during the summer of 1978 and a wide range of alternatives was discussed. Major issues were:

What minimum qualifications should be established for professional personnel in SNFs and ICFs?

Should unlicensed personnel be allowed to administer medications?

How often should physicians be required to visit SNF patients?

Should physician extenders (nurse practitioners and physician assistants) be used?

Should facilities be required to provide or arrange for respiratory therapy?

Should the requirement for annual surveys be changed?

Sectors Affected

These regulations affect institutional providers, patients, and staff of SNFs and ICFs participating in the Medicare and Medicaid programs. State health agencies will also be involved in any revisions to these rules.

Estimate and Summary of Economic Effects

We believe that revisions to the Conditions of Participation will result in savings, partially due to the simplification and consolidation of present regulations. However, those savings have not been estimated. Revisions to the Life Safety Code requirements, which will be incorporated into these regulations, will play a large part in the cost impact. (See related document on Life Safety Code requirements.)

Related Regulations or Actions

Internal: As part of "Operation Common Sense" (the HEW-wide operation to make regulations clear, concise, and understandable to the general public), the Department intends to review and revise all standards and certification regulations which affect programs participating in Titles XVIII and XIX of the Social Security Act. At the present time, the Conditions of Participation for Hospitals regulations are being re-evaluated.

External: None.

Active Federal Collaboration

The Federal Trade Commission, which is concerned with patient rights in nursing homes, is collaborating.

Available Documents

New Directions for Skilled Nursing and Intermediate Care Facilities (Summaries of Public Hearings), September 1978.

Timetable

Proposed regulations—Spring 1979.
Final regulations—Fall 1979.

Agency Contact

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DOL-MSHA

Title

Mandatory safety standards for surface coal mines and surface areas of underground coal mines, 30 CFR Part 77

Objectives and Benefits

The objective of this regulation is to improve, insofar as possible, existing safety standards for miners in surface coal mines and surface areas of underground coal mines. The proposal would clarify ambiguities in existing standards, reorganize certain sections and subparts to facilitate their use by operators and inspectors, and strengthen other standards. Standards for illumination, guarding of electrical equipment, examination and testing of high voltage circuit breakers, protection of direct current circuits, protection of low and medium voltage alternating current circuits, mine maps, and locations for magazines are expanded to include additional requirements. New standards for protection of electric wiring and equipment, for low resistance grounding medium, and for the handling of energized trailings cables and portable feeder cables are included in the proposal. The proposed regulations will reduce fatalities and injuries in the coal mining industry.

Legal Authority

The Federal Mine Safety and Health Act of 1977, §101, 30 U.S.C. §801 (1977).

Major Alternatives Under Study

The first alternative under consideration is whether to go forward with the proposal at all, and, if so, to what extent. This regulation, which was proposed in 1977, covers all of the safety requirements for surface coal mines and surface areas of underground coal mines. The Mine Safety and Health Administration will be evaluating the proposal to determine which of the specific standards included in the 1977 proposal should be reproposed. This determination will be made within the framework of the 1977 Act and its requirements. For example, one alternative might be to exclude requirements for supervisory training in light of the mandatory safety and health training regulations which were published by the Mine Safety and Health Administration on October 13, 1978.

Sectors Affected

Operators of surface coal mines, miners, representatives of miners as defined in 30 CFR Part 40, and state inspection agencies will be affected.

Estimate and Summary of Economic Effects

These regulations were proposed in January 1977, and, at that time, economic estimates revealed that it would cost approximately $44 million for the industry to comply with the proposal. The principal costs were related to additional requirements for low resistance grounding medium, handling energized trailings cables and portable feeder cables, protection of direct current circuits, guarding of high voltage equipment, examination and testing of high voltage circuit breakers, protection of low and medium voltage alternating current circuits, illumination, guarding of electrical equipment, and protection of electric wiring and equipment. This does not, however, take into consideration industry expansion and overall increases due to inflation. Final estimates related to the impact on the industry may well exceed $50 million during the first year. Because many of the costs are associated with one-time equipment purchases, they are expected to decline to only $6.8 million for the second year, with further reductions for the succeeding years.

Related Regulations or Actions

Internal: The Mine Safety and Health Administration has regulations setting forth requirements for underground coal mines—30 CFR Part 75. The Mine Safety and Health Administration is working on safety and health standards for construction work on mine property—30 CFR Part 110.

External: None.

Active Federal Collaboration

None.

Available Documents

The earlier proposal is available for public review, 42 FR 2800 (January 13, 1977).

Timetable

ANPRM—April 30, 1979.

Agency Contract

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DOL-MSHA

Title

Regulations providing for automated temporary roof support standards, 30 CFR Part 75

Objectives and Benefits

These improved safety standards will reduce injuries and fatalities associated with roof falls in underground mines. Statistics reveal that approximately 1,400 roof fall injuries and fatalities occurred in 1977. These standards will allow for the mechanical installation of temporary roof supports, as opposed to manual, as is done now. Specifically, in underground coal mines, current regulations provide for permanent roof supports and prohibit a miner's presence beyond permanent supports unless there are adequate temporary supports. These temporary supports are now installed by the miners. These regulations will prevent the miners from having to be exposed to unsupported roofs, which are now a source of many mine accidents.

Legal Authority

The Federal Mine Safety and Health Act of 1977, §101, 30 U.S.C. §811 (1977).

Major Alternatives Under Study

The alternatives available to the Mine Safety and Health Administration include the following: (1) do not change the existing regulation; (2) include in any proposal a grandfather clause which would allow existing equipment to continue to be used with revised roof control plans.

Sectors Affected

Operators of coal mines, miners, and representatives of miners as defined in 30 CFR Part 40 will be affected.

Estimate and Summary of Economic Effects

Although costs associated with these regulations will depend, in large part, upon the final makeup of the regulations, the Mine Safety and Health Administration estimates that the economic impact will be under $50 million for the first year. This amount is expected to decline for succeeding years since many costs will be attributable to one-time equipment purchases.

Related Regulations or Actions

Internal: The Mine Safety and Health Administration has existing coal mine safety and health roof control regulations—30 CFR 75.200.

External: None.

Active Federal Collaboration

None.

Available Documents

The Mine Safety and Health Administration's existing regulation which sets forth the requirements for temporary roof supports—30 CFR 75.200.

Timetable

ANPRM—June 30, 1979.

Agency Contact

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DOL-MSHA

Title

Requirements for construction and maintenance of impoundments and tailings piles at metal and nonmetal mines, 30 CFR Parts 55, 56, and 57

Objectives and Benefits

The Mine Safety and Health Administration (MSHA) believes that this regulation will improve, insofar as possible, existing standards for dams and waste piles in metal and nonmetal mines. The standards, which will require more substantial new dam and waste pile construction and an upgrading of existing facilities, will result in fewer dam failures and fewer accidents resulting from waste piles. In addition to a reduction of injuries at the mine site, these regulations will minimize the chances of water and waste from ore spilling over into the surrounding public environment.

Legal Authority

The Federal Mine Safety and Health Act of 1977, §101, 30 U.S.C. §811 (1977).

Major Alternatives Under Study

MSHA is now focusing on several alternatives related to: (1) the manner in which new dams will be constructed, i.e., how substantial; (2) whether or not there will be a phase-in period to allow operators who have existing facilities to comply; (3) the particular applicability of the Department of Army's Corps of Engineers' requirements; and (4) what type of plans for waste piles and dam structures will be required and the role of the Department of Labor's Metal and Nonmetal Mine Safety and Health District Manager in requiring and approving such plans.

Sectors Affected

Operators of metal and nonmetal mines, states which conduct mining activities, miners, and representatives of miners as defined in 30 CFR Part 40 will be affected.

Estimate and Summary of Economic Effects

Preliminary estimates reveal that the costs associated with constructing new dams and waste piles and upgrading existing facilities may well exceed $50 million, with the greatest portion of costs being attributable to upgrading existing facilities. However, since most of the costs will be of a one-time nature, this amount is expected to decline in succeeding years.

Related Regulations or Actions

Internal: The Mine Safety and Health Administration currently has surface coal mine safety standards which regulate refuse piles—30 CFR 77.214-217. The Mine Safety and Health Administration has existing metal and nonmetal safety standards which regulate waste piles—30 CFR 55.20-10, 30 CFR 56.20-10, 30 CFR 57.20-10.

External: The Department of the Army has authority, through the Corps of Engineers, to regulate dams and their construction under P.L. 92-367, 86 Stat. 506-507. The Department of Interior, Office of Surface Mining, has authority to regulate case mine dams and waste piles under the Surface Mining Control and Reclamation Act of 1977, P.L. 95-87, 91 Stat. 445.

Active Federal Collaboration.

None.

Available Documents

None.

Timetable

ANPRM—March 30, 1979.
NPRM—June 30, 1979.

Agency Contact

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DOL-MSHA

Title

Requirements to provide self-contained (oxygen-generating) self-rescuers to underground metal and nonmetal miners, 30 CFR Part 57

Objectives and Benefits

The objective of this regulation is to set improved safety standards for underground metal and nonmetal miners which will increase a miner's chance of surviving a mine emergency in which oxygen deficient air is present. The

current self-rescue devices available to miners are of a filter type which do not generate oxygen, and, hence, the user must rely on the oxygen in the air. If there is a lack of oxygen, a miner's chance of survival is reduced. A new device is available which uses the chemical potassium superoxide to produce oxygen, and thus even in oxygen deficient environments, a miner's chance of survival is greatly increased.

Legal Authority

The Federal Mine Safety and Health Act of 1977, §101, 30 U.S.C. §811 (1977).

Major Alternatives Under Study

The Mine Safety and Health Administration is considering the possibility of a phase-in period for metal and nonmetal operators to comply with the regulations. The regulation will probably permit alternative methods for using and providing access to self-contained self-rescuer units.

Sectors Affected

Operators of underground metal and nonmetal mines, miners, and representatives of miners as defined in 30 CFR Part 40 will be affected.

Estimate and Summary of Economic Effects

Preliminary estimates reveal that the costs of equipping approximately 30,500 underground metal and nonmetal miners with self-contained self-rescue units will total $12-15 million. This amount includes costs related to testing, training, and buying extra units for inventory.

Related Regulations or Actions

Internal: The Mine Safety and Health Administration currently requires self-contained self-rescue devices in underground coal mines—30 CFR 75.1714. The Mine Safety and Health Administration, in cooperation with the National Institute for Occupational Safety and Health, has regulations setting forth tests for permissibility for respiratory protective devices—30 CFR Part 11.

External: None.

Active Federal Collaboration

None.

Available Documents

None.

Timetable

NPRM—April 30, 1979.
Final Rule—October 1979.

Agency Contact

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Health Administration
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DOL-MSHA

Title

Safety and health standards for construction work on mine property, 30 CFR Part 110.

Objectives and Benefits

The objective of this regulation is to improve safety and health standards for construction workers on mine property in an effort to reduce accidents and occupationally caused illnesses. The Federal Mine Safety and Health Act requires that the Secretary shall, to the extent practicable, promulgate separate mandatory safety and health standards applicable to "mine construction activity on the surface." These standards will implement this statutory provision. They will set forth minimum safety and health requirements for all construction activity on surface mine property. Standards will cover health and safety hazards related to all aspects of construction work.

Legal Authority

The Federal Mine Safety and Health Act of 1977, §§101 and 101(a)(8), 30 U.S.C. §811 (1977).

Major Alternatives Under Study

At this point, MSHA is considering two alternatives. The first alternative is to propose, in large part, the current requirements of the Occupational Safety and Health Administration related to construction. This alternative will provide less disruption to that portion of the industry which, prior to March 9, 1978 (the effective date of the transfer of the Mining Enforcement and Safety Adminstration from the Department of Interior to the Department of Labor), was subject to the jurisdiction of the Occupational Safety and Health Administration while working on surface mine property. The Mine Safety and Health Adminstration is also considering whether to include separate requirements related to the sinking of shafts and slopes.

Sectors Affected

Affected sectors include the construction industry, buildings trade employees, mine operators, miners, and representatives of miners as defined in 30 CFR Part 40.

Estimate and Summary of Economic Effects

It is estimated that the costs of complying with these regulations will be under $50 million for the first year since the requirement is not new to the construction industry, even though this is a new regulation. Prior to the 1977 Act, all construction activity in metal and nonmetal mines which was not undertaken by the operator was subject to the jurisdiction of the Occupational Safety and Health Administration. This was by far the largest part of construction work at metal and nonmetal mines. Thus, construction contractors doing work at metal and nonmetal mines had to comply with the Occupational Safety and Health Administration's construction standard. It is safe to assume that these construction contractors are, in fact, complying with construction standards. All construction on coal mine property was subject to the jurisdiction of the Mining Enforcement and Safety Administration, this Agency's predecessor. The Mine Safety and Health Administration, in order to minimize the impact of these regulations on the construction industry, is planning to propose, in large part, the current construction regulations of the Occupational Safety and Health Administration. These standards will, therefore, have a minimum impact on the methods by which construction contractors currently do business, and no new areas will be regulated. For these reasons, it is anticipated that the economic impact of these regulations will not be great.

Related Regulations or Actions

Internal: The Mine Safety and Health Administration currently has coal mine surface construction regulations—30 CFR Part 77. The Occupational Safety and Health Administration has regulations which govern construction activity—29 CFR 1926. The Mine Safety and Health Administration has published draft regulations which set forth criteria for identifying those independent contractors who will be operators within the meaning of section 3(d) of the 1977 Act—30 CFR 45.

External: None.

Active Federal Collaboration

None.

Available Documents

None.

Timetable

ANPRM—February 28, 1979.
NPRM—May 30, 1979.

Agency Contact

Frank A. White

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Mine Safety and
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703/235-1910

DOL-MSHA

Title

Regulations setting forth requirements for safety and health training for mine construction workers

Objectives and Benefits

These regulations will enable the Mine Safety and Health Administration (MSHA) to comply with the statutory mandate that the Secretary promulgate appropriate standards for safety and health training for mine construction workers. The regulations will require that all construction workers on mine property be appropriately trained in the safety and health hazards of their jobs. Such training will help reduce injuries, illnesses and fatalities in the mining workplace.

Legal Authority

The Federal Mine Safety and Health Act of 1977, §§ 115 and 101, 30 U.S.C. § 815, 811 (1977).

Major Alternatives Under Study

Consideration is being given to how much training will be required, how often, who will be able to conduct the training, and what training can be substituted for that required by the regulation. MSHA is currently meeting with representatives of industries and labor unions to determine exactly what training is currently being given.

Sectors Affected

Construction industry, building trades employees, mine operators, miners, and representatives of miners as defined in 30 CFR Part 40 will be affected.

Estimate and Summary of Economic Effects

It is estimated that the first year costs of complying with these regulations will be well under $50 million; however, MSHA is developing more precise data. Preliminary industry estimates reveal that there are approximately 150,000 employees engaged in mine construction work. Since MSHA is only in the drafting stage with respect to this regulation, the estimate of the economic effect of the regulation will depend, in large part, upon the final make-up of the regulation, including category of training required, hours of training, etc.

Related Regulations or Actions

Internal: The Mine Safety and Health Administration is developing safety and health standards for construction work on mine property—30 CFR Part 110. The Mine Safety and Health Administration has existing mandatory safety and health training regulations for miners—30 CFR Part 48. The Occupational Safety and Health Administration has construction safety and health standards—30 CFR Part 1926. The Mine Safety and Health Administration has issued draft regulations which set forth criteria for identifying those independent contractors who will be operators within the meaning of Section 3(d) of the Mine Act—30 CFR Part 45.

External: None.

Active Federal Collaboration

None.

Available Documents

None.

Timetable

ANPRM—March 30, 1979.
NPRM—June 30, 1979.

Agency Contact

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703/235-1910

DOL-OSHA

Title

Identification, classification and regulation of toxic substances posing a potential occupational carcinogenic risk

Objectives and Benefits

The proposed cancer policy has three major objectives: (1) to establish scientifically-based criteria for the identification and classification of toxic substances found in the workplace for which human or experimental data indicate some degree of carcinogenic risk, (2) to establish procedures and timetables for the Agency to establish standards for substances classified as carcinogens, and (3) to establish model standards for use in future rulemakings on these substances.

The procedures developed through this rulemaking will increase the efficiency of Federal regulatory programs to control workplace carcinogens and will assure greater consistency in standards for worker exposure to cancer causing substances. The Occupational Safety and Health Administration's (OSHA) statement of policy will provide employers with a clearer understanding of OSHA's regulatory process and its position with respect to controlling workplace carcinogens. The consistent format for standards will make it easier for employers to identify their responsibilities for protecting employees from the harmful effects of potential carcinogens.

Legal Authority

Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

Major Alternatives Under Study

The proposed OSHA policy and procedure for carcinogen standards includes issues on which the Agency has requested public comment and has invited suggestions for alternative approaches. Among the alternatives suggested are:

1. Use of rigorous risk analyses in establishing priorities for regulating specific chemicals;
2. Use of cost-benefit analyses in setting exposure limits and other requirements of standards;
3. Use of personal protective equipment in lieu of engineering controls, at the discretion of the employer, to provide protection against carcinogenic substances.

Sectors Affected

Employers covered by the Occupational Safety and Health Act of 1970, and whose workers are potentially exposed to cancer-causing chemicals, may be affected by specific standards developed following this policy and procedure. Potential carcinogenic substances may be found in use in a wide variety of industrial operations, including primary chemical production and secondary use of these products in various manufacturing processes. The actual scope ("Sectors Affected") of each standard would be established during the actual rulemaking on the specific standard and would not be predetermined by the cancer policy.

Estimate and Summary of Economic Effects

This rulemaking, as a statement of policy and procedure, has no direct economic impact, and it is not possible to determine quantitatively the potential economic costs or economic benefits of standards for substances regulated in the future following this procedure. In subsequent rulemakings, OSHA will estimate the potential economic impact of the proposed standards for specific substances. The Agency will encourage discussion regarding the issue of the economic impact, and the closely related concern for technological feasibility, of each specific proposal and any alternative control measures.

Related Regulations or Actions

Internal: OSHA has several rulemakings underway for the regulation of carcinogenic substances found in the workplace. In each rulemaking, the basic scientific and policy issues addressed in the "cancer policy" are debated.

External: Several other Federal agencies, including the Consumer Product Safety Commission, the Environmental Protection Agency, and the Food and Drug Administration, are developing or reviewing agency policies with respect to the regulation of carcinogenic materials within the scope of their respective statutes.

Active Federal Collaboration

National Cancer Institute, National Institute for Occupational Safety and Health, Environmental Protection Agency, Food and Drug Administration, and the Consumer Product Safety Commission.

Available Documents

"Identification, Classification and Regulation of Toxic Substances Posing a Potential Occupational Carcinogen Risk," 42 FR 54148 (October 4, 1977).

"Regulatory Analysis of a Proposal for the Identification, Classification and Regulation of Toxic Chemicals Posing a Potential Occupational Carcinogen Risk" (Department of Labor, October 1978).

Public docket of the record of rulemaking on the cancer policy procedure.

Timetable

Final Rule—Spring 1979.

Agency Contact

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DOL-OSHA

Title

Occupational exposure standard to hexavalent chromium

Objectives and Benefits

The Occupational Safety and Health Administration (OSHA) is developing a proposed occupational exposure standard to provide employees protection from the hazards of one valence (form) of chromium or chromium compounds. The standard would include maximum permissible exposure limit(s) for substance(s) containing hexavalent chromium, and requirements for medical surveillance of exposed employees, periodic monitoring of the workplace environment, and employee training concerning the hazards and control measures. Some hexavalent chromium compounds have been implicated as cancer causing agents. The new standard would reduce the risk of cancer for employees exposed to these substances, and would offer protection against other health hazards of hexavalent chromium exposure. These other hazards include skin ulceration, nasal membrane irritation and ulceration, and dermatitis.

Legal Authority

Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

Major Alternatives Under Study

Studies indicated that at least some chromium compounds in the hexavalent state are cancer-causing agents and some scientists believe that all hexavalent chromium compounds should be regulated as carcinogens. Other scientists believe that there are carcinogenic and non-carcinogenic chromium compounds and that separate standards should be developed for the two types.

Some parties have suggested that chromium standards be distinguished further on the basis of feasibility. In other words, the specific requirements of the standard would differ according to the feasibility of various control measures in different industries or processes where occupational exposure to hexavalent chromium could occur. The Agency has asked for public comment on possible alternatives for limiting worker exposure to hexavalent chromium.

Sectors Affected

Hexavalent chromium exposure is found in many industrial operations. These operations include primary processing of chromium ore for the production of basic hexavalent chromium compounds and pigments. Hexavalent chromium compounds are used in plastic products, in electrolytic platings, as pigments in paints and inks, and as a coloring agent. Employees in various facets of these processes have potential exposure. The National Institute for Occupational Safety and Health estimates that there are 175,000 workers who are potentially exposed to hexavalent chromium.

Estimate and Summary of Economic Effects

The regulatory analysis has not been completed, although the impact is likely to be major in terms of cost. Employers would be required to make initial capital investments and would incur greater operating costs. The actual cost will depend on decisions on the provisions to be included in the final standard.

Related Regulations or Actions

Internal: The OSHA Air Contaminant Standards, found at 29 CFR 1910.1000, Table Z-2, of the Agency's General Industry Standards, contain a maximum permissible exposure limit listed as:

Chromic acid and chromates 1 mg/M3 (i.e., 100 micrograms/M3). This limit is calculated on the basis of an 8 hour average and is expressed as chrome (Cr^{+6}), "100 micrograms Cr per cubic meter of air." (This rulemaking would reconsider this exposure limit and would propose additional provisions listed under "Objectives and Benefits.")

External: None.

Active Federal Collaboration

None.

Available Documents

ANPRM—41 FR 18869 (May 7, 1976).

"Criteria for a Recommended Standard . . . Occupational Exposure to Chromium (VI)," (NIOSH-HEW, 1975).

Public docket of the record of rulemaking on the occupational exposure to chromium standard.

Timetable

NPRM—Spring 1979.
Final Rule—Early 1980.

Agency Contact

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DOL-OSHA

Title

Occupational exposure to pesticides

Objectives and Benefits

The Occupational Safety and Health Administration (OSHA) is developing a standard for pesticides in order to reduce the risk of serious occupational illness among workers employed in pesticide manufacture and formulation. The rule may contain provisions, among others, for changes in work practices, engineering controls and medical surveillance of employees. Pesticides are capable of causing a wide variety of toxic effects, including severe skin irritation, damage to organs such as the liver and kidney, and central nervous system depression. In addition, some pesticides may increase the risk of cancer or genetic changes. This standard would extend

new protective measures to approximately 8700 workers employed in facilities whose primary product is pesticides and to over 350,000 workers potentially exposed at plants that produce pesticides as secondary products.

Legal Authority

Occupational Safety and Health Act of 1970, 29 U.S.C. § 655.

Major Alternatives Under Study

OSHA believes that mandatory standards may be necessary to protect employees whose health is at risk in pesticide manufacturing and formulation employments. One alternative is to develop standards for pesticides on a substance-by-substance basis. This alternative would significantly delay extending protection to many employees in these operations and would require a much greater investment of government resources to develop individual standards.

The generic approach to regulation, that is, regulation of pesticides as a class, provides basic protection to the employees more quickly and appears to be a more manageable approach for employers to understand and implement. OSHA has published an ANPRM requesting public comment on alternatives.

Sectors Affected

The scope of the final standard is not certain at this time, but will be an issue for public comment and debate following the publication of the proposal. A National Institute for Occupational Safety and Health recommendation suggested application to workplaces where pesticides were manufactured, formulated, mixed, blended or repackaged. The standard would not apply to the population at large, or to users of pesticides already regulated by other agencies.

Estimate and Summary of Economic Effects

The regulatory analysis has not been completed, although the impact is likely to be major in terms of cost. Employers would be required to make initial capital investments and would incur higher operating costs. The actual cost will depend on decisions on the provisions to be included in the final standard.

Related Regulations or Actions

Internal: The OSHA Air Contaminant Standards, found at 29 CFR 1910.1000 of the Agency's General Industry Standards, contain maximum permissible exposure limits for about 160 chemicals which may be used as pesticides. OSHA is developing a Pesticides Emphasis Program to increase compliance activities in this area, and is preparing a training program for compliance officers engaged in inspections.

External: The Environmental Protection Agency, the Food and Drug Administration and the Departments of Transportation and Agriculture have regulations or programs for pesticides use.

Active Federal Collaboration

Environmental Protection Agency and the National Institute for Occupational Safety and Health.

Available Documents

"Request for Comments and Information—Occupational Exposure to Pesticides," 43 FR 54955 (November 24, 1978).

"Criteria for a Recommended Standard . . . Occupational Exposure During the Manufacture and Formulation of Pesticides," (NIOSH-HEW, 1978).

Public docket of the record of rulemaking on the occupational exposure to pesticides standard.

Timetable

NPRM—Spring 1979.
Final Rule—Early 1980.

Agency Contact

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DOT-FAA

Title

Flammability standard for crewmember uniforms

Objectives and Benefits

The intent of this regulation is to reduce the risk that clothing worn by flight attendants will catch fire during an emergency. The proposed rule would set standards of flammability for fabrics used in all crewmember uniforms.

This proposed rule is based upon an ANPRM, "Flight Attendant Clothing," which was issued in response to information supplied by the Association of Flight Attendants indicating that some items of flight clothing are highly flammable when exposed to heat or flame. The Federal Aviation Regulations require that each air carrier provide one or more flight attendants on each passenger-carrying aircraft. These flight attendants could be called upon in an emergency involving fire in flight or on the ground. Since flight attendant clothing consists of fabrics which may be ignited under these emergency conditions, flight attendants would be subject to serious injuries. The purpose of the ANPRM was to obtain comments from the public concerning technology that may be included in the establishment of flammability standards and specifications for uniforms, taking into consideration the practical aspects of cost, wearability and comfort, while providing a reasonable degree of protection against heat and flame.

Uniform items covered by the rule would have to meet certain flammability standards. The proposed rule prescribes test methods and criteria to be used to determine whether fabrics and other materials used in uniform items (1) self-extinguish adequately when exposed to heat or flame and (2) provide adequate protection from heat in survivable cabin fires.

Legal Authority

The Federal Aviation Act of 1958, as amended, §§ 313(a), 601, and 604, 49 U.S.C. §§ 1354(a), 1421, and 1424.

Major Alternatives Under Study

The National Bureau of Standards is currently studying the public comments received in response to the ANPRM and is conducting further testing of materials to develop alternatives.

Sectors Affected

This regulation would affect the aviation and clothing industries.

Estimate and Summary of Economic Effects

Because this regulation is at an early stage of development, specific economic effect data are not available at this time. When an economic impact study is conducted, economic data will become available.

Related Regulations or Actions

None.

Active Federal Collaboration

National Bureau of Standards, National Transportation Safety Board, and Department of Commerce.

Available Documents

ANPRM—40 FR 11737 (March 16, 1975).

Timetable

NPRM—April 1979.

Agency Contact

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DOT-FAA

Title

Wind shear equipment requirements

Objectives and Benefits

The objective of this project is to reduce the possibility of aircraft accidents due to encounters with low-level wind shear. Wind shear, which is a change in wind speed and/or direction over a short distance, has been a major factor in eight U.S. airline accidents which involved deaths and injuries since July of 1973. Additionally, there were 23 accidents between 1964 and 1975 that occurred during takeoff or approach to the airport in which the involvement of low-level wind shear was a distinct possibility. This latter group of accidents also involved large, multi-engine powered airplanes. As a result of these accidents, the Federal Aviation Administration (FAA) believes it is necessary to inform interested persons about engineering and development programs that it has established for the purpose of developing solutions to the wind shear problem. The FAA will issue an ANPRM to explain these programs and to request information to help it to identify the type of equipment that will enable pilots to locate low-level wind shear so that they can take measures to avoid hazards associated with the weather condition.

Legal Authority

The Federal Aviation Act of 1958, as amended §§ 313(a), 601, and 604, 49 U.S.C. §§ 1354(a), 1421, and 1424.

Major Alternatives Under Study

FAA will develop alternatives from the comments it receives in response to the proposed ANPRM, which it expects to publish in July 1979.

Sectors Affected

This regulation will affect the aviation industry.

Estimate and Summary of Economic Effects

Because this regulation is at an early stage of development, specific economic data are not available this time. When an economic impact study is conducted, economic data will become available.

Related Regulations or Actions

None.

Active Federal Collaboration

National Weather Service, National Transportation Safety Board.

Available Documents

The National Transportation Safety Board's reports on the eight accidents refered to above are available through the FAA.

Timetable

ANPRM—March 1979.

Agency Contact

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DOT-FRA

Title

Alerting lights display—locomotives

Objectives and Benefits

The intent is to reduce the number of accidents, injuries, and deaths at public rail-highway grade crossings by requiring railroad locomotives to display highly conspicuous alerting lights at public grade crossings. The lights would provide additional warning to motorists. One study done for the Federal Railroad Administration (FRA), "Analysis for NPRM—Strobe Lights on Locomotives," estimated 124 fatalities, 566 injuries and 1,414 accidents would be avoided each year if an alerting lights system using xenon strobe lights were employed. The study estimated the annual benefit to be $65 million. The net present value benefit, including all societal benefits, was estimated to be $432.6 million (with present value calculations based on a 20-year project evaluation and a 10 percent discount rate). The net present value benefit is the estimated dollar savings for the full 20-year period after subtracting the costs involved, calculated with a discount to reflect the current value of future cost savings. The study used actual and estimated cost figures for valuation of fatalities, injuries, property damage, lost utilization of the rail line, and other costs. A societal cost of $315,900 per fatality, based on a 1975 study for the National Highway Traffic Safety Administration, was used.

Legal Authority

Federal Railroad Safety Act of 1970, § 202(a), 45 U.S.C. § 431(a).

Major Alternatives Under Study

One alternative would be to alter the approximately 220,000 public rail-highway grade crossings so that highways do not cross railroad tracks at grade crossings.

A second alternative would be to install active warning devices such as flashing lights or gates at all public grade crossings.

A third alternative would be to rely on railroads to install alerting lights voluntarily.

Sectors Affected

This regulation would affect the railroad industry, the driving public, and railroad shippers and the general public (to the extent that the railroads pass on costs through general rate increases).

Estimate and Summary of Economic Effects

The initial cost of installing alerting lights would be approximately $21,000,000 over a three year period. This would be substantially offset by anticipated reduced costs relating to grade crossing accidents. In the short term, costs might exceed benefits. The financial condition of the railroad industry could require that these costs be recouped through rate increases. (See A Preliminary Report by the Secretary of Transportation, "A Prospectus for Change in the Freight Railroad Industry," October 1978.) However, according to the study, "Analysis for NPRM—Strobe Lights for Locomotives," the estimated present value cost of application and subsequent maintenance of an alerting lights system using xenon strobe lights is $32,300,000 (based on a 20-year evaluation), while the economic impact is estimated to be a benefit of $61,400,000 to the railroads; as indicated above, the net present value benefit, including all societal benefits, is $432.6 million. The first two alternatives are more costly and less cost effective. Separation of all existing public and rail-highway grade crossings would cost an estimated $200 billion. Installation of active warning devices at all public grade crossings would cost in excess of $4 billion. Assuming voluntary installation of alerting lights by all railroads, the third alternative would cost $21,000,000.

Related Regulations or Actions

Internal: FRA requires that all grade crossing accidents be reported (49 CFR Part 225). FRA publishes each year a "Rail-Highway Grade Crossing Accident/Incident Bulletin." In addition, FRA has published and periodically updates the National Grade Crossing Inventory. Railroad locomotives are required by 49 CFR 230.231 to have a headlight.

External: The Federal Highway Administration has authority under 23 U.S.C. § 130 to fund the costs of construction of projects that eliminate hazards at rail-highway grade crossings.

Active Federal Collaboration

None.

Available Documents

ANPRM—43 FR 9324 (March 7, 1978).

A Preliminary Report by the Secretary of Transportation, "A Prospectus for Change in the Freight Railroad Industry," October, 1978.

Analysis for NPRM—"Strobe Lights on Locomotives," Input Output Computer Services, Inc., May 26, 1978.

DOT Transportation Systems Center Study—"Grade Crossings Resource Allocation for Strobe Lights and Conventional Warning Systems," November 16, 1978.

Timetable

NPRM—February 1979.
Public Hearing—April 1979.
Final Rule—July 1979.

Agency Contact

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DOT-FHWA

Title.

Hours of service of drivers

Objectives and Benefits

The objective of this regulation is to increase the overall safety of the nation's highways through the revision of current regulations governing the hours of service for drivers of commercial trucks and buses engaged in interstate or foreign commerce.

The Federal Highway Administration (FHWA) presently limits, by regulation, the hours of service for drivers as part of its overall responsibility for the safe operation of motor carriers. Research studies dating from as early as the mid-1930's have indicated that fatigue is a cause of highway accidents. Research reports have shown that fatigue causes such things as narrowing of vision and inattention that cause the driver to miss signs and signals. The research data, as well as numerous petitions and requests from public interest groups, labor organizations, motor carriers and individual drivers, prompted FHWA to publish in February 1976 an ANPRM that requested public comment and alternatives on proposals to revise the current regulations. A second ANPRM was published in May 1978 requesting further comments, suggesting alternatives, and announcing public hearings to be held around the country.

The FHWA believes that revisions in the hours of service of drivers regulations would help assure alertness and reduce the fatigue of drivers which would reduce fatigue-related accidents. This, in turn, would increase the overall safety of the nation's highways.

Legal Authority

The Motor Carrier Act of 1935 (Part II of the Interstate Commerce Act), § 2, 49 U.S.C. § 304.

Department of Transportation Act, § 3, 49 U.S.C. § 1655.

Major Alternatives Under Study

Some of the changes to current regulations which are currently under study include: (1) longer off-duty periods between driving and/or work assignments; (2) mandatory rest periods during long driving assignments; (3) elimination of the numerous exemptions to current regulations; (4) new methods to record hours of service. In addition, the FHWA is considering requirements relating to the following: (1) maximum weekly work hours, (2) maximum on-duty time, (3) minimum off-duty time, (4) driving hours or mileage limitations, (5) driver relief periods, (6) elimination of intermittent off-duty periods during a work day, (7) mandatory meal periods, (8) special provisions for night driving assignments.

Sectors Affected

This regulation will affect that portion of the truck and bus industry engaged in the interstate commercial transportation of property and passengers.

Estimate and Summary of Economic Effects

The FHWA expects that the effect of these proposed regulations would be major. Any changes in the present hours of service regulations would likely cause increased overall expenses for payrolls since the proposed rules suggest that the same amount of traffic would be handled by drivers working fewer hours. This could be expected to lead to increases in the operating expenses of motor carriers, resulting in increased costs for truck and bus transportation and, eventually, for goods consumed. The initial rough estimate of cost to motor carriers is that it could exceed $100 million annually.

The regulation is also expected to have economic benefits. The anticipated benefits will include a reduced number of fatalities, injuries, and property damage resulting from highway accidents. In addition to a reduction in costs to society as a whole from reducing accidents, there should also be a reduction in motor carrier operating expenses due to reduced insurance premiums, litigation and compensation payments.

Related Regulations or Actions

Internal: Current FHWA regulations restrict hours of service of drivers (49 CFR Part 395).

External: None.

Active Federal Collaboration

The Federal Bureau of Labor Statistics, Department of Labor, is providing information for use in further analysis of this issue.

Available Documents

ANPRM—41 FR 6275 (February 13, 1976).

Second ANPRM—43 FR 21905 (May 22, 1978).

Sixteen reports or professional journal articles are referenced in the second ANPRM.

PROD, Inc., et al. vs. *Brinegar,* Civil Action 2098-73, U.S. District Court, District of Columbia, (May 20, 1974). This is a decision in which the District Court dismissed, without prejudice to renew in 18 months, a suit brought against the Department of Transportation by PROD, a group representing professional drivers. The suit sought judicial review of the FHWA's failure to institute rulemaking proceedings on "hours of service."

Timetable

NPRM—January 1980.
Final Rule—September 1980.

Agency Contact

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DOT-FHWA

Title

Minimum cab space dimensions

Objectives and Benefits

The objective of this regulation is to specify a minimum size for the cab portion of cargo-carrying motor vehicles involved in interstate commerce, and through this to increase the comfort of drivers and reduce accidents. There are currently no regulations regarding the minimum size of truck cabs. There are limitations on total vehicle length imposed by the states, most ranging between 55 feet and 65 feet, with the maximum state-imposed length for a tractor/semitrailer combination set at 75 feet. Reports from drivers' organizations have stated that vehicle manufacturers, in response to customer requests, have shortened the wheel base and cab dimensions of the power units of trucks in order to increase the cargo carrying portion of the vehicle. This has caused excessive weight on the steering axle, reduced driver comfort, reduced accessibility to the engine for inspection and overloading of the front tires. Studies have linked highway accidents with these conditions. The benefit of these regu-

lations would be to reduce wheel and axle overloading and protect the driver's work place, and thereby reduce the risk of accidents to all highway users.

Legal Authority

The Motor Carrier Act of 1935 (Part II of the Interstate Commerce Act), § 2, 49 U.S.C. § 304.

The Explosive and Dangerous Articles Act, 18 U.S.C. § 831.

Major Alternatives Under Study

As a possible alternative to rulemaking, FHWA has requested comments on the feasibility of proposing voluntary model advisory standards with respect to minimum cab space dimensions. This approach was recommended by the National Highway Safety Advisory Committee Report of March 1977. Within the rulemaking process, FHWA is considering several alternatives. One alternative under consideration is to exempt certain types or weight classes of vehicles. Another possible alternative would be to restrict the placement of cabs over the engine. A further alternative under review considers the impact on safety of different length cabs matched with different length trailers.

Sectors Affected

The initial impact would be on the manufacturers of cargo-carrying vehicles. Additionally, all industries involved in interstate commercial transportation of property will be affected as these regulations may reduce the available cargo space.

Estimate and Summary of Economic Effects

These regulations may result in the need for substantial redesign of truck cabs. The significant financial burden to accomplish this redesign and retooling would originally be placed on the manufacturers, and would lead to an increase in the cost of trucks to motor carriers. Unless changes are made by the states in allowable overall length of a tractor semitrailer combination, the increased cab space would result in a lessening of available cargo space. This could result in smaller loads and the need for increased numbers of vehicles and drivers to ship the same amount of goods. All of these could be expected to increase shipping costs and eventually result in consumer price increases on all items traveling by truck. Specific estimates of the economic effects will be available at the time of the next rulemaking action.

Related Regulations or Actions

Internal: None.

External: Fifty states and the District of Columbia have regulations limiting overall vehicle length.

Active Federal Collaboration

None.

Available Documents

ANPRM—43 FR 6273 (February 14, 1978).

Research Studies: (a) Driver Profile and Body (Anthropometric) Data on Interstate Truck Driver, April 1977; (b) Vehicular Stresses Leading to Degradation of Driver Performance in Trucks, October 1974; (c) Cause and Control of Commercial Vehicle Accidents Involving Front Tire Failure, August 1975.

Timetable

NPRM—July 1979.

Agency Contact

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DOT-USCG

Title

Construction and equipment for existing self-propelled vessels carrying bulk liquefied gases

Objectives and Benefits

The proposed regulation would insure the safe transportation of bulk liquefied gases aboard existing vessels entering the United States by upgrading the minimum standards for their equipment, material, and construction.

Existing gas ships were designed and constructed in accordance with current Coast Guard standards. A recently developed international standard includes requirements which exceed these current standards. Failure to adopt these requirements will result in national standards which may be less stringent than the international standards developed at the Intergovernmental Maritime Consultative Organization (IMCO).

Legal Authority

The Port and Tanker Safety Act of 1978, P.L. 95-474, § 5, 92 Stat. 1480 (1978).

Major Alternatives Under Study

The Coast Guard has issued an ANPRM to gather information for future rulemaking. At this time, the Coast Guard is seeking basic information on the estimated amount of equipment that would be required, the purchase price of such equipment, the availability of the equipment, the time needed for delivery and installation, and projected costs. Once this information has been gathered, the Coast Guard will develop and evaluate various alternatives.

Sectors Affected

The regulation will impose higher costs on the owners and operators of ships carrying bulk liquefied gas. They may pass these costs on to consumers of liquefied gas.

Estimate and Summary of Economic Effects

The Coast Guard is examining the economic effect of implementing the IMCO Existing Gas Ship Code through an ANPRM issued in June of 1977. Final estimates will not be available until the regulatory analysis is completed during the second quarter of 1979.

Related Regulations or Actions

Internal: The Coast Guard has also proposed rules for new self-propelled vessels carrying bulk liquefied natural gases. The Coast Guard based this proposal on the IMCO Gas Code for new ships. There are current regulations for these vessels in various parts of the Code of Federal Regulations. The proposed gas ship regulations would create unified and consolidated gas ship requirements.

External: None.

Active Federal Collaboration

None.

Available Documents

ANPRM—42 FR 33353 (June 30, 1977).

Timetable

NPRM—September 1979.

Agency Contact

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DOT-USCG

Title

Requirements for inert gas systems for oil tankers of over 20,000 dead weight tons

Objectives and Benefits

The objective of this rule is to reduce the likelihood of explosions in the cargo tanks of oil tankers by requiring new and existing tank vessels, both foreign and domestic, of 20,000 dead weight tons and over to be equipped with inert gas systems. An inert gas atmosphere is established by introducing into the cargo tanks of vessels a gas or mixture of gases with an oxygen content low enough to prevent combustion. Use of a properly operating inert gas system reduces the risk of fire and explosion aboard a

tanker. This system is especially useful during tank cleaning operations because the Coast Guard believes that tank cleaning produces static electricity which can ignite a flammable mixture of gases and create a devastating explosion. The dangers of an explosion are also great in other periods when the tank is partially empty, such as during cargo loading and discharging. The benefits are reductions in damage to tank vessels themselves, reduced incidents of marine pollution, and, most important, decreased loss of life due to explosions.

Legal Authority

Port and Tanker Safety Act 1978, P.L. 95-474, § 5, 92 Stat. 1480 (1978).

Major Alternatives Under Study

In President Carter's March 17, 1977 message to Congress, he advised that he was instructing the Secretary of Transportation to develop new rules for oil tanker standards, applying to all oil tankers over 20,000 deadweight tons, U.S. and foreign, which call at American ports. Included in the requirements listed by the President were inert gas systems.

One alternative which the Coast Guard is proposing is not to require all existing product carriers of 20,000 deadweight tons (DWT) and over to have inert gas systems. The Coast Guard is proposing that vessels between 20,000 and 40,000 DWT should not be included unless they are fitted with high capacity tank washing systems. The incidence of fire and explosions on these smaller vessels is relatively low and the one million dollars cost for an inert gas system, therefore, would not be cost effective. However, the proposal would require an inerting system on all vessels having high capacity tank washing machines because there is a greater possibility of static electricity build-up with such machines. The Coast Guard believes that static electricity discharges are the ignition source for in-tank explosions.

Sectors Affected

The primary sectors affected are tank vessel owners and operators who must pay for inert gas systems, and the people working in and around these vessels and the related port and terminal facilities. The secondary sector affected will be the general consuming public, to whom compliance costs will be passed, and the total marine environment which would benefit from reduced levels of pollution.

Estimate and Summary of Economic Effects

The Coast Guard estimates that implementation of the requirements of the Tanker Safety and Pollution Prevention Protocols for existing foreign and domestic tankers trading in U.S. ports could cost 3.0 billion dollars or more, spread out over a period of about 15 years. The initial investment is estimated at 1.6 billion dollars or more. All costs are dependent upon such factors as which options for compliance are chosen; the size, configuration and age of the vessel, and what equipment is selected for installation.

Detailed estimates of costs for both U.S. and foreign vessels categorized by vessel displacement and possible option are contained in the document "Cost Model and Analysis for Estimating Costs for Implementation of the Results of the International Conference on Tanker Safety and Pollution Prevention."

An upper estimate of the total number of tankers affected could range from 831 to 953 for foreign crude tankers, and from 396 to 475 for foreign product tankers. About 232 U.S. product and crude tankers could be affected. The average cost per tanker will vary between 2 and 3 million dollars.

The Coast Guard estimates the proportional increase in the cost per gallon of gasoline to the U.S. consumer due to the minimum cost Tanker Safety and Pollution Prevention option to be one-tenth of a cent.

Because of the current worldwide tanker surplus and expected increase in domestic pipeline transportation of oil, very few new tankers are expected to be constructed between now and 1985. Planned tanker construction beyond 1985 is unknown at this time. For these reasons, the Coast Guard can not presently estimate how much this regulation will add to new ship construction cost.

Related Regulations or Actions

Internal: The Coast Guard is proposing a full range of regulations related to tanker safety and pollution prevention. The other regulation is discussed in this calendar. (See the entry for Implementation of the Port and Tanker Safety Act of 1978).

External: None.

Active Federal Collaboration

The Coast Guard has advised the following agencies of this regulation: Council on Environmental Quality; Council on Wage and Price Stability; Department of Commerce, Maritime Administration and National Oceanographic and Atmospheric Administration; Department of Energy, Strategic Petroleum Reserve Office; Department of Interior; and Environmental Protection Agency.

Available Documents

President's Message to Congress of March 17, 1977, Concerning Tanker Safety

White House Fact Sheet of March 16, 1977, Concerning Tanker Safety

NPRM—42 FR 24868 (May 16, 1977)

Regulatory Implementation Plan—43 FR 16886 (April 20, 1978)

Regulatory Analysis—"Cost Model and Analysis for Estimating Costs for Implementation of the Results of the International Conference of Tanker Safety and Pollution Prevention."

Timetable

Second NPRM—February 1979

Agency Contact

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202/426-2205

EPA-OANR

Title

Review, and possible revision, of the national ambient air quality standards for carbon monoxide

Objectives and Benefits

The formal review of current carbon monoxide (CO) National Ambient Air Quality Standards may or may not result in a proposed new rulemaking. The main review objectives are to provide updated health data for carbon monoxide and to determine if these recent data on health effects and other impacts of CO warrant a modification of the current national standards. CO exposure can adversely affect central nervous system functions, retard fetal development, and aggravate pulmonary and cardiovascular diseases and symptoms, such as angina.

Legal Authority

The Clean Air Act Amendments of 1977, § 109(d)(1), 42 U.S.C. § 7409.

Major Alternatives Under Study

The major alternatives to maintaining the existing standards are: (1) to change the levels of the standards, and (2) to change the averaging times and/or the number of allowable exceedances of the standard level. The health-based (primary) standards may be made more stingent, less stringent, or kept at current levels. The Environmental Protection Agency (EPA) is also reviewing the need for a secondary standard to protect against environmental and other non-health damages.

Sectors affected

If the review results in a new regulatory action, the regulation will affect the automotive industry, the driving public, and public highway usage. Indirectly, the practice of transportation planning and operation of highways may be affected. The major sectors that would be affected are, therefore, energy, governmental units, manufacturing, and transportation.

Estimate and Summary of Economic Effects

If the standards are changed, they may result in either major additional costs or savings (compared with the current CO standards). Although the Clean Air Act prohibits the Environmental Protection Agency from considering economic impacts in setting the level of a standard which is based on health, the ecomonic impact analysis will serve as support information in considering the impact on the nation's economy.

Related Regulations or Actions

Internal: Regulatory programs that may be affected by a revision in the carbon monoxide National Ambient Air Standard include the Federal Motor Vehicle Pollution Control Program, development and implementation of transportation control measures, and planning programs for areas where the standard may not be attained.

External: State air pollution control programs would be affected by revision to the current standards. This includes a possible resubmittal of State Implementation Plans.

Active Federal Collaboration

Other federal agencies that actively will be involved in various standard review activities include the Departments of Health, Education, and Welfare; Transportation; and Energy.

Available Documents

Air Quality for Carbon Monoxide (External Review Draft, November 1978), Environmental Criteria and Assessment Office, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

Control Techniques for Carbon Monoxide Emissions (Draft, December 1978), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

ANPRM—"Review of the Carbon Monoxide Air Quality Standard," 43 FR 56250 (December 1, 1978).

Timetable

NPRM—August 1979.
Public Hearing—October 1979.
Final Rule—February 1980.

Agency Contact

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919/541-5204 (FTS 629-5204)

EPA-OANR

Title

Review, and possible revision, of the national ambient air quality standards for nitrogen dioxides (NO_x)

Objectives and Benefits

The formal review of the current National Ambient Air Quality Standard for nitrogen dioxide may or may not result in new rulemaking. The objective of this task is to review nitrogen dioxide health and welfare data acquired since original promulgation in 1972 and to determine, on the basis of these criteria, whether a modification of the current long-term standard is indicated. Also, Section 109(c) of the Clean Air Act Amendments of 1977 requires EPA to promulgate a short-term standard (of 1 to 3 hours) if available evidence suggests that such a standard is needed to protect the public health and welfare. Control of nitrogen dioxide provides substantial benefits in terms of public health and welfare. NO_2 exposure can result in impairment of pulmonary function and increased susceptibility to respiratory infection. NO_2 in the ambient air can affect crops, visibility, materials, and acid rainfall.

Legal Authority

The Clean Air Act Amendments of 1977, §109(d)(1), §109(c), 42 U.S.C. §7409.

Major Alternatives Under Study

The major alternatives to maintaining the existing standard are: (1) to replace, or supplement the annual standard with a short-term standard, and (2) to change the level of the standard, either in conjunction with or independent of adding a short-term standard.

Sectors Affected

If the review results in a new regulatory action, the regulation could affect point sources of nitrogen oxides (NO_x) emissions such as power plants and industrial boilers. Mobile source emissions are currently being controlled under existing emissions limit actions.

Estimate and Summary of Economic Effects

The economic impacts of changing the requirements for controlling nitrogen oxides emissions are not yet fully analyzed. The costs may increase or decrease over current levels. It is not yet known whether the cost changes will be significant. Although the Clean Air Act prohibits the Environmental Protection Agency from considering economic impacts in setting the level of a standard which is based on health, the economic impact analyses will serve as support information in considering the impact on the nation's economy.

Related Regulations or Actions

Internal: Regulatory programs that are related to a revision of the nitrogen dioxide National Ambient Air Standard include the Federal Motor Vehicle Pollution Control Program, New Source Performance Standard controls of NO_x emissions and planning programs for areas where the standard may not be attained.

External: State air pollution control programs would be affected by any major revision to the current standards. This includes a possible resubmittal of State Implementation Plans.

Active Federal Collaboration

Other federal agencies that will actively be involved in various standard review activities include the Departments of Health, Education, and Welfare; Transportation; and Energy.

Available Documents

Air Quality Criteria for Nitrogen Dioxide (external Review Draft, November 1978), Environmental Criteria and Assessment Office, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

Control Techniques for Nitrogen Dioxide Emissions (Draft, January 1978), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

Timetable

NPRM—October 1979.
Public Hearing—November 1979.
Final Rule—April 1980.

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EPA-OANR

Title

Review, and possible revision, of the national ambient air quality standards for particulate matter (PM)

Objectives and Benefits

The formal review of the current National Ambient Air Quality Standards for Particulate Matter may or

may not result in new rulemaking. The objective of this task is to review information on the health, environmental, and other effects of PM exposure acquired since original promulgation in 1971 and to detemine, on the basis of these criteria, whether a modification of the current standards is indicated. Modification of the standard would necessitate rulemaking. Exposure to particulate matter (generally) aggravates asthma and other respiratory disorders, aggravates cardiovascular diseases, impairs pulmonary function and increases cough and chest discomfort. Ambient levels of PM may increase the adverse effects of gaseous air pollutants, such as SO_2. Depending on the chemical composition, specific types of PM may have more serious toxic or carcinogenic effects. Elevated PM levels result in increased soiling and contribute to acid rain problems.

Legal Authority

The Clean Air Act Amendments of 1977, § 109(d)(1), 42 U.S.C. § 7409 *et seq.*

Major Alternatives Under Study

The major alternatives to maintaining the existing standards are: (1) to change the levels of the standards, (2) to change the nature of the standards to include particle size, and (3) to combine, in some manner, the standards for particulate matter and for sulfur oxides (SO_x), since they often occur in combination. Other alternatives are to change the averaging times and/or the number of allowable exceedances of the standard level.

Sectors Affected

Standards for particulate matter primarily affect the iron and steel industry, the utility industry, the non-ferrous metal industry, and industries which use large quantities of fossil fuels.

Estimate and Summary of Economic Effects

If EPA reaffirms its current standard following the review, there will be no effect on costs. Modifications of the current standards may either increase or reduce the costs of attaining acceptable air quality levels; the magnitude of incremental costs or savings is not yet known. Although the Clean Air Act prohibits consideration of cost and economics in setting the level of a standard which is based on health, an economic analysis will serve as support information in consideration of the impact on the nation's economy.

Related Regulations or Actions

Internal: Regulations or actions which could be affected by modifications in the current particulate matter standards are those for prevention of significant deterioration (PSD), sulfur oxides (SO_x), the review program for new sources, and approval of State Implementation Plans under 40 CFR Part 52.

External: New State Implementation Plans for achieving the standard will need to be developed by the states if there is any change in the current standards for particulate matter.

Active Federal Collaboration

Other Federal agencies which will be actively involved in the review of the particulate matter standards are the Department of Energy; Department of Transportation; Department of Interior; Department of Commerce; Department of Health, Education, and Welfare; Department of Agriculture; and the Tennessee Valley Authority.

Available Documents

Air Quality Criteria for Particulate Matter, AP-49, January 1969.

Health Effects Considerations for Establishing a Standard for Inhalable Particulates, July 1978.

Airborne Particulates, National Academy of Sciences, 1977.

Timetable

NPRM—May 1980.
Public Hearing—July 1980.
Final Rule—December 1980.

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EPA-OANR

Title

Review, and possible revision, of the national ambient air quality standards for sulfur oxides

Objectives and Benefits

The formal review of the current National Ambient Air Quality Standards for Sulfur Oxides may or may not result in new rulemaking. The objective of this task is to review new sulfur oxide health and welfare data acquired since original promulgation in 1971 and to determine, on the basis of these criteria, whether or not a modification of the current standards is indicated. Modification of the standard would necessitate rulemaking. Sulfur oxides (alone or in combination with other pollutants) aggravate respiratory diseases (such as asthma, chronic bronchitis, and emphysema) and irritate the eyes and respiratory tract. Sulfur oxides also contribute to visibility degradaton and to formation of acid rain, which adversely affects crops, materials, and aquatic ecosystems.

Legal Authority

The Clean Air Act Amendments of 1977, § 109(d)(1), 42 U.S.C. § 7409.

Major Alternatives Under Study

The major alternatives to maintaining the existing standards are: (1) to combine in some manner the standards for particulate matter (PM) and for sulfur oxides (SO_x), and (2) to change the levels of the standards. Other alternatives are to change the averaging times and/or allowable violations or to consider the possibility of a sulfate standard.

Sectors Affected

Standards for sulfur oxides primarily affect the utility industry, the nonferrous metal industry, the chemical industry, and industries which use large quantities of fossil fuels.

Estimate and Summary of Economic Effects

The economic impacts of controlling sulfur oxides emissions are not yet fully analyzed. If EPA does not change the standard following the review, there will be no change in cost. Changes in the current standards may increase or reduce currently required controls, but any cost savings or additional costs will not necessarily be major (greater than $100 million per year). Although the Clean Air Act prohibits consideration of cost and economics in setting the level of a standard which is based on health, an economic analysis will serve as support information in consideration of the impact on the nation's economy.

Related Regulations or Actions

Internal: Regulations or actions which could be affected by modifications in the current sulfur oxide standards are those for prevention of significant deterioration (PSD), particulate matter (PM), the review program for new sources, and approval of State Implementation Plans under 40 CFR Part 52.

External: New State Implementation Plans for achieving the standard will need to be developed by the states if there is any change in the current standards for sulfur oxides.

Active Federal Collaboration

Other Federal agencies which will be actively involved in the review of the sulfur oxide standards are the Department of Energy; Department of Transportation; Department of Interior; Department of Commerce; Department of Health, Education and Welfare; Department of Agriculture; and the Tennessee Valley Authority.

Available Documents

Air Quality Criteria for Sulfur Oxides, AP-50, January 1969.
Sulfur Oxides, National Academy of Sciences; 1978.

Timetable

NPRM—May 1980.
Public Hearing—July 1980.
Final Rule—December 1980.

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EPA-OANR

Title

Standards of performance to control atmospheric emissions from industrial boilers

Objectives and Benefits

The objective of this regulation is to reduce particulate matter, nitrogen oxides, and sulfur oxide emissions to the atmosphere from new industrial steam generating units or boilers. The reduced emission rates will result in improved air quality, with associated health and welfare benefits. The regulation will limit emissions to levels attainable by the best systems of emission reduction. These levels will take into consideration cost, environmental and energy impacts.

Legal Authority

The Clean Air Act Amendments of 1977, § 111, 42 U.S.C. § 7411.

Major Alternatives Under Study

The 1977 Clean Air Act specifically requires standards of performance for fossil fuel-fired (i.e., coal, oil, and gas) stationary sources. The available alternatives pertain to the structure of the regulation and the possible exemption of certain sizes or classes of sources. For example, more restrictive limitations may be imposed on larger sources or on sources using fuels with greater pollution potential.

Sectors Affected

Owners and operators of new industrial steam generating units will be affected. These units are used as a source of heat and power for industrial processes.

Estimate and Summary of Economic Effects

Costs are very tentative at this time and will depend on such factors as the sources regulated and the degree of control required. Based upon the assumption that new boilers will be entirely coal-fired, and assuming an 8 percent growth rate, annual costs could approach $500 million per year.

Related Regulations or Actions

Internal: Effluent guidelines and ambient air quality standards are in effect. Additional effluent guidelines Best Available Technology and Resource Conservation and Recovery Act Regulations are being developed.
External: None.

Active Federal Collaboration

Department of Energy.

Available Documents

None.

Timetable

NPRM—October 1980.
Public Hearing—November 1980.
Final Rule—August 1981.

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EPA-OANR

Title

Reducing benzene emissions to the atmosphere

Objectives and Benefits

The objective of this action is to reduce the risk of leukemia cases among people living near sources of benzene. Based upon evidence that exposure to benzene is related to an increased incidence of leukemia in humans, Environmental Protection Agency (EPA), in June 1977, listed benzene as a hazardous air pollutant under Section 112 of the Clean Air Act. Benzene is emitted to the atmosphere principally from industrial processes and from the storage, the handling and distribution of gasoline. Regulations are now being developed which will impose specific limits on the emissions of benzene to the atmosphere from specifically identified emission sources.

Legal Authority

The Clean Air Act Amendments of 1977, § 112, 42 U.S.C. § 7412.

Major Alternatives Under Study

Regulations are being developed for adoption under Section 112 of the Clean Air Act. These will limit emissions to levels which can be attained by applying available systems of emission control. The type of emission control systems or techniques required will vary among sources, but they may involve modification of the industrial process to reduce emissions, elimination of benzene emissions by substitution of other chemical compounds in place of benzene as a raw material used in industrial processes, or use of add-on control equipment to limit the release of benzene to the atmosphere.

If application of available technologies does not reduce health risk, to a more reasonable level, more restrictive limits requiring additional controls will be established.

An alternative to the direct control of benzene is control of total volatile organic compounds (VOC) under Sections 111 and 110 of the Clean Air Act. Under Section 111, which authorizes Federal standards for new pollution sources, standards would be established for those categories of sources which emit significant quantities of benzene. The regulations would limit the emissions of a wide range of organic chemicals (i.e., volatile organic compounds), including benzene. States would be encouraged to adopt similar VOC limitations applicable to existing sources of benzene emissions. Because VOC emissions contribute to the formation of photochemical oxidants—a major component of smog—many states have begun to limit VOC emissions as required by Section 110 of the Clean Air Act. To control benzene, the states would be encouraged to single out and adopt VOC regulations for sources of benzene.

Sectors Affected

The following sectors would be affected: gasoline refining, storage, handling, distribution and transfer facilities and operations; benzene storage, handling and transfer operations; industries which produce the organic compounds maleic anhydride, ethyl benzene/styrene, nitrobenzene, chlorobenzene, and ethylene; and possibly motor vehicles.

Estimate and Summary of Economic Effects

The cost of controls and economic impacts will depend on the scope and stringency of the regulation. Preliminary estimates indicate that the regulation could have an overall annual cost in excess of $100 million. Existing and anticipated state VOC regulations adopted to control oxidants will reduce the impact of Federal benzene controls. The initial regulation to be proposed is anticipated to apply only to emissions from maleic anhydride plants. The cost impact of this regulation is estimated to be $5 million on an annualized basis.

Related Regulations or Actions

Internal: EPA airborne carcinogen interpretive ruling is currently under development.

External: OSHA workplace standards.

Active Federal Collaboration

Occupational Safety and Health Administration.

Available Documents

Interagency Regulatory Liaison Group Development Plan—November 1978.

Timetable

NPRM (for Maleic Anhydride)—May 1979.
Public Hearing—June 1979.
Final Rule—March 1980.

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EPA-OANR

Title

Listing of coke oven emissions as a hazardous air pollutant and reducing emissions

Objectives and Benefits

The objective of this action is to reduce the risk of excess lung cancer to people living near coke ovens. Epidemiological studies (i.e., studies of health effects and their causes) of occupationally exposed workers have implicated coke oven emissions as a cause of lung cancer. Air monitoring studies have found that significant levels of the same pollutants emitted from coke ovens exist in the ambient air in the vicinity of coke ovens. The regulations being considered would limit pollutant emissions to the atmosphere from coke ovens.

Legal Authority

The Clean Air Act Amendments of 1977, § 112, 42 U.S.C. § 7412 or § 111, 42 U.S.C. § 7411.

Major Alternatives Under Study

The principal alternative being considered is the listing of coke oven emissions as a hazardous pollutant under the authority of Section 112 of the Clean Air Act. Regulations would then be adopted limiting coke oven emissions from both new and existing coke ovens. These regulations would limit emissions to levels which can be attained by applying reasonably available systems of emission control. The types of controls required will vary among the sources within a coke plant, but they may include revised operating and maintenance techniques, modifications to equipment used in producing coke, and application of air pollution control devices.

As an alternative to control under Section 112, regulations limiting coke oven emissions could be adopted under Section 111 of the Clean Air Act. These regulations would apply only to new coke ovens. However, Section 111(d) of the Act requires that when such a Federal standard for new sources is established, states must then adopt regulations controlling emissions from existing sources, i.e., coke ovens. Control of existing plants by states under Section 111(d) would allow compliance schedules to extend over a longer time than the 2 years maximum required in Section 112.

A third option which is being actively pursued pertains to those facilities within a coke plant where OSHA regulations are now in effect. These regulations in some cases appear to require the same control measures as would be required by EPA. Therefore, although additional data are needed, it is likely that EPA regulations will not be required for coal charging, door leaks, or leaks from oven topsides.

Sectors Affected

Coke plants used to produce metallurgical coke would be affected. Facilities, operations, and emission points within a coke plant which would be specifically controlled would include coal charging and coke pushing, oven leaks, quenching of hot coke, and coke byproduct facilities.

Estimate and Summary of Economic Effects

The cost of controls is not currently well-defined, but it is likely to exceed $100 million if all coke oven facilities are controlled. Preliminary cost estimates for various facilities are listed below in terms of incremental annualized cost beyond current state regulations.

Charging	$9,000,000-$33,000,000
Pushing	$2,000,000
Quenching	$60,000,000
Doors	$52,000,000
Topside leaks	$10,000,000
Stacks	$3,000,000

The respective cost will occur for each facility within the first two years after adoption of a standard. The overall cost of compliance will depend on the specific facilities to be controlled and will be related to the stringency of the standard. Capital investment costs are probably the major expenditure, but increased operation and maintenance costs are also expected. Older steel plants may have difficulty in applying some of the technology because of physical limitations. This may necessitate investigation of alternatives to emission standards as a means of control.

Related Regulations or Actions

Internal: Ambient Air Quality Standards and water effluent guidelines are in effect. An EPA airborne carcinogen interpretive ruling and further water effluent guidelines (Best Available Technology) are being developed.

External: OSHA workplace standards are in effect.

Active Federal Collaboration

OSHA regulations are now in effect which limit worker exposure to coke oven emissions. As indicated above, these regulations in some cases require the same control measures which would be required by EPA. Therefore EPA and OSHA are working closely to assure that duplication is avoided.

Available Documents

Interagency Regulatory Liaison Group Development Plan—November 1978.

Timetable

Decision to List Under § 112—June 1979.
NPRM—April 1980.
Public Hearing—May 1980.
Final Rule—February 1981.

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EPA-OANR

Title

Gaseous emission regulations for 1983 and later model year heavy-duty engines

Objectives and Benefits

These regulations will significantly reduce hydrocarbon (HC) and carbon monoxide (CO) emissions from heavy-duty vehicles (those vehicles having gross vehicle weight ratings greater than 8500 pounds). EPA estimates that this regulatory action will reduce oxidants (a smog producing agent) and carbon monoxide levels in the urban air by 2 percent and 6 percent, respectively. These pollutant reductions will aid many major urban areas in achieving health-related air quality standards.

The objectives will be achieved by: (1) implementing more stringent hydrocarbon and carbon monoxide emission standards; (2) adopting an assembly-line testing program; and (3) modi-

fying several aspects of the test procedure to insure that heavy-duty vehicles continue to meet emission standards throughout their useful life.

Legal Authority

The Clean Air Act Amendments of 1977, §§ 202, 206, 207, and 301, 42 U.S.C. §§ 7521, 7525, 7541, and 7601.

Major Alternatives Under Study

The major alternative that EPA did consider in developing these regulations is the implementation of emission standards more stringent than those proposed. Although additional benefits could be gained by this approach, costs of compliance with the regulations could increase substantially. EPA will continue looking into the feasibility of promulgating more stringent standards.

Sectors Affected

This regulation would affect heavy-duty engine and vehicle manufacturers and users of heavy-duty vehicles.

Estimate and Summary of Economic Effects

The aggregate five-year cost of these regulations (1983-1988) is estimated to be $2.5 billion (present value at start of 1983 assuming a 10 percent discount rate).

EPA anticipates that gasoline-fueled engines will require oxidation catalyst systems and engine calibration changes, in addition to exhaust gas recirculation (EGR) and air injection already in use, to comply with the 1983 standards. The added emission control system costs are estimated at $171 per engine. Adding certification testing costs, assembly-line testing costs and testing facility costs, the first-cost increase per engine attributable to this proposed action will be $204. This cost is equivalent to 1 to 2.5 percent of the price of a new gasoline-fueled heavy-duty (HD) vehicle. The increased cost of unleaded fuel, catalyst replacement (it is assumed that 60% of in-use catalysts will require replacement), and inspection and maintenance (I/M) fees are estimated to total an additional $1016 (present worth as of January 1, 1983, assuming 10% discount rate) over the useful life of a gasoline-powered heavy-duty vehicle. The increase in cost attributable to the use of unleaded fuel (required because of expected catalyst usage on gasoline-fueled engines) is the major cost resulting from these proposed regulations. More than 80% of the total cost per gasoline-fueled vehicle is chargeable to unleaded fuel.

At present, we anticipate that diesel engines can meet the proposed 1983 standards with minor changes to injectors and calibration. These changes are estimated to cost an average of $25 per engine. The total first-cost increase resulting from these proposed regulations is estimated at $185 per engine. (This figure includes amortized facility costs, certification costs, and testing costs.) This cost is equivalent to 0.2 to 1 percent of the price of a new diesel-fueled HD vehicle

Related Regulations or Actions

Internal: The regulations that are in effect now and which are to be modified in this action are entitled "Certification and Test Procedure for Heavy-Duty Engines for 1979 and Later Model Years" (40 CFR Part 86).

EPA is also developing:

(1) Proposed emission regulations for 1983 and later model year light-duty trucks;

(2) Evaporative emission (those emissions emitted into the atmosphere from the vehicle's fuel system) regulations for heavy-duty gasoline vehicles;

(3) More stringent oxides of nitrogen standards for 1985 and later model year heavy-duty engines; and

(4) Particulate emission measurement procedures and standards for heavy-duty engines.

External: None.

Active Federal Collaboration

None.

Available Documents

None.

Timetable

NPRM—February 1979.
Public Hearing—April 1979.
Final Rule—Prior to December 31, 1979.

Agency Contact

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EPA-OANR

Title

Gaseous emission regulations for 1985 and later model year heavy-duty engines

Objectives and Benefits

The objective of these regulations is to significantly reduce oxides of nitrogen (NO_x) emissions from heavy-duty vehicles (those vehicles having gross vehicle weight ratings greater than 8500 pounds). This objective will be accomplished by adopting an oxides of nitrogen emission standard that reflects a 75 percent reduction from 1973 model year levels. The primary benefit derived from these regulations is an improvement in urban air quality (34 percent improvement) with respect to oxides of nitrogen emissions.

Legal Authority

The Clean Air Act Amendments of 1977, § 202(a), 42 U.S.C. § 7521(a).

Major Alternatives Under Study

Two major alternatives are being evaluated at this time. They are:

(1) Implementing a heavy-duty oxides of nitrogen standard that reflects Clean Air Act mandated 75 percent reduction; and

(2) Revising NO_x standards (either less stringent or more stringent), as provided under Section 202(a) of the Clean Air Act.

The Clean Air Act (as amended August 1977) directs EPA to set oxides of nitrogen standards that reflect a 75 percent reduction (from 1973 levels) applicable for the 1985 model year. However, provisions are incorporated in the Act allowing EPA to set either more stringent standards or less stringent standards. Such revisions to the standards can be made if EPA finds that the emission standards can or cannot be achieved by available technology at reasonable cost. EPA is currently evaluating both of these alternatives in formulating this regulation.

Sectors Affected

This regulation would affect heavy-duty engine and vehicle manufacturers, and users of heavy-duty vehicles.

Estimate and Summary of Economic Effects

The cost effects associated with this regulation are still under study. No accurate estimates can be made at this time. Preliminary estimates indicate the costs will exceed $100 million per year, making this a "major" regulation under Executive Order 12044.

Related Regulations or Actions

Internal: "Certification and Test Procedures for Heavy-Duty Engines for 1979 and Later Model Years," 40 CFR Part 86.

EPA is also developing:

(1) Proposed emission regulations for 1983 and later model year light-duty trucks;

(2) Proposed gaseous emission regulations for 1983 and later model year heavy-duty engines (hydrocarbon and carbon monoxide emissions only);

(3) Evaporative emission (those emissions emitted into the atmosphere from the vehicle's fuel system) regulations for heavy-duty gasoline vehicles; and

(4) Particulate emission measurement procedures and standards for heavy-duty engines.

External: None

Active Federal Collaboration

None.

Available Documents

None

Timetable

NPRM—May 1980.
Public Hearing—July 1980
Final Rule—December 1980.

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EPA-OANR

Title

Particulate regulation for light-duty diesel vehicles

Objectives and Benefits

The objective is to reduce the amount of particulate emissions from light-duty diesel-powered vehicles and trucks. These emissions contribute to particulate air pollution problems in our nation's cities. These standards will reduce diesel particulate emissions from light-duty diesels by 77% in 1990. Because of this reduction, a much lower number of Air Quality Control Regions will exceed air quality standards. This objective will be accomplished by developing emission standards based upon the lowest emission rates which the Environmental Protection Agency (EPA) finds to be possible through the application of technology (giving due consideration to economics, noise, energy, and safety).

Legal Authority

The Clean Air Act Amendments of 1977, §§ 202, 206, 207, and 301, 42 U.S.C. §§ 7521, 7525, 7541, and 7601.

Major Alternatives Under Study

EPA will consider alternatives to the proposed regulations based upon comments submitted in response to the NPRM.

Sectors Affected

Passenger car and light-duty truck manufacturers, both domestic and foreign, involved in manufacturing diesel-powered vehicles, and the consumers who use these vehicles will be affected.

Estimate and Summary of Economic Effects

The exact cost of compliance will depend upon the number of diesel light-duty vehicles and trucks sold each year and the type of control techniques chosen to comply with the standards. Using a range of light-duty diesel penetration of 10-25 percent of the market by 1983, the cost of control should be between $349 million and $872 million (1978 dollars) for the five-year period from 1981-1985. Expressed as an increased sticker price to the consumer, for 1983 and beyond, EPA estimates a price increase of $285 per vehicle.

Related Regulations or Actions

Internal: Current EPA regulations cover emissions of hydrocarbons, carbon monoxide, and nitrogen oxides from light-duty vehicles and trucks. Other EPA regulations implement the Department of Transportation fuel economy standards for light-duty vehicles and trucks. In addition, EPA is developing new gaseous emission standards for light-duty trucks titled "Proposed Emission Regulations for 1983 and Later Model Year Light-Duty Trucks."

External: Light-duty vehicle and truck fuel economy standards are found in the Department of Transportation's "Passenger Automobile Average Fuel Economy Standards," 41 CFR Part 531.

Active Federal Collaboration

None.

Available Documents

Regulatory Analysis;
Other supporting references in rulemaking docket;
NPRM—44 FR 6650-6671 (February 1, 1979).

Timetable

Public Hearing—March 1979.
Final Rule—August 1979.

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EPA-OANR

Title

Proposed emission regulations for 1983 and later model year light-duty trucks

Objectives and Benefits

The objective of these regulations is to reduce the emissions of hydrocarbons, carbon monoxide and oxides of nitrogen from light-duty truck exhaust by 90 percent, 90 percent, and 75 percent, respectively. These amounts are the reductions relative to uncontrolled vehicles (1969 model year). Although some control of light-duty truck emissions is already required by present regulations, light-duty trucks are projected to contribute more than 20 percent of the hydrocarbon emissions, 29 percent of the carbon monoxide emissions, and 10 percent of the oxides of nitrogen emissions in the urban areas of the United States by 1995 unless new standards are adopted. These emissions contribute significantly to urban air quality violations.

This objective will be met by adopting more stringent emission standards applicable to new light-duty trucks in 1983, coupled with several measures designed to help ensure that light-duty trucks continue to meet the standards throughout their useful life after being sold.

Legal Authority

The Clean Air Act Amendments of 1977, §§ 202, 206, 207, and 301, 42 U.S.C. §§ 7521, 7525, 7541, and 7601.

Major Alternatives Under Study

The alternatives include:

(1) Delaying the implementation of the oxides of nitrogen standard two years, until 1985; and

(2) Separating the light-duty truck class into two subcategories by weight (those under 6,000 pounds and those over 6,000 pounds gross vehicle weight) and setting separate standards for each subcategory.

Sectors Affected

Light-duty truck manufacturers and consumers will be affected.

Estimate and Summary of Economic Effects

Buyers of light-duty trucks would pay approximately $169 more for 1983 models than for comparable 1982 models (in 1978 dollars). Operating costs will increase about $120 over the life of the vehicle. The aggregate cost of compliance for the first five years will be roughly $3.8 billion.

Related Regulations or Actions

Internal: Current emission standards for light-duty trucks are found in "Emissions Standards for 1979 and Later Model Year Light-Duty Trucks," 40 CFR Part 86. EPA regulations implementing the Department of Transportation light-duty truck fuel economy standards are found in "Fuel Economy of Motor Vehicles," 40 CFR Part 600. In addition to these existing regulations, EPA is also developing:

(1) Proposed particulate regulations for diesel light-duty vehicles and light-duty trucks;

(2) Proposed gaseous emission regulations for 1983 and later model year heavy-duty engines; and

(3) Proposed emission standards for light-duty motor vehicles sold in high-altitude areas.

External: Light-duty vehicle and light-duty truck fuel economy standards are found in The Department of Transportation's "Passenger Automobile Average Fuel Economy Standards," 41 CFR Part 531.

Active Federal Collaboration

None.

Available Documents

None.

Timetable

NPRM—March 1979.
Public Hearing—June 1979.
Final Rule—December 1979.

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EPA-ORD

Title

Fuels and fuel additives testing regulation

Objectives and Benefits

The intent of this regulation is to minimize the impact of emissions from fuels and fuel additives on public health and the environment. Additives can adversely affect the performance of the emission control system of the internal combustion engine or motor vehicles by degrading the performance of the catalyst and thereby increasing the emission rate of gaseous pollutants. Additionally, when additives containing certain chemical elements, notably metals, are burned, they release pollutants into the atmosphere which may adversely affect public health.

The proposed action would amend the present registration regulation of fuels and fuel additives (40 CFR Part 79) by requiring environmental and health effects testing for certain fuels and fuel additives. The present registration regulation requires that manufacturers submit certain information on the chemical composition and the toxicity of fuels and fuel additives "to the extent said information is known to the manufacturer as the result of testing conducted for reasons other than fuel registration" (40 CFR 79.3 (c)).

This action would require chemical, physical and biological testing. These tests will be required on a tier basis in that the chemical and physical tests will precede the biological and environmental tests. In many cases the chemical or physical tests will be adequate to indicate the acceptability of a fuel or fuel additive.

This action would prohibit the introduction into the market place of those fuels or fuel additives which, on the basis of health or environmental testing, are determined to be unacceptable. It may discourage the production or eliminate from the market certain fuels and fuel additives. It will encourage development of fuels and additives which are more compatible with the environment and the public health. This action will also have a beneficial effect on the reduction of respiratory and cardiovascular diseases in the urban environment, where automobile emissions constitute a major source of air pollution.

Legal Authority

Clean Air Act Amendments of 1977, § 211(e) in support of § 211(b) (A and B), 42 U.S.C. §§ 7545, 7601 (a).

Major Alternatives Under Study

The most promising alternative is registration and tesing on a tier basis. This approach requires that all fuels and fuel additives be evaluated according to their composition. Depending on their expected environmental and public health impact, they might be partially or completely exempted from testing.

The second alternative is registration and testing with no exemptions. Approximately 2000 fuels and fuel additives would require full health and environmental testing.

The third alternative would be registration with performance testing but no health or environmental testing. This option is the present system as required by 40 CFR Part 79.

Sectors Affected

This proposed regulation would affect the petroleum industry, the automobile industry, and the driving public, to the extent that the petroleum industry would pass along increased testing costs to the petroleum user.

Estimate and Summary of Economic Effects

There are over 2,000 fuels and fuel additives presently registered as required by section 211 of the Clean Air Act. We estimate that approixmately 200 of these will require some level of testing. The cost to the petroleum industry for implementing these tests will be between $90 million and $120 million, distributed over the next 3 years, as all fuels and fuel additives must meet the requirements of this proposed regulation 3 years after promulgation.

Related Regulations or Actions

Internal:

Fuels and Fuel Additives Registration (40 CFR Part 79).

Proposed guidelines for Registration of Pesticides (40 CFR Parts 162, 163, 181).

Toxic Substances Control Act, Section 4, carcinogen protocols and chronic toxicity protocols (40 CFR Part 772).

Ambient Air Lead Standard (40 CFR Part 50).

External: None.

Active Federal Collaboration

Health testing protocols will be submitted to the Interagency Regulatory Liaison Group for screening prior to promulgation.

Available Documents

Testing for Health Effects of Fuels and Fuel Additives by Gause, et al., Environmental Monitoring and Support Laboratory, Research Triangle Park, N.C. 27711.

Test Plan to study the effect of Methylcyclopentadienyl Manganese Tricarbonyl (MMT) on Emission Control Performance (Draft).

Protocol to Characterize Gaseous Emissions as a Function of Fuel and Additive Composition EPA-600/2-75-048 September 1975.

Timetable

NPRM—March 1979.
Final Rule—June 1979.

Agency Contact

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EPA-OTS

Title

Pesticide registration guidelines

Objectives and Benefits

These Guidelines will specify the data on characteristics and potential adverse effects of pesticides that must be submitted to the Environmental Protection Agency (EPA) in support of pesticide producers' and formulators' applications for registration and reregistration. With certain limited exceptions, pesticides must be registered by EPA before they can legally be distributed and sold in the United States. In addition, the law requires reregistration of currently registered pesticides; in many cases, the registrants will have to submit data meeting Guidelines requirements (because data pre-

viously had not been submitted or are inadequate).

EPA's Guidelines specify the data to be submitted and testing methods to be used in developing such data. Prospective registrants are responsible for performing the testing and submitting results to the Agency. EPA uses the data in determining whether a pesticide will perform its intended function without causing unreasonable adverse effects on health and the environment.

Publication of these Guidelines will mark the first time (in three decades of Federal activity in this area) that registration data requirements have been formally established and set forth in one place. Thus, the Guidelines will give prospective registrants the benefit of knowing precisely what kinds of data the Agency requires (though there are provisions for waiving some requirements under some circumstances); registrants therefore will be able to plan their research and development programs with greater certainty. A reduction in the time required to obtain registration is another potential benefit. The Guidelines can also be expected to result in improvement in the quality of data available for decisionmaking on pesticide registrations.

Legal Authority

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. §§ 136(a)(c)(2)(A), 136f, 136w (1978).

Major Alternatives Under Study

Several key portions of the Guidelines already have been proposed. (See "Available Documents.") EPA is analyzing the public comments on the proposed portions and considering alternative ways of modifying the data/testing requirements.

Sectors Affected

The Guidelines will affect the manufacturing sector, principally chemical manufacturing, and the food and agriculture sector (which is the major user of pesticides).

Estimate and Summary of Economic Effects

The estimated incremental cost over the next ten years is $500-600 million. This estimate reflects the extent to which data requirements set forth in the Guidelines exceed current requirements. Ten years is the period during which the pesticide industry will have to meet data requirements for reregistration of the major pesticides registered for agricultural uses. The total also includes an estimate of costs associated with registration of new pesticides during the 10-year period. The estimate applies only to those portions of the Guidelines already published as proposed rules. (See "Available Documents".)

The projected costs represent expenditures for conducting laboratory testing and are expected to contribute to the growth of the toxicological testing industry. While registrants will initially bear the costs, it is expected that the costs will be passed through to pesticide users, resulting in relatively small price increases. No significant employment, output, or other macroeconomic impacts are expected.

Related Regulations or Actions

Internal: EPA is developing testing standards for chemical substances and mixtures under the Toxic Substances Control Act (TSCA); insofar as possible, the testing methods prescribed by the Pesticide Registration Guidelines will be harmonized with the TSCA standards. Insofar as possible, the Good Laboratory Practice standards being developed under TSCA will be applied to pesticide testing, to avoid inconsistencies.

External: Under the aegis of the Interagency Regulatory Liaison Group (IRLG), EPA, the Food and Drug Administration, the Occupational Safety and Health Administration, and the Consumer Product Safety Commission are jointly developing guidelines describing test methods that will meet all four agencies' needs.

Active Federal Collaboration

Agencies that have been consulted include the members of the Interagency Regulatory Liaison Group (IRLG), the National Cancer Institute, and the Department of Agriculture.

Available Documents

The following portions of the Guidelines have been published as NPRM:

Introduction, 43 FR 29696 (July 10, 1978).

Chemistry Requirements, 43 FR 29696 (July 10, 1978).

Hazard Evaluation: Humans and Domestic Animals, 43 FR 37336 (August 22, 1978).

Also available is: "Economic Impact Analysis of Guidelines for Registering Pesticides in the U.S.," 43 FR 39644 (September 6, 1978).

Timetable

Those portions of the Guidelines already published as NPRM are scheduled to be issued as final rules between May and August 1979. Additional portions dealing with pesticide product performance data requirements, label development, and data requirements for issuance of experimental use permits are scheduled to be published as NPRM in the Spring 1979.

Agency Contact

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EPA-OANR

Title

Noise emission standard for newly manufactured motorcycles

Objectives and Benefits

The intent of this regulation is to reduce the noise level of motorcycles manufactured after January 1, 1980, by establishing noise emission standards for newly-manufactured motorcycles and newly-manufactured motorcycle replacement exhaust systems. Under the Noise Control Act, it would also become illegal to make these regulated motorcycles noisier by tampering with the exhaust and other key noise control components.

The Environmental Protection Agency (EPA) estimates that the regulation in its proposed form would achieve at least a 54% reduction in current motorcycle noise impact when fully implemented.

Legal Authority

Noise Control Act of 1972, § 6, 42 U.S.C. § 4901.

Major Alternatives Under Study

(1) The major alternative to the proposed regulations under consideration is the setting of less stringent standards and/or extending the time schedule for compliance. The proposed standards amd implementation schedules are considered to be achievable by all current motorcycle manufacturers. However, there is reason to believe that smaller manufacturers, including AMF/Harley-Davidson, the sole U.S. manufacturer (6% of the market), and several European firms, may be adversely affected by the proposed standards and the schedule of effective dates. A less restrictive standard of 80 dB(A)—the A weighting designated by dB(A) is a weighting of sound, measured in decibels, which represents the way in which the human ear responds to sound—could achieve up to 90% of the benefits of the 78 dB(A) standard at half the cost to the industry, and it would have less impact on some manufacturers. It would, however, result in motorcycles standing out as the loudest surface transportation noise source within the urban residential/suburban environment as other sources are quieted in the coming years. Extending the time schedule for compliance with the 78 dB(A) standard would also lessen the impact of the regulation upon smaller manufacturers.

(2) Since a major cause of the current motorcycle noise problem arises from owner exhaust system modifications (either by tampering or by replacement of stock mufflers with less effective ones), one option is that of reserving Federal authority and supporting state and local noise enforcement programs exclusively. The Agency's studies have shown, however, that reductions in the noise emissions of new motorcycles, when combined with exhaust system standards and in-use enforcement programs, are by far the most effective means of achieving the desired reductions in noise impact from motorcycles over the next several decades. In addition, state and local governments have called for Federal regulations requiring reduced noise emissions from new motorcycles.

(3) An alternative to setting Federal emission standards would be to require that newly-manufacturered motorcycles be labeled with their noise emission levels. This would facilitate the setting of both new product and in-use emission standards for motorcycles by concerned states and localities as opposed to the Federal government. However, this would also be likely to bring about a proliferation of motorcycle emission standards at different levels of stringency, with different compliance schemes, and possibly even different test procedures; thus, each motorcycle and replacement exhaust system manufacturer would have to comply with all of them in order to sell his products in all states and localities.

Sectors Affected

This regulation would affect manufacturers and distributors of motorcycles and motorcycle parts and consumers.

Estimate and Summary of Economic Effects

The estimated purchase price increase for street motorcycles is 10% ($140), with a total annualized cost of $190 million. The estimated purchase price increase for off-road motorcycles is 7% ($75), with a total annualized cost of $12 million. The estimated purchase price increase for replacement exhaust systems is 50% ($50) over current stock replacement prices, with a total annualized cost of $22 million. Thus, the total annualized cost of this regulation is estimated to be $224 million.

Related Regulations or Actions

Internal: Noise emission standards for newly-manufactured medium and heavy trucks, as well as interstate motor carriers, are in effect. Proposed standards for buses over 10,000 pounds Gross Vehicle Weight Rating (GVWR) have been published and are expected to become final this year. EPA is also investigating noise emission standards for newly-manufactured tires, and light vehicles. In addition, more stringent regulation revisions are being investigated for medium and heavy trucks and interstate motor carriers.

External: None.

Active Federal Collaboration

National Highway Traffic Safety Administration of the Department of Transportation.

Available Documents

NPRM—43 FR 10822 (March 15, 1978).

"Background Document for Proposed Motorcycle Noise Emission Regulations," U.S. Environmental Protection Agency, Office of Noise Abatement and Control, November 1977.

Timetable

Final Rule—October 1979.

Agency Contact

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EPA-OANR

Title

Noise emission standard for newly manufactured wheel and crawler tractors

Objectives and Benefits

This rule will establish not-to-exceed noise emission levels and effective dates for wheel and crawler tractors (typically referred to as bulldozers and front loaders) used in construction. We estimate this rule will result in an additional 10% reduction in the severity and extensiveness of impact on an estimated 30 million persons presently exposed to noise from construction activities.

Legal Authority

The Noise Control Act of 1972, 42 U.S.C. § 4905.

Major Alternatives Under Study

The major alternatives under study are differing maximum noise levels, phased as to stringency and effective dates, based on machine type and horsepower rating. The differences in noise levels are predicated on the nature of the use of different machines, the levels of noise emitted that affect people, the difficulties of applying necessary control technology, and the attendant costs and economic impact. The public comments received are now under review for this proposed rule.

Sectors Affected

Manufacturers and users of construction equipment and the general public will be affected.

Estimate and Summary of Economic Effects

We estimate that the annualized cost increase of complying with this regulation will be about $223.0 million. This compliance cost includes capital expenditures for changes in the manufacturing process, product testing, record keeping, maintenance, and changes in product productivity. We anticipate 100% of these costs will be passed through to the user and, ultimately, to the consumer in terms of increased charges for construction. These potential cost increases represent less than 0.01% of the total construction receipts for 1976. We do not anticipate significant, if any, unemployment to result from this action.

Related Regulations or Actions

Internal: EPA issued noise emission standards for newly manufactured portable air compressors on January 14, 1976, with effective dates of January 1, and July 1, 1978. The Agency also issued noise emission standards for medium and heavy trucks on April 13, 1976, with effective dates of January 1, 1978, 1982 and 1985. EPA is currently developing noise emission standards for pavement breakers and rock drills, identified by the Administrator as a major source of noise on February 3, 1977.

External: None.

Active Federal Collaboration

National Bureau of Standards; U.S. Army; Federal Highway Administration; and Bureau of Mines, Department of Interior.

Available Documents

NPRM—42 FR 35804 (July 11, 1977).
Draft Environmental Impact Statement.
Economic Impact Statement.
Background Document—EPA 550/9-77-250, dated June 1977.

Timetable

NPRM—April 4, 1979.

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EPA-OWWM

Title

Hazardous waste regulations: core regulations to control hazardous solid waste from generation to final disposal

Objectives and Benefits

These regulations include criteria for determining whether a solid waste is hazardous, standards for those who produce hazardous waste, and performance standards applicable to owners and operators of facilities which treat, store and/or dispose of hazardous waste. The regulations will control, from generation to disposal, hazardous wastes (other than nuclear or radioactive wastes) which may contaminate surface water, groundwater or land, poison humans and animals, cause air pollution, or cause fires and explosions. These regulations are key provisions of a comprehensive system designed to ensure protection of human health and the environment from the impacts of improperly managed hazardous wastes.

Legal Authority

Resource Conservation and Recovery Act of 1976, Subtitle C, §§ 3001, 3002 and 3004, 42 U.S.C. §§ 6921, 6922 and 6924.

Major Alternatives Under Study

The major alternatives studied prior to proposed rulemaking were: the development of standards covering the various methods of disposal, treatment and storage of hazardous waste versus waste-specific or industry-specific standards; phasing in the introduction of the regulatory program; defining more or less waste as hazardous waste, thereby varying the scope of regulation; and exclusion of certain hazardous wastes from regulation.

The proposed regulations reflect the similar management needs of most hazardous wastes. They establish standards for each of the several methods of disposing, treating and storing of hazardous wastes (landfilling, application to the land, treatment in surface impoundments, such as holding ponds or aeration ponds, and incineration) that do not vary according to the source. Except for very high volume hazardous wastes, such as utility, mining, oil and gas drilling and cement kiln operations produce, waste-specific or industry-specific standards have not been proposed because for any given disposal, treatment or storage method they would be very similar to and repetitious of each other.

The proposed regulations do not provide for time-phasing the regulation of different classes of hazardous waste because it was not possible to adequately distinguish various degrees of hazardousness or justify priorities for regulating different classes of hazardous wastes. However, implementation of the regulations will necessarily involve time-phasing, as determined at the state or regional level, because of insufficient state and Federal resources to immediately and fully apply the regulations to all parties.

The proposed regulations provide two mechanisms for determining if a waste is hazardous: a set of characteristics of hazardous waste and a list of particular hazardous wastes. These proposed regulations include only four (ignitable, corrosive, reactive and toxic) of the eight characteristics considered because test methods for the excluded four characteristics (radioactive, infectious, phytotoxic [toxic to plants] and teratogenic and mutagenic [ability to cause malformed fetuses and mutations]) were not fully developed or validated. (Eventual proposal of these excluded characteristics is anticipated and, toward that end, an ANPRM (43 FR 59022-59028 (December 18, 1978) has been published.) As a result, the present coverage of the regulations is less than it eventually will be.)

The proposed regulations exclude hazardous wastes generated by households, farmers, retail establishments and persons who generate less than 100 kilograms per month. These exclusions are based on the assumption that these hazardous wastes will be disposed of in adequate land disposal facilities approved under Subtitle D of the Resource Conservation and Recovery Act and therefore will not pose a hazard to human health or the environment. The proposed regulation invites comment on increasing or decreasing the size of the 100 kilogram per month exclusion.

Sectors Affected

The regulations for determining what is a hazardous waste affect most industries in this country. However, only those persons generating and disposing of more than 100 kilograms per month must comply with the generator standards and other provisions of the regulatory control system. Principal industries affected include textile mill products, inorganic chemicals, plastics, pharmaceuticals, paints, organic chemicals, explosives, pesticides, petroleum refining and rerefining, rubber products, leather tanning and finishing, metal smelting and refinishing, electroplating and metal finishing, special machinery manufacturing, electronic components, and batteries. Also, the hazardous waste management industry (both public and private) will be affected.

Estimate and Summary of Economic Effects

The annualized cost of compliance with the proposed regulations is $630 million (in 1977 dollars). This is the cost to go from existing disposal technology to environmentally acceptable technology and to implement control provisions. Of the $630 million, $120 million, is for compliance with post-closure liability requirements, and $260 million is the technical cost of building and operating waste management facilities. The remaining costs are for recordkeeping and reporting, monitoring and testing, administration, training and contingency planning. Industries which presently dispose of hazardous waste at their own facilities may increasingly choose to ship their wastes to off-site facilities rather than to upgrade their disposal facilities.

Alternative cost estimates were developed for regulations that were more strict and regulations that were less strict than proposed (described above). The stricter regulations would more broadly define hazardous waste and require perpetual financial responsibility after closure of the site and have an annual incremental cost of $1.8 billion. The less strict regulations, requiring only generators of 1000 kilograms per month to comply with the regulatory control system, would have an annual incremental cost of $490 million.

Related Regulations or Actions.

Internal: The Safe Drinking Water Act (42 U.S.C. § 300f *et seq.*), Clean Air Act (42 U.S.C. § 1857 *et seq.*) and Clean Water Act (33 U.S.C. § 466 *et seq.*) establish groundwater, ambient air quality, and surface water standards, respectively, which hazardous waste treatment, storage and disposal facilities must comply with.

Disposal by deep well injection must comply with Underground Injection Control regulations to be promulgated under the Safe Drinking Water Act. Best Available Technology (BAT) toxic effluent guidelines and new source and pretreatment standards are being developed for specific industries under the Clean Water Act.

Rules regarding disposal and marking requirements for Polychlorinated Biphenyls have been issued under the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*).

The Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 135 *et seq.*) covers disposal of pesticides and pesticide containers.

The Marine Protection Research and Sanctuaries Act (33 U.S.C. § 1401 *et seq.*) controls the incineration or dumping of hazardous waste at sea.

External: The Department of Transportation Hazardous Materials Trans-

portation Regulations (49 CFR Parts 171-173 and 179) apply to hazardous waste generators who use transporters engaged in interstate or foreign commerce.

Active Federal Collaboration

Department of Defense, Occupational Safety and Health Administration, Department of Energy, Food and Drug Administration, Soil Conservation Service, Water Resources Council, Center for Disease Control, Department of Transportation and Interstate Commerce Commission.

Available Documents

NPRM—43 FR 58946-59028 (December 18, 1978).

Draft Environmental Impact Statement—44 FR 3089 (January 15, 1979).

Regulatory Analysis.

Background Documents.

Resource Requirement Summary.

Timetable

Public Hearings—1979.

February 7, 8, 9, New York, New York.

February 14, 15, 16, St. Louis, Missouri.

February 20, 21, 22, Washington, D.C.

March 7, 8, 9, Denver, Colorado.

March 12, 13, 14, San Francisco, California.

Final Rule—December 1979.

Agency Contacts

Hazardous Waste Management Division
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(1) Criteria for Identifying and Listing Hazardous Wastes (Section 3001)—Mr. Alan Corson, 202/755-9187.

(2) Standards Applicable to Generators of Hazardous Waste (Section 3002)—Mr. Harry Trask, 202/755-9187.

(3) Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities (Section 3004)—Mr. Timothy Fields, 202/755-9206.

EPA-OWWM

Title

Control of organic chemicals in drinking water

Objectives and Benefits

These are amendments to the National Interim Primary Drinking Water Regulations which add a Maximum Contaminant Level (MCL) for chloroform and other trihalomethanes (THMs), and add a treatment requirement for pollution-related synthetic organic chemicals. Trihalomethanes are organic chemicals which are formed by the reaction of natural organic matter with the chlorine used for disinfection of drinking water. The pollution-related synthetic organic chemicals are those industrially-derived chemicals which enter drinking water sources as the result of industrial discharges, spills, and urban and rural run-off. Many of these organic chemicals are either known or suspected carcinogens. The intent of these amendments is to improve the quality of drinking water at the tap and reduce the health risk to the public from long term exposures to organic chemicals in drinking water. The National Interim Primary Drinking Water Regulations, or equivalent regulations adopted by the states, apply to all public water systems in the United States.

Legal Authority

The Safe Drinking Water Act, as amended, §1412, 42 U.S.C. §300f *et seq.*

Major Alternatives Under Study

For the THM regulations, the alternatives include consideration of other limits besides the 0.10 milligrams per liter that was proposed. Another alternative is to extend coverage of the proposed regulations to communities smaller than those proposed for coverage. In the current proposal (February 1978), communities with populations of 75,000 and larger would be required to meet the THM standard as set forth by EPA. Communities with populations between 10,000 and 75,000 would only be required to monitor for THMs. These communities, and their water systems, in the initial proposal, include 65% of the U.S. populations but only 2,500 out of the 50,000 public water systems.

For the regulation of synthetic organic chemicals, the proposed regulations specify that granular activated carbon (GAC) filters or equivalent technology be used to adsorb a wide variety of chemicals from source waters. One alternative, provided for by the Safe Drinking Water Act, is to specify MCLs for individual chemicals, and to allow the water systems to achieve those MCLs by treatment techniques of their own choice. Other alternatives under review include the specification of treatment techniques other than GAC, and extension of coverage to smaller commmunities. The coverage of the presently proposed regulations is limited to communities of 75,000 or more persons. Economic impact of these alternatives is the critical consideration. For technological considerations, delay of the proposed regulations pending further study and construction of large test systems is also being evaluated.

Sectors Affected

Local and state governments, and public water systems, including both municipal and privately-owned systems, are affected. In addition, manufacturers of granular activated carbon, manufacturers of the furnaces used to reactivate spent carbon, analytical laboratories and laboratory equipment manufacturers are affected.

Estimate and Summary of Economic Effects

We estimate that total national capital costs (construction) will range from approximately 600 million to 800 million dollars over 5 years. Local water rates are projected to increase in the approximately 60 metropolitan communities that will have to install granular activated carbon filtering facilities by about 10 to 20 dollars per year per family of three. Installing water treatment systems will cause considerable growth in construction, granular activated carbon, analytical services, and consulting engineering industries. The demand for trained water plant operators, analytical chemists and sanitary engineers will increase, in proportion to the number of water systems which install new treatment facilities.

Related Regulations or Actions

Internal: All EPA regulations affecting control of chemical contamination of water would be indirectly related; including: Effluent Criteria, National Pollution Discharge Elimination System, and Water Quality Criteria.

External: State public water system supervision programs would expand to deal with decisions on variances and exemptions from the regulations, and to provide technical assistance to public water systems making changes in their treatment processes.

Active Federal Collaboration

Supporting documentation for the health basis of the proposed regulations requires information-sharing with the National Cancer Institute and the Food and Drug Administration.

Available Documents

ANPRM—41 FR 28991 (July 14, 1976).

"Drinking Water and Health," National Academy of Sciences, 1977.

"National Organics Reconnaissance Survey," EPA, Municipal Environmental Research Laboratory, 1975.

"National Organics Monitoring Survey," EPA, Office of Drinking Water, 1977.

"Interim Treatment Guide for the Control of Chloroform and other Tri-

halomethanes," EPA, Municipal Environmental Research Laboratory, June, 1978.

"Statement of Basis and Purpose for the Regulation of Trihalomethanes," EPA, Office of Drinking Water, 1977.

"Economic Impact of a Trihalomethane Regulation for Drinking Water," EPA, Office of Drinking Water, August, 1977.

"The Analysis of Trihalomethanes in Drinking Water by Liquid/Liquid Extraction," EPA, Environmental Monitoring and Support Laboratory, September 9, 1977.

"The Analysis of Trihalomethanes in Finished Waters by the Purge and Trap Method," EPA, Environmental Monitoring and Support Laboratory, September 9, 1977.

"Statement of Basis and Purpose for an Amendment to the National Interim Primary Drinking Water Regulations on a Treatment Technique for Synthetic Organic Chemicals," EPA, Office of Drinking Water, 1977.

"Economic Analysis of Proposed Regulations on Organic Contaminants in Drinking Water," EPA, Office of Drinking Water, 1977.

"Draft Interim Treatment Guide for the Control of Synthetic Organic Contaminants in Drinking Water Using Granular Activated Carbon," EPA, Municipal Environmental Research Laboratory, 1978.

"Revised Economic Impact Analysis of Proposed Regulations on Organic Contaminants in Drinking Water," EPA, Office of Drinking Water, 1978.

"Operational Aspects of Granular Activated Carbon Absorption Treatment," EPA, Municipal Environmental Research Laboratory, 1978.

NPRM—43 FR 5756 (February 9, 1978).

Timetable

Final Rule—Spring 1979.

Agency Contact

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EPA-OTS

Title

Standards and rules for testing of chemical substances and mixtures

Objectives and Benefits

The Environmental Protection Agency (EPA) will be issuing a series of testing standards and rules over the next several years for the purpose of obtaining scientific data on the potential human health and environmental effects of chemical substances and mixtures. Testing standards (which will include standards to be followed in testing for specific effects and characteristics of chemicals, as well as Good Laboratory Practice standards) will specify how tests are to be performed. Testing rules will identify specific chemicals or categories of chemicals to be tested. Testing rules will apply not only to specified chemicals already in use, but also to new chemicals (if they are in categories covered by testing rules). Chemical manufacturers and processors will be responsible for performing the required testing and reporting the results to EPA. On a case-by-case basis, they will have opportunities to seek EPA's approval of departures from applicable testing standards.

EPA expects that its testing standards and rules will identify the possible human and environmental hazards of many of the chemical substances and mixtures now in use and will increase the number of new chemicals that undergo adequate testing before their introduction. Given adequate knowledge of potential adverse effects, the Agency will be able to make better decisions on needs for control of human and environmental exposure to chemical substances and mixtures. The end result should be greater protection of the public against risks associated with chemicals.

Legal Authority

Toxic Substances Control Act (TSCA), 15 U.S.C. § 2603.

Major Alternatives Under Study

EPA conceivably could rely on testing performed voluntarily by the chemical industry, but there is no assurance that the chemical substances and mixtures that are potentially the most hazardous would be tested or that such testing would be adequate to provide the kinds of information needed for risk assessment; similarly, there is a lack of assurance that testing would be done as expeditiously as possible.

Another alternative is to conduct all testing in governmental facilities or under contract to the government. This approach will be taken where it would be inappropriate or infeasible to require testing by the chemical industry, but exclusive reliance on this approach would be in direct conflict with TSCA, which states that the development of data on health and environmental effects "should be the responsibility of those who manufacture and those who process chemical substances and mixtures."

In developing testing standards, EPA will consider alternative methodologies, taking into account their relative scientific validity and efficacy, as well as relative costs. Where possible, EPA will develop hierarchical testing schemes, in which the results of relatively inexpensive short-term tests, together with other relevant factors, such as potential exposure, will be considered in determining whether long-term testing should be undertaken.

In selecting chemicals to be tested, EPA will consider likelihood of adverse effects, extent of human and/or environmental exposure, economic impacts, and availability of qualified personnel and facilities.

Sectors Affected

Testing standards and rules will affect the manufacturing sector, principally chemical manufacturing. Under TSCA, chemical manufacturing includes importing. Also, the Act distinguishes between chemical manufacturers and processors and specifies that either or both are subject to the requirements for testing; whether manufacturers and/or processors will be required to test a specific chemical will depend on the stage of the "life cycle" of that chemical for which effects testing is needed.

Estimate and Summary of Economic Effects

EPA is still in the initial stages of developing a testing program under TSCA. Thus far, no testing standards or rules have been issued. It, therefore, is too early to make any quantitative estimates of economic effects. EPA recognizes that testing, especially lifetime testing in laboratory animals, can be expensive and time-consuming. Estimates of economic effects, including effects on prices and profitability of chemicals and on innovation in the chemical industry, will be developed and made available as testing rules are proposed.

Related Regulations or Actions

Internal: EPA has proposed Pesticide Registration Guidelines specifying testing requirements for pesticides (see EPA-Pesticide Registration Guidelines). These guidelines and the TSCA testing standards are analogous and will be consistent insofar as possible. EPA is developing testing standards for fuels and fuel additives; insofar as possible, they will be consistent with the TSCA testing standards.

External: The Food and Drug Administration (FDA) is issuing Good Laboratory Practice (GLP) standards for drug toxicity testing. GLP standards to be issued under TSCA will be consistent with FDA's. Under the aegis of the Interagency Regulatory Liaison Group, EPA, FDA, the Occupational Safety and Health Administration, and the Consumer Product Safety Commission are jointly developing guidelines describing test meth-

ods that will meet all four agencies' needs.

Active Federal Collaboration

Other Federal agencies that have been or will be consulted include the Food and Drug Administration, Consumer Product Safety Commission, Occupational Safety and Health Administration, National Cancer Institute, and National Institute of Environmental Health Sciences.

Available Documents

No documents are available at this time. Proposed testing standards and rules, as well as technical support documents, will be available when NPRMs are published. See Timetable below.

The Interagency Testing Committee established under TSCA has issued three reports making recommendations on chemicals to be covered by TSCA testing rules:

Initial Report—42 FR 55026 (October 12, 1977).

Second Report—43 FR 16684 (April 19, 1978).

Third Report—43 FR 50630 (October 30, 1978).

Timetable

An NPRM setting out testing standards for oncogenicity (i.e., potential to cause cancer) and other chronic health effects testing is scheduled for publication in February 1979, together with proposed GLP standards for health effects testing. An NPRM to require testing of selected chemicals for oncogenicity and other chronic health effects is scheduled for publication in July 1979. Chemicals for which testing will be required have not been selected yet. Priority consideration is being given to those recommended by the Interagency Testing Committee established under TSCA. (See "Available Documents.") NPRMs setting out testing standards for other health effects, including acute toxicity, teratogenesis (potential to cause birth defects), and reproductive effects, are scheduled for publication later this year.

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EPA-OTS

Title

Rules and notice forms for premanufacture notification of new chemical substances

Objectives and Benefits

EPA has proposed a set of premanufacture notification rules and forms for public comment. The rules will clarify for manufacturers (including importers) of new chemical substances their statutory obligations to provide information on the substances, which information must be supplied and which is optional, and the Agency's procedures for reviewing the information. The forms will provide a detailed specification of the information to be submitted and the formats in which the information is to be supplied. The manufacturers are responsible for developing the information. EPA must decide, within 90 days of receipt of the information, whether the substance in question presents an unreasonable risk to human health or the environment, and if so, what action to take.

EPA expects that implementation of these rules and of the notice review process will identify the risks presented by new chemical substances and, where possible, forestall the possibility that human beings and the environment will be unnecessarily exposed to new hazardous substances. The result should be a significant lessening of the threat to the public from new chemicals.

Legal Authority

Toxic Substances Control Act (TSCA), § 5, 15 U.S.C. § 2604.

Major Alternatives Under Study

EPA has considered the relative emphasis to place in the rules and forms for detailing information requirements. One option is to detail each specific reporting requirement in the rules, in regulatory language and format. However, to duplicate details of the form in regulatory language would not affect their legal standing or EPA's procedures towards modifying them. Further, to prescribe details in the rules which do not appear in the forms would be to forego the basic advantage of using forms, which is to organize information requirements in a logical and understandable manner that facilitates industry's reporting and EPA's review of new chemicals. Therefore, EPA proposes to specify the exact reporting requirements in the forms and to explain the forms in accompanying instructions. In the rules, the Agency will establish in more general terms the contents of the forms and the legal duty to complete them. EPA will follow general rulemaking procedures to change the rules and forms.

EPA has also considered the level of detail which it should require for the submitted information. For example, it could require only general estimates of human exposure and environmental release, thus minimizing the reporting burden on submitters, but significantly limiting the Agency's ability to assess the health and environmental risks associated with the new substance. Alternatively, it could require detailed estimates of exposure levels at each work station, and descriptions of plant layouts in terms of stack locations, fugitive emissions and so forth. This approach might enable the Agency to perform sophisticated exposure modeling and risk assessment; however, it would impose a significant reporting burden on each manufacturer, and would emphasize initial conditions of manufacture, processing and use to an excessive degree.

EPA proposes to require information at varying levels of detail, to the extent known to or reasonably ascertainable by the manufacturer. For human exposure, for example, the maximum level or best available description would be required; for environmental release, order-of-magnitude ranges would suffice. This approach would recognize the uncertainties inherent in these estimates, and would mitigate the reporting burden while still permitting the Agency both to perform risk assessments commensurate with the level of detail that submitters are able to provide and to identify potential problem areas for further investigation.

Sectors Affected

Premanufacture notification rules and forms will have their primary effects upon the manufacturing sector and principally upon chemical manufacturers and importers. Under TSCA, manufacturers are distinguished from processors; the latter may be requested to provide information to EPA, either directly or through the primary manufacturers, but are under no legal obligation to do so.

Estimate and Summary of Economic Effects

EPA is studying costs to manufacturers of completing the notification form. The costs will vary depending upon the amount and detail of information supplied, which will in turn depend upon the nature of the substance, the size of the manufacturing company, and other factors. In the absence of any experience in reviewing actual notices, estimates are largely speculative. A similar situation exists with regard to economic impacts upon chemical innovation; the projected number of chemicals whose introduction into commerce would be foregone depends upon the cost of completion of the form as well as upon other factors such as elasticity in chemical prices and availability of substitute materials.

Related Regulations or Actions

Internal: EPA is developing guidelines for testing new chemical substances. Insofar as these will indicate to manufacturers the kind of informa-

tion that the Agency needs or provide to manufacturers guidance on whether to conduct tests to develop such information, the guidelines will relate directly to the forms.

External: None.

Active Federal Collaboration

Other Federal agencies that have been or will be involved include the Consumer Products Safety Commission, the Occupational Safety and Health Administration, the Food and Drug Administration, the Department of Transportation, and the Bureau of the Census.

Available Documents

A Notice of Proposed Rulemaking has appeared (44 FR 2242, January 10, 1979); support documents and associated materials are available.

No documents are available on testing guidelines; see "Related Regulations or Actions."

Timetable

Final Rule—August 1979.

Agency Contact

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EPA-OTS

Title

Environmental standard for inactive uranium mill tailings

Objectives and Benefits

The objective of the standard is the protection of public health, safety, and the environment from wastes ("tailings") located at inactive uranium ore processing sites. Congress has identified 20 inactive sites at which these wastes were found to constitute a potential and significant radiation health hazard. The Secretary of the Department of Energy was therefore ordered by Congress to provide remedial action for these tailings which would conform to standards to be determined by the Environmental Protection Agency (EPA). Radiation can cause lung cancer, genetic disorders, and other health effects. If uncorrected, high levels of radiation in radioactive materials will persist for thousands of years, resulting in unacceptable, high individual risk situations.

Legal Authority

Uranium Mill Tailings Radiation Control Act of 1978, P.L. 95-604, § 206(a), 92 Stat. 3021.

Major Alternatives Under Study

Congress recently provided EPA with comprehensive authority and responsibility for development of the standard; the alternative approaches to setting standards have not been developed. Alternatives will involve considerations of allowable emission levels in relation to the costs involved in meeting those levels.

In the process of developing the standard, EPA will consider the range of alternative remedial actions that may reasonably be considered to be available for these 20 specific tailings situations. These actions vary greatly in cost and effect; they range from physical relocation of large masses of material to a variety of treatments of the tailings at their present locations. However, the standard will be generally applicable rather than specific to any particular site. The Department of Energy will select the remedy to be applied at each site, with the concurrence of the Nuclear Regulatory Commission, in order to comply with the standard.

Sectors Affected

The costs of the remedial actions taken to comply with the standard will be borne by the Federal government and the states in which the inactive sites are located. Any property owners may be reimbursed for their remedial costs, and the full costs of compliance for tailing sites located on Indian lands will be borne by the Federal government. As none of the sites are actively producing, there should be no effect on the utility industry.

Estimate and Summary of Economic Effects

Until the standard has been set there can be no accurate prediction of the remedial costs, but an approximate range of 100-200 million (1978) dollars appears possible as the total cost. These costs will be distributed over a period of about 7 years as the remedial actions are carried out at the 20 sites identified in the Act. Additional costs may be required if other sites are identified. The Federal government will pay all costs for remedial action on Indian lands and 90% of the costs at all other sites. States will pay the remaining 10% of the latter costs.

Related Regulations or Actions.

Internal: The standards developed by EPA under the Uranium Mill Tailings Radiation Control Act of 1978 for inactive mill sites will establish a precedent for subsequent standards set under the same act for active mill sites. In addition, the Act provides that both of these standards are to be consistent with requirements of the Solid Waste Disposal Act, as amended, under which the Agency regulates the disposal of broad categories of hazardous wastes.

External: The generally applicable standards set by EPA for inactive sites will be complied with through remedial actions for the 20 sites identified by Congress. Selection and execution of an appropriate form of action for each site is the responsibilty of the Department of Energy, with the concurrence of the Nuclear Regulatory Commission.

Active Federal Collaboration

A working group of representatives of the Environmental Protection Agency, the Department of Energy, and the Nuclear Regulatory Commission will be established in order to promote the effective exchange of information regarding their respective programs and reponsibilities related to the standard.

Available Documents

House of Representatives Report 95-1480, September 30, 1978.

Timetable

NPRM—August 1979.
Final Rule—November 1979.

Agency Contact

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CPSC

Title

Blade contact standard for walk-behind power lawn mowers and proposed certification rule

Objectives and Benefits

The Consumer Product Safety Commission (CPSC) estimates that 77,000 injuries are caused each year from contact with the blade of walk-behind power mowers. Of this total, approximately one-third are foot and toe injuries and two-thirds are hand and finger injuries. The objective of the standard is to reduce these blade contact injuries by requiring shielding of the mower blade and requiring the blade to stop within 3 seconds of the release of a control on the handle of the mower.

The Commission estimates that the blade contact standard will prevent about 59,500 injuries or 77% of the blade contact injuries that occur each year. The staff estimates the economic cost of the 59,500 injuries to be about $211 million; this represents the value of the expected measurable benefits of the standard. Nonquantifiable benefits that may be related to the standard

include a reduction in losses associated with pain and suffering.

Legal Authority

Consumer Product Safety Act, § 7 and § 14, 15 U.S.C. § 2056 and § 2063.

Major Alternatives Under Study

The Commission proposed a mandatory lawn mower standard on May 5, 1977. This standard covered a wide range of hazards and included requirements for blade contact, thrown objects, fuel ignition and, for riding mowers, stability, and braking and steering systems. After studying the comments on the proposed standard, CPSC narrowed the focus of the standard to requirements that address blade contact injuries for walk-behind mowers, which represent 64% of all walk-behind power mower injuries and 50% of all power mower injuries.

On January 25, 1979, the Commission made a decision to issue a final standard. The standard requires sufficient shielding of the mower blade to reduce the likelihood of foot access to the blade at the discharge chute and at the rear of the mower, and, in addition, requires the blade to stop within 3 seconds after the operator releases the mower. (The time of 3 seconds was selected based on Commission research on the time it takes consumers to gain access to the rotary blade.) The standard also requires that a warning label be placed on walk-behind power mowers. The effective date for the standard is December 31, 1981, except for the labeling requirements which are effective on December 31, 1979.

The Commission is proposing for public comment a product certification rule to determine conformance with the standard. The proposed rule would mandate recordkeeping and labeling requirements for industry.

Thus, the Commission strategy has been to proceed with regulation of power mowers by addressing the most serious hazards rather than continuing development of an "all inclusive" standard. Upon completion of work on the blade contact standard and product certification rule for walk-behind power mowers, the staff may begin work on a standard to address the additional hazard of thrown objects from walk-behind power lawn mowers, and may also begin work on hazards associated with riding mowers.

A voluntary industry standard (American National Standards Intitute (ANSI) B.71.1—1972) for power mowers first went into effect in 1960. This standard was last revised in 1972, with supplements in 1974 and 1977. The Commission believes that most mowers comply with the voluntary standard. CPSC has not included several proposed blade contact provisions involving handles, shield attachments, and shut-off controls in the mandatory standard since they are addressed by the voluntary standard.

In addition to promulgating the mandatory standard, CPSC is also continuing consumer education efforts concerning the safe use of power mowers.

Sectors Affected

The standard primarily will affect mower manufacturers. Regulatory action will also affect material suppliers, distributors, wholesalers and retailers.

Estimate and Summary of Economic Effects

The CPSC staff estimates that the standard may increase average retail prices for rotary walk-behind mowers by about $35 per unit. If sales volume remains at current levels when the standard becomes effective, this price increase will result in a maximum total annual impact of about $189 million in retail expenditures. As discussed in the Objectives and Benefits section, the staff estimates the value of the expected benefits of the standard to be $211 million annually.

The CPSC staff believes that recordkeeping and labeling costs generated by a certification rule will be insignificant in relation to the direct retail price impacts of the standard.

The staff estimates that power mowers have an average expected life of about 8 years; therefore, the cost to a consumer of a safer mower will average about $4.40 per year. The probable effect on the various types of walk-behind power mowers will differ, from about a 7% price increase for power restart, self-propelled mowers to about a 30% price increase for manual-start push mowers.

The Commission staff expects that small firms producing relatively inexpensive walk-behind mowers will experience the greatest impact from the standard. These small firms have fewer units over which to spread the costs of complying with the standard. Some may decide to drop power mower production rather than undergo the expenses of complying.

The staff believes that the few firms not complying with an existing voluntary standard (ANSI B.71.1—1972) may be found among these small firms. Such firms would incur expenses for product testing and quality control that they had not incurred previously. From the 1972 *Census of Manufacturers* data, it appears that some small manufacturers have sales of less than $300,000 annually. With such small sales volume, even minimal certification and compliance requirements might have an adverse impact on a firm's profitability.

Although the large firms in the industry will probably adapt more readily to the standard than small firms, firm size is not the only factor relating to ease of compliance with the standard. Small manufacturers with only a few models that are relatively close to compliance may be in a better position than large manufacturers with many models relatively far from compliance.

Related Regulations or Actions

Internal: Upon completion of work on the blade contact standard and the product certification rule for walk-behind power mowers, the staff may begin development of requirements which address the additional hazard of thrown objects from walk-behind mowers, and may also begin work on hazards associated with riding mowers.

External: None.

Active Federal Collaboration

The National Bureau of Standards of the Department of Commerce, performed technical research in support of the standard.

The Commission has deferred the consideration of sound level requirements for power lawn mowers to the Environmental Protection Agency, which has the responsibility for coordinating the programs of all Federal agencies relating to noise control and for establishing related regulations.

Available Documents

Proposed Safety Standard, (42 FR 23052; May 5, 1978) and CPSC Staff Briefing Packages dated April 27, 1978 and January 12, 1979, are available from the Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D.C. 20207.

Timetable

The following dates are applicable to the standard:

Final Standard—February 1979.

Effective Date—December 31, 1981 (except for the labeling requirements which become effective on December 31, 1979).

The following dates are applicable to the certification rule:

Proposed Rule—February 1979.

Final Rule—Fall 1979.

Effective Date—December 31, 1981.

Agency Contact

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CPSC

Title

Proposed amendment to cellulose insulation standard, proposed labeling rule for cellulose insulation, proposed certification rule

Objectives and Benefits

Regulation of cellulose home insulation does not meet the $100 million criterion for a major regulation. The Consumer Product Safety Commission (CPSC) has included this activity in the calendar because of widespread interest in the regulation of this product and because under worst case assumptions, up to 100 small firms may be forced out of the insulation business.

The objective of the program is to promulgate mandatory requirements for cellulose home insulation in order to reduce the incidence of fire and corrosion hazards associated with this product. The program includes safety standards, a related certification and testing regulation, and a product labeling rule. The Emergency Interim Consumer Product Safety Standard Act of 1978, P.L. 95-319, required the Consumer Product Safety Commission to adopt flame resistance and corrosiveness requirements of the then existing General Services Administration (GSA) purchasing specification (HH-1-515C) as a mandatory standard.

At the time the Act was passed, an assumption made by some groups was that the demand for cellulose insulation would continue at the same high level experienced in 1977. This implied a sizeable market for cellulose insulation, and, therefore, a potential for eliminating a substantial number of fires and injuries associated with cellulose insulation. However, the demand for cellulose insulation has declined substantially. Thus the number of fires and potential injury reduction may not be as great as anticipated earlier.

Legal Authority

Emergency Interim Consumer Product Safety Standard Act of 1978, P.L. 95-319. Consumer Product Safety Act, § 14 and § 27(e), 15 U.S.C. § 2063 and § 2076(e).

Major Alternatives Under Study

A CPSC interim cellulose insulation standard is in effect. P.L. 95-319 requires the Commission to propose, as amendments to the interim standard, any revisions to the General Services Administration specification HH-1-515C that supersede the requirements for flame resistance and corrosiveness. The legislation requires the Commission to adopt the amendments unless CPSC determines, after consulation with the Secretary of Energy, either (1) that the amendments are not necessary to protect consumers from the unreasonable risk of injury associated with flammable or corrosive cellulose insulation, or (2) that implementation of the amendment will create an undue burden on persons subject to the interim standard. Thus, the Commission has two alternatives: (1) to retain the interim standard unchanged or (2) to amend the standard in accordance with GSA revisions.

Sectors Affected

The Commission's regulatory actions primarily will affect cellulose insulation manufacturers. Other sectors which will be affected include material suppliers, installers, distributors, and retailers.

Estimate and Summary of Economic Effects

When Congress passed the Emergency Interim Consumer Product Safety Standard Act of 1978, some groups assumed that demand for cellulose insulation would remain high. Current CPSC staff estimates indicate that demand for cellulose insulation has declined substantially. It appears that much of the present decline in cellulose insulation industry sales volume can be attributed to a long-term downward trend in demand related to a declining number of houses which are under-insulated and an increasing production capacity for fiberglass. Demand is dependent, however, on many unpredictable occurrences such as winter weather severity, the Organization of Petroleum Exporting Countries' pricing policies, and citizen support of public energy conservation policies.

The economic impact will depend on which of various assumptions involving technical aspects of the standard prove to be correct. However, it appears that the proposed amended standard and certification rule will have little effect on retail prices. The maximum impact which the CPSC staff expects under worst case assumptions would include: (1) about 100 small companies might be forced to leave the cellulose insulation manufacturing business; (2) approximately 500 cellulose insulation workers might become unemployed; (3) cellulose insulation prices probably would increase by about 1 percent at the retail level, which would result in an annual cost increase to consumers of about $700,000; and (4) a consumer would pay $1 to $2 more to insulate a 1200 square foot attic to a value of R-19.

A Consumer Product Safety Act Section 27(e) labeling rule would require only that a label be placed on the product container. The impact of the labeling rule on the utility, availability, and price of cellulose insulation is expected to be minimal, since manufacturers are not required to alter the product.

Related Regulations or Actions

Internal: CPSC has a compliance and enforcement program currently underway to support the existing interim cellulose insulation standard. In addition, the agency conducts information and education activities for consumers and industry. CPSC is currently developing a compliance program and performing related work for the proposed amendment to the Cellulose Insulation Standard.

External: None.

Active Federal Collaboration

CPSC has coordinated its cellulose insulation standard development activities with the Department of Energy, Federal Trade Commission, Department of Housing and Urban Development, General Services Administration, and Department of Commerce.

Available Documents

The following documents are available from the Office of the Secretary, U.S. Consumer Product Safety Commission, Washington, D.C. 20207:

(1) Emergency Interim Consumer Product Safety Standard Act of 1978, P.L. 95-319; July 11, 1978.

(2) Staff Briefing Packages on Cellulose Insulation Standard, dated June 21, 1978, July 25, 1978 and July 26, 1978.

(3) Cellulose Insulation Standard (43 FR 35240; August 8, 1978).

(4) Staff Briefing Package on Notice of Intent to Propose an Amendment to Cellulose Insulation Standard, dated August 28, 1978.

(5) Notice of Intent to Propose Amendment to Interim Standard and Certification Rule (43 FR 39720; September 6, 1978).

(6) Cellulose Insulation-Proposed Labeling Requirements (43 FR 59390; December 20, 1978).

Timetable

Final rule covering labeling requirements—week of May 29, 1979. Effective date of labeling requirements—Fall 1979.

Proposed amendment to the existing standard and proposed certification rule—on or before March 8, 1979. Final amendment and certification rule—on or before June 29, 1979. Effective date—Fall 1979.

Agency Contact

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CPSC

Title

Upholstered furniture cigarette flammability standard

Objectives and Benefits

The Consumer Product Safety Commission (CPSC) staff estimates that 45,000 residential upholstered furniture fire incidents occur each year in the United States; 33,000 of these fires are associated with cigarettes. Current estimates indicate that 3,200 injuries and 800 deaths occur annually from these fires. At a mimimum, 1,700 of the injuries and 500 of the deaths involve the primary hazard of cigarette ignition of residential upholstered furniture. Among other actions, the Commission is considering a flammability standard for upholstered furniture to reduce the number of injuries and deaths.

The Commission staff preliminarily estimates the economic value of the annual losses due to cigarette ignition of upholstered furniture to be about $541 million. These losses consist of 500 deaths, 1,700 injuries and $25 million in property damage. (The Commission does not endorse any particular estimate for the value of life. However, for the purposes of this calculation, the CPSC staff has assumed a figure of $1 million per life. This figure is in the range of estimates that are associated with studies of the "statistical value of life.") Therefore, the cost for loss of life could be about $500 million. Other estimated costs are $16 million for injuries exclusive of pain and suffering, and $25 million in property damages. Estimates indicate that about 86% of the losses or 430 deaths, 1,462 injuries and $22 million in property damage could be prevented by the standard. Therefore, the Commission staff estimates the expected annual benefits to be about $470 million when all upholstered furniture is in compliance.

Nonquantifiable benefits that may be related to the cigarette ignition standard are a reduction in losses associated with pain and suffering from burn injuries, a possible reduction in losses due to ignition sources other than cigarettes, and a possible increase in the durability of upholstered furniture fabrics as thermoplastics replace cellulosic fibers.

Legal Authority

Flammable Fabrics Act, § 4, 15 U.S.C. § 1193.

Major Alternatives Under Study

Possible alternatives to promulgating a mandatory standard include taking no action, encouraging state and local action to mandate the use of smoke detectors, initiating educational efforts, or pursuing a voluntary approach through the Upholstered Furniture Action Council. A reduction in the scope of the standard by excluding some classes of furniture such as business, institutional, and children's furniture is also under consideration.

The possible mandatory standard that is being considered contains industry testing requirements for upholstery fabrics and upholstered furniture which are significantly less costly than requirements in previous draft proposals. Under the draft proposed standard, firms would test upholstery fabrics and classify them into four classes on the basis of their resistance to ignition from cigarettes burned on the fabric. Fabric manufacturers would label fabrics to show their classification.

Furniture manufacturers would determine furniture constructions suitable for use with the fabric classes by testing mockups of the furniture constructions to demonstrate their resistance to cigarette ignition. Testing would be required annually. The standard would permit manufacturers to use specific classes of fabric only on furniture constructions which did not produce ignition when the appropriate mockup was tested.

The major alternative to the mandatory standard being considered is voluntary action by the industry. The Upholstered Furniture Action Council's (UFAC) recommended voluntary practices program would encourage the classification of fabrics into two categories by their fiber content. For furniture using Class I fabrics, the program would provide for the elimination of ignition-prone welt cord (heavy yarn enclosed by fabric around the edges of furniture cushions) and the elimination of untreated cotton as a substrate in immediate contact with decking fabric (the material on which a loose seat cushion rests) and in immediate contact with the covering fabric of inside vertical walls of pieces of furniture. For furniture using Class II fabrics, construction provisions would be the same as for Class I plus elimination of intimate contact of conventional polyurethane foam cushions with horizontal seating surfaces.

In addition to these provisions, the voluntary approach assumes the use of very specific furniture constructions. No provisions have been made for fabric or mockup testing by upholstered furniture manufacturers. The voluntary program does not provide for certification of conformance by manufacturers, nor does it provide for follow-up to determine conformance.

Sectors Affected

The standard under consideration would affect three primary industry sectors. These three groups are (1) upholstered furniture manufacturers, (2) material suppliers and (3) distributors, wholesalers, and retailers.

Estimate and Summary of Economic Effects

The CPSC staff estimates the annual cost increase to the consuming public as a result of the standard which is being considered would range from $114 million to $174 million. As discussed in the Objectives and Benefits section, the staff believes that the annual benefits would be about $470 million when all upholstered furniture is in compliance. The staff feels that the standard would be an effective means of reducing the annual economic losses resulting from fires due to the cigarette ignition of upholstered furniture.

The staff estimates that the average manufacturing cost increases would range from $1.75 to $2.65 per piece ($3.50 to $5.30 retail price increase) for chairs and from $3.30 to $5.00 per piece ($6.60 to $10.00 retail price increase) for sofas.

The Commission staff expects that the standard would result in relatively greater cost increases for the smaller furniture and fabric producers than for larger firms. Some of the marginally profitable firms in the industry might discontinue their operations. The staff further expects that relatively greater adverse impacts would be felt by small furniture producers, which specialize in filling orders using fabrics supplied by individual customers, and small fabric firms that specialize in cellulosic fabrics produced in relatively small production volumes.

Related Regulations or Actions

Internal: None.

External: California has regulations, parts of which would be preempted by the CPSC standard. Other states may have similar regulations.

Active Federal Collaboration

The National Bureau of Standards of the Department of Commerce developed the technical basis for the standard.

Available Documents

CPSC Staff Briefing Package, Dated November 15, 1978. Available from the Office of the Secretary, U. S. Consumer Product Safety Commission, Washington, D. C. 20207.

Timetable

If the Commission decides to propose a standard and then issue a final standard, the following estimated dates are applicable:

Proposed Standard—Early 1979.
Final Standard—Fall 1979.
Effective Date—Fall 1980.

Note that noncomplying furniture could be produced for two additional years (until the Fall of 1982) provided that the furniture was labeled as noncomplying.

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NRC

Title

Decommissioning of nuclear facilities

Objectives and Benefits

Decommissioning is the removal or isolation of the radioactive contaminants of a nuclear facility so that it can be released for unrestricted use. The purpose of this regulation is to provide clear specification of Nuclear Regulatory Commission (NRC) requirements for planning and conduct of decommissioning. NRC requirements for the method, cleanup criteria, schedule and financial assurance of decommissioning actions will be clearly specified.

At the present time, the benefits of the regulations can be characterized only in a qualitative way. Systematic and encompassing specifications as part of nuclear facility licensing requirements will ensure that decommissioning is accomplished in an efficient, timely and cost effective manner. This results in reducing potential radiation hazards to both the public and occupational workers after the end of useful nuclear facility life. Moreover, it eliminates potential public financial burdens which might otherwise occur at the time of decommissioning. The following are examples of regulatory particulars directed toward providing the desired benefits: (1) Clear specification of decommissioning requirements simplifies planning and conduct of decommissioning activities by nuclear facility licensees. It also reduces or eliminates remedial actions to clean up sites which are found by later evaluation to have been inadequately decommissioned. (2) New facility design requirements directed toward facilitating eventual decommissioning can mitigate occupational radiation exposure hazards associated with decommissioning, as well as reduce radiation exposure hazards associated with required, routine facility clean-up, by providing safer access to critical facility components.

Legal Authority

Atomic Energy Act of 1954, as amended, § 161, 42 U.S.C. § 2201.

Major Alternatives Under Study

The present regulatory approach leaves the choice of decommissioning method, schedule and financial procedures to the licensee within a loose framework of regulatory criteria. Under the proposed regulatory approach, these are carefully specified in the regulation.

There are two major alternatives being considered for the method of decommissioning at the end of useful facility life. One is the removal of the radioactive constituents of a facility allowing unrestricted use of the facility and site. The other is the permanent isolation of the radioactive components on the site, where some small portion of the site will have temporary limited access for public use (dependent on radioactive decay times). For facility components which have long-lived radioactive materials (i.e., significant activity for 100 years or more), the latter method is unacceptable because their isolation cannot be adequately guaranteed and they must be removed from the site.

The regulation may provide for delays of varying lengths before decommissioning to allow for reduction in radiation exposure and decommissioning cost.

The regulation will consider the various methods of paying for decommissioning costs. While it is generally acknowledged that those who benefit (the users of the power) should pay, the manner with which to implement such payment is unclear. Requiring payment from a nuclear facility in advance (or obtaining a surety bond), while in operation, at the end of life, or a combination of these are all viable alternatives.

Sectors Affected

All holders of NRC licenses or state licenses for which a state has an agreement with NRC to assume certain regulatory responsibilities for nuclear materials and facilities are affected. This includes approximately 70 current nuclear power reactors and more than 20,000 holders of material licensees (i.e., radiopharmaceutical suppliers, industrial radioisotope users, etc.).

Estimate and Summary of Economic Effects

The estimated cost of decommissioning a single nuclear power reactor is approximately $40 million. There are about 70 such reactors now operating and almost twice that many are under construction or being planned. None of the currently operating reactors is in need of near-future decommissioning and none may require it for 20 or more years. Although this action would not change the existing responsibility of licensees to decommission, it could require immediate collections from electricity customers to accumulate these decommissioning funds. These collections could be about $1-2 million per year for each reactor—about $100 million per year to start. While the added cost to the consumer would depend on many factors, this cost is estimated to be relatively insignificant and on the order of a tenth of a mill (1/100 of a cent) on a per kilowatt-hour basis of electrical consumption. If advance collection or surety bonding is required, rather than collection over the operating life of the facility, the economic impact will be to further increase the cost of electricity produced by nuclear reactors. It is not likely that the change in the cost of electricity due to a surety bonding requirement will affect the existence of any reactor-owning company. It is possible that additional financial surety costs could drive smaller nuclear fuel cycle licensees, such as uranium mill operators, out of the nuclear business.

The cost of decommissioning and financial surety for the more than 20,000 material licensees is not well-established at this time.

Related Regulations or Actions

Internal: Action on DOE request for exemption to recycle to commercial use scrap materials which contain radioactive contamination.

External: Environmental Protection Agency: The EPA standard for low level radioactive residues in the environment.

Federal Energy Regulatory Commission: FERC requirements for accounting methods and treatment of decommissioning costs by electrical wholesalers.

Internal Revenue Service: IRS rulings on tax treatment of funds collected for future decommissioning actions.

State Public Utility Commission: Requirements for accumulation of funds for decommissioning.

State Legislatures: Passage of laws requiring bonds or other surety for nuclear decommissioning.

Active Federal Collaboration

Active liaison is being carried on as part of this program with the Environmental Protection Agency, the Federal Energy Regulatory Commission, and the Internal Revenue Service.

Available Documents

An environmental impact statement is being prepared as the basis for the regulation.

NUREG-0436, "Plan for Reevaluation of NRC Policy of Decommissioning of Nuclear Facilities," dated March, 1978.

NUREG-0278, "Technology, Safety, and Costs of Decommissioning of Reference Nuclear Fuel Reprocessing Plant," dated October, 1977.

NUREG/CR-0130, "Technology, Safety and Costs of Decommissioning a Reference Pressurized Water Reactor Power Station," dated June, 1978.

NUREG/CR-0131, "Decommissioning of Nuclear Facilities—An Annotated Bibliography," dated October, 1978.

Timetable

A series of regional meetings with state officials, open to the public, is scheduled for September, 1979.

The environmental statement and the proposed regulation will be circulated for public comment in March 1980.

Draft Environmental Impact Statement—March 1980.

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NRC

Title

Disposal of high level radioactive waste in geologic repositories

Objectives and Benefits

The Department of Energy (DOE) is responsible for building and operating facilities for disposal of high level radioactive waste (HLW). Based on official communications to NRC and public actions, it appears that DOE intends to dispose of HLW by burial deep in the earth. Normally facilities and activities owned by and operated for DOE are excluded from licensing by NRC. However, the Energy Reorganization Act of 1974 provides NRC with licensing and regulatory authority over certain DOE high level radioactive waste storage (permanent storage or disposal) facilities.

The intent of this regulation is to provide guidance, to DOE and other interested parties, on licensing disposal of HLW. This regulation sets forth criteria for approval of a license to dispose of HLW in geologic repositories (i.e., placing the waste in prepared cavities deep in the earth). These criteria state the information that NRC will need on site suitability, repository design, systems design, and repository closure.

There is great concern by the public, state governments, and Congress that a safe method for HLW disposal be demonstrated. A major benefit is that this regulation will present the criteria and information required to assure safe construction, operation, and closure of these repositories for public review and comment. Another benefit is that it will serve as a base from which DOE can plan and develop such a facility.

Legal Authority

Energy Reorganization Act of 1974, § 202 (3) and (4), 42 U.S.C. § 5842.

Major Alternatives Under Study

This regulation is concerned specifically with disposal of HLW in geologic repositories. An alternative considered was a regulation to provide guidance with respect to any type of facility that DOE might propose. Among the different types of disposal alternatives are seabed emplacement, ice cap or ice sheet emplacement, transmutation (i.e., the conversion of one radionucleid into another), and propulsion into space. Disposal in geologic repositories was selected because (1) seabed and ice cap or ice sheet emplacement are probably outside the legal authority of NRC (suitable locations would probably involve international agreements), (2) transmutation and space disposal involve such extensive research and development that reasonable prospects for licensing are many years ahead, and (3) that information, as previously mentioned, indicates that this technology is likely to be the subject of a license application in the near future.

Also under consideration is whether to set forth generic criteria and provide details elsewhere (e.g., Regulatory Guides) or to specify requirements for information and data in the regulation.

Sectors Affected

The Department of Energy will be the only organization directly affected.

Estimate and Summary of Economic Effects

Estimated costs for construction and operation of a geologic repository range from one billion dollars to five billion dollars. Estimates of the impact on the cost of electricity production vary over a wide range, but the maximum is not expected to exceed one mil ($0.001) per kilowatt hour. As many as four repositories may be required to accommodate the HLW generated by the end of the century.

The only direct costs related to this regulation are the resources expended by NRC to develop, support, and issue it. (The bulk of this will be costs for technical assistance contracts, which are estimated to be over five million dollars.) It is not expected that issuance will cause significant incremental change in the cost of a repository.

Related Regulations or Actions

Internal: This action is related to an NRC Program to classify radioactive waste according to its required degree of confinement.

External: This action is related to the "Environmental Protection Criteria for Radioactive Waste," issued by EPA. Standards for high level radioactive waste to be issued by EPA will also relate to the rule.

Active Federal Collaboration

Active liaison is being carried out with the Environmental Protection Agency, The United States Geological Survey, and the Department of Energy.

Available Documents

Commission Paper—SECY 79-366 (and addenda).

"Licensing Procedures for Geologic Repositories for High Level Waste."

Policy Statement—"Licensing Procedures for Geologic Repositories for High-Level Radioactive Wastes," (43 FR 53869, November 17, 1978).

NUREG-0279—"Determination of Performance Criteria for High-Level Solidified Nuclear Waste," July, 1977.

NUREG-0456—"A Classification System for Radioactive Waste Disposal—What Waste Goes Where?" June, 1978.

Timetable

Draft Environmental Impact Statement—April 1979.
NPRM—April 1979.
Final Rule—June 1980.

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NRC

Title

Decommissioning and site reclamation of uranium and thorium mills

Objectives and Benefits

The purpose of this regulation is to minimize potential future public exposures to radioactive materials. The milling of ores for the extraction of uranium or thorium generates large volumes of sand-like residues, generally called tailings, which contain small quantities of naturally occurring radioactive materials. Milling activities also result in the radioactive contamination of mill buildings, equipment, and sites from the naturally occurring radioactive materials in the ores. After a mill closes, it is important to the public health and safety that the tailings generated during the milling operations be stabilized and controlled to prevent radioactive materials from en-

tering the environment and that mill buildings, equipment, and sites be cleaned to remove any residual contamination that may have resulted from the milling operations. This regulation will clearly specify Nuclear Regulatory Commission (NRC) requirements for the cleaning and restoration of mill sites after a mill closes. These actions and activities are commonly referred to as decommissioning and reclamation. It will also specify financial surety arrangements to ensure that funds are available to cover cleaning and restoration activities.

The benefits from the regulation are not quantifiable in terms of dollar amounts since the radioactive materials involved would persist for hundreds of years if cleaning and restoration were not undertaken. The regulation will result, however, in a reduction of potential radiation exposures to the public to levels essentially the same as those existing prior to milling operations.

Legal Authority

Uranium Mill Tailings Radiation Control Act of 1978, P. L. 95-604, 92 Stat. 3021 (1978).

Major Alternatives Under Study

We are evaluating several alternatives in a generic environmental impact statement on uranium milling pursuant to the National Environmental Policy Act. Technical alternatives for tailings control include below grade storage, disposal in open pit mines, various types of coverings, and different milling processes. Alternative financial arrangements include surety bonds, cash deposits, certificates of deposit, and letters of credit.

Sectors Affected

This regulation would affect all holders of source material licenses involving uranium and thorium milling. This includes 21 presently operating mills and an additional 43 uranium mills projected to be built by the year 2000 based on an annual nuclear generating capacity of 380 gigawatts of electricity in the year 2000.

Estimate and Summary of Economic Effects

The minimum estimated one-time cost for each mill to comply with this regulation is approximately $5-6 million. For a total of 64 mills, the minimum estimated aggregate cost would be $320-384 million. However, costs are highly site-specific and involve many variables, such as size of mill, ore grade, geology, topography, hydrology, etc. Costs ranging from $8-12 million per mill, if required, would represent overall costs of less than 1% of the price of uranium product from mills and 0.1% of the electricity generation costs.

Related Regulations or Actions

Internal: Regulations specifying requirements for the clean-up of other nuclear facilities at the end of their operating life.

External: The Uranium Mill Tailings Radiation Control Act of 1978 requires the Environmental Protection Agency (EPA) to establish standards of general application for the protection of the public health, safety, and the environment from radiological and nonradiological hazards associated with mill tailings. The NRC has the responsibility for implementation and enforcement of the EPA standards.

The Department of Energy has authority under the Uranium Mill Tailings Radiation Control Act of 1978 to undertake remedial action at certain inactive mill sites.

Various states have regulatory authority under state and Federal laws over some uranium mill sites.

Active Federal Collaboration

We have active liaison as part of this program with the Environmental Protetion Agency and the Department of Energy.

Available Documents

Notice of Intent to Prepare Generic Environmental Impact Statement on Uranium Milling—41 FR 22430 (June 3, 1976).

Timetable

"Draft Generic Environmental Impact Statement on Uranium Milling"—February 1979.

NPRM—February 1979.

Public Hearing—Currently unscheduled.

"Final Generic Environmental Impact Statement on Uranium Miling"—Currently unscheduled.

Final Rule—Currently unscheduled.

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CHAPTER 2—HUMAN RESOURCES

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Implementation of the Veterans' and Survivors' Pension Improvement Act of 1978 11434

DOC-EDA

Title

Special economic development and adjustment assistance grants

Objectives and Benefits

The Economic Development Administration (EDA) is considering revising its regulations concerning Special Economic Development and Adjustment Assistance Grants. This grant program forms part of the comprehensive economic development assistance provided under the Public Works and Economic Development Act (PWEDA) of 1965, as amended. PWEDA provides financial assistance for planning, public works and development activities in order to foster economic development in areas experiencing substantial and persistent unemployment and underemployment. Title IX of PWEDA (42 U.S.C. § 3241) authorizes Special Economic Development and Adjustment Assistance Grants which are designed to help recipients meet special economic development and adjustment needs arising from actual or threatened sudden and severe economic dislocations and arising from long-term economic deterioration. EDA is considering revising the regulations which implement the Title IX grant program in order to distinguish more adequately between the two basic types of adjustment problems for which this program provides assistance: "sudden and severe economic dislocation" and "long-term economic deterioration."

The primary benefit of these revisions will be to facilitate management of the program. They will establish separate criteria for the extension of assistance on the basis of the type of economic adjustment problem encountered by the prospective applicant. The current regulations provide a single framework for extending all assistance under the program and do not sufficiently delineate the differences between "long-term economic deterioration" and "sudden and severe economic dislocation."

Legal Authority

The Public Works and Economic Development Act of 1965, as amended, § 701 and § 901, 42 U.S.C. § 3211, § 3241.

Major Alternatives Under Study

The alternatives under study concern the refinement of statutory eligibility criteria. Given the limited amount of assistance available, EDA must establish criteria to judge among deserving applicants. Alternatives available involve establishing criteria according to the need of either the applicant or of the area, sub-area, or neighborhood. In addition, the eligibility criteria will vary according to the type of assistance involved; criteria for extending assistance under the "long-term economic deterioration" clause will involve different factors than criteria for extending assistance under the "sudden and severe economic dislocation" clause.

Sectors Affected

As the revision of these regulations will establish new eligibility criteria, the revision will affect all potential applicants eligible for assistance under Title IX of PWEDA (42 U.S.C. § 3242). Eligible recipients are economic development organizations representative of redevelopment areas and economic development districts designated under Title IV of PWEDA (42 U.S.C. § 3161), Indian tribes, states, cities or other political subdivisions of a state, and consortia of such political subdivisions.

Estimate and Summary of Economic Effects

Approximately $83 million was appropriated for Title IX of PWEDA for Fiscal Year 1979. As a grant and loan agency, EDA's primary mission is to spur economic development in distressed areas meeting the statutory criteria. Consequently, the economic impact of the appropriations is mandated by statute. As EDA does not currently impose many reporting requirements as a matter of administrative discretion (there are a few in the area of civil rights), these regulations would not appear to provide much opportunity to modify requirements to reduce burdens or to eliminate avoidable inflationary impacts. At this time, however, EDA has not analyzed the economic consequences of the proposed action under Executive Order 12044. EDA will review this action over the course of the next few weeks to determine if a regulatory analysis is required.

Related Regulations or Actions

None.

Active Federal Collaboration

EDA has undertaken a review of its grant requirements to eliminate unnecessary variations between EDA requirements and those of the Department of Housing and Urban Development (HUD). In addition, EDA has entered a joint policy statement with HUD, the Environmental Protection Agency, and the Farmers Home Administration regarding rural water and sewer assistance.

Available Documents

13 CFR Part 308, Special Economic Development and Adjustment Assistance Grants.

ANPRM—43 FR 52432 (November 9, 1978).

ANPRM—43 FR 57918 (December 11, 1978).

Timetable

NPRM—February 1979.
Final Rule—May 1979.

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HEW

Title

Non-discrimination on the basis of age in activities receiving Federal financial assistance

Objectives and Benefits

The objective of this regulatory action is to state general, government-wide rules to implement the Age Discrimination Act of 1975, as amended. The general regulations are designed to guide the development of specific regulations by each Federal agency that provides Federal financial assistance. The Age Discrimination Act of 1975 applies to persons of all ages and to all programs and activities receiving Federal funds, not just to the elderly or solely to the Department of Health, Education, and Welfare (HEW) programs. While the Act prohibits discrimination on the basis of age in programs or activities receiving Federal funds, it permits some distinctions based on age.

The Secretary of HEW is required to publish proposed and then final general regulations, and thereafter the head of each agency which provides Federal financial assistance is required to publish proposed and then final specific regulations. All agency regulations must be approved by the Secretary of HEW.

Legal Authority

The Age Discrimination Act of 1975, § 304, 42 U.S.C. § 6104.

Major Alternatives Under Study

The regulations propose several major alternatives. The first deals with how to define the coverage of the provisions of the Age Discrimination Act. Section 304(b)(2) of the Act exempts from its coverage programs established under authority of "any law" conditioning benefits on the basis of age. Similarly section 304(c)(1) exempts from coverage all employment practices except for those in programs receiving Comprehensive Employment and Training Act (CETA) assistance. The Age Discrimination in Employment Act remains the principal tool for addressing age discrimination in employment practices.

The NPRM proposes four options for interpreting the "any law provision": (1) Federal, state, and local statutes and regulations; (2) Federal, state, and local statutes; (3) Federal and state statutes; and (4) Federal statutes. The current preference is option (3). The regulations could also include activities which are both employment and Federal financial assistance, such as the college work-study program. This possibility is raised in the preamble to the NPRM.

The second set of alternatives presented in the proposed regulations concerns the construction of the exceptions to the general prohibition against age discrimination.

The Act contains an exception for age distinctions reasonably necessary to the "normal operation" or "achievement of a statutory objective" of a program or activity which receives Federal financial assistance. The regulations propose four criteria to be used to determine if an age distinction falls within this exception.

The Act also contains an exception which permits a recipient to take an action generally prohibited by the Act if the action is based on "reasonable factors other than age." In that event, the action may be taken even though it has a disproportionate effect on persons of different ages.

The proposed regulations contain four options for the standards to be applied to that action. These options range in stringency, from establishing whether there is a rational connection between the action and the program's objectives, to establishing that the action is absolutely necessary to the program's success. HEW expresses a preference for the least stringent option—establishing a rational connection.

The NPRM proposes to use mediation as the first step in resolving age discrimination complaints. The Federal Mediation and Conciliation Service is under consideration as the agency to administer the mediation process for all Federal departments and agencies. The NPRM proposes to require an attempt at informal resolution similar to that used by the Equal Employment Opportunity Commission. Complaints not resolved under one of these methods would be handled in the conventional manner. That is, an unresolved complaint will be referred back to the appropriate Federal agency for investigation, further attempts at conciliation and, if necessary, a hearing on the record and the termination of Federal financial assistance as provided in the Act.

Sectors Affected

All Federal agencies extending Federal financial assistance and, through them, all recipients of that assistance are affected by these regulations. These are essentially the same agencies and recipients affected by Title VI of the Civil Rights Act of 1964.

Estimate and Summary of Economic Effects

The major costs are for compliance by the estimated 90-100,000 recipients of Federal financial assistance. Those recipients employing 15 or more persons (70-80,000) would have to conduct a one-time self-evaluation of age distinctions which they impose directly. The estimated total cost of these self-evaluations is $16-17 million. Those recipients who distribute Federal funds to sub-recipients would incur an additional total cost of less than $1 million to notify sub-recipients of their responsibilities under the Act.

There will be continuing costs for compliance related to enforcement activities of Federal agencies. The volume of complaints is expected to be low, at least initially, since most employment is not covered by the Act. Mediation may cut compliance costs. If we estimate 300-700 complaints per year, annual costs would be in the area of several million dollars. These figures are only rough estimates.

There are no known compliance requirements involving program changes that would create significant costs to recipients. These costs are very difficult to estimate. There is still a question regarding the proper interpretation of certain data collection requirements in Section 308 of the Act. As currently interpreted, these costs should be minimal; however, a more literal interpretation of Section 308 would increase these costs substantially perhaps up to hundreds of millions of dollars annually if federally assisted programs are required to collect and report annually data on the age of program participants or beneficiaries.

Related Regulations or Actions

Internal: None.

External: Department of Labor CETA age discrimination regulations (20 CFR Parts 675-679) are in effect. Treasury Department Revenue Sharing Program non-discrimination regulations including age discrimination (31 CFR Part 51 *et seq.*).

Once the final government-wide regulations are issued, Section 304 of the Act requires each agency to develop its own age discrimination regulations consistent with the HEW general regulations and subject to HEW approval.

Active Federal Collaboration

An interagency committee of affected Federal agencies meets periodically to consult on the development of these regulations. We have consulted on an individual basis with the Departments of Labor, Treasury, Commerce, Agriculture, Defense, Housing and Urban Development, and Justice, the agencies likely to be most affected.

Available Documents

Notice of Intent to Issue Age Discrimination Regulations. 43 FR 8756 (March 2, 1978).

NPRM, 43 FR 56428 (December 1, 1978).

Timetable

Comment period for government-wide regulation ends—February 28, 1979.

HEW publishes final government-wide regulations—April 30, 1979.

Individual agencies publish their NPRM—July 30, 1979.

Individual agencies publish their final regulations—November 30, 1979.

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HUD-HOUS

Title

Standards for the design, construction, and alteration of residential structures to insure accessibility by the physically handicapped

Objectives and Benefits

This regulation will amend 24 CFR Part 40 to assure conformity with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §4161. Specifically, the Act requires, and HUD adopted in 1969, design standards for insuring access by the physically handicapped to residential structures leased, constructed, or rehabilitated with Federal grant or loan assistance. In keeping with current legislation, the regulation will add language which would extend coverage of current HUD design standards to privately-owned residential structures which are leased for subsidized housing. However, this language will have little effect, since HUD presently has no programs for leasing residential structures for subsidized housing. The regulation also updates the referencing of design standards to accommodate a change in the title, but not in the substance, of such design standards, and it makes other changes of a routine nature. The preamble to the regulation recommends that HUD Assistant Secretaries who conduct programs subject to the Act supplement the 24 CFR Part 40 design standards with appropriate numerical or percentage requirements relating to specific building or facility elements, these requirements being necessary to achieve a reasonable level of accessibility for the physically handicapped.

Access to residential structures by the handicapped will be of benefit in permitting them to live independently, enjoying insofar as possible the same lifestyle as the non-handicapped, and in permitting them to be self-supporting, thereby saving the much higher costs of institutionalization.

Legal Authority

The Architectural Barriers Act of 1968, 42 U.S.C. §4161, and the Rehabilitation Act of 1973, 29 U.S.C. §792.

Major Alternatives Under Study

If physically handicapped people are to enter and use buildings and facilities, there is no alternative to the application of accessibility design standards. Moreover, since this regulation is mainly in response to legislation, the Department has no alternative but to issue the revision.

The Department is conducting a number of studies and efforts aimed at improving the benefits of accessibility while holding down the costs of making residential structures accessible. These efforts, when completed, will affect subsequent issuances or subsequent revisions to this regulation. Generally, the objective of these efforts is two-fold: to improve the design standards, making them more suitable to the needs of the handicapped as they strive to get by with a minimum of assistance; and to be selective as to the extent and degree of accessibility for any particular residental structure, so that accessibility features will not be required where they will not be useful.

Perhaps Federal regulation would not be needed if architects, builders, designers, developers, public housing authorities, financial institutions, owners, and others involved in the housing construction and management process would adopt accessibility design standards on their own initiative. These persons and agencies have not done so despite three decades of efforts on the part of handicapped people and their families, friends, and advocates to make them aware. Additionally, educational programs could be developed to increase public awareness of the needs of the handicapped, including the need for accessible buildings. The Office of Independent Living for the Disabled and other governmental and private institutions are doing this.

Sectors Affected

The primary sectors affected by this regulation are those public housing agencies or other public bodies which lease, construct, or rehabilitate public residential structures. The primary beneficiaries of the regulation are those physically handicapped individuals residing in or seeking to reside in buildings subject to the regulation.

Estimate and Summary of Economic Effects

This regulation, since it is only a revision of an existing regulation, will have little economic impact. As mentioned above, the regulation's inclusion of language to extend coverage of current HUD accessibility design standards to privately-owned residential structures which are leased by the Federal government for subsidized housing will have no effect, since HUD now has no programs involving such housing. The change in the title of the referenced design standards will have no economic effect since the substance of those design standards will remain the same as presently referenced. The recommendation in the preamble that HUD Assistant Secretaries who conduct programs subject to the Act supplement the 24 CFR Part 40 design standards with approrpriate numerical or percentage requirements will have an effect insofar as the recommendation is followed; however, when it is followed, the economic benefits to handicapped residents will more than offset the added costs of construction. To the extent that the publication of this revision triggers an increased compliance with the requisite design standards, money will be saved since the cost or accessibility in new construction is less than 1 percent of the total cost; the costs may be 50 percent or more of initial construction costs for remodeling deficient buildings.

HUD is currently conducting both a demonstration project and a survey of Public Housing Agencies, which are to furnish information relating to the cost and feasibility of providing access on a large scale in residential structures.

Related Regulations or Actions

Internal: A number of HUD program handbooks implement the regulation at 24 CFR Part 40, and some program handbooks administratively require compliance with accessibility design standards even though the programs are not covered under the Architectural Barriers Act. 24 CFR Part 8, Nondiscrimination Based on Handicap in Federally Assisted Programs and Activities of the Department of Housing and Urban Development, is a related regulation which calls for accessibility to HUD programs and activities and for building accessibility when that is essential to program accessibility.

24 CFR Part 41, Procedures for Insuring Compliance with Accessibility Standards: this proposed new regulation will provide for added compliance procedures in connection with 24 CFR Part 40.

External: Under the Act, the GSA, Postal Service, and Department of Defense are required to issue and have issued, accessibility design standards

for publicly-assisted buildings or facilities, postal facilities, and military installations, respectively.

Active Federal Collaboration

The Assistant Secretary for Housing-Federal Housing Commissioner represents the Department as a member of the Architectural and Transportation Barriers Compliance Board (A&TBCB), which is the primary regulatory agency for the Architectural Barriers Act.

Available Documents

None.

Timetable

NPRM—February 1979.

Agency Contact

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HUD-HOUS

Title

Tax exemption, under section 11(b) of the U.S. Housing Act of 1937, of obligations issued by public housing agencies to finance section 8 projects (24 CFR Part 811)

Objectives and Benefits

The intent of this regulation is to amend regulations issued August 3, 1977 to: (1) clarify the requirements which must be met in order for a private, nonprofit entity to be approved by HUD as an "agency or instrumentality" which may issue tax-exempt obligations to finance Section 8 low-income housing; (2) provide explicit standards to field offices for approving the dollar amount of obligations which may be issued, including costs of development and financing; (3) provide explicit standards to field offices for determining what interest rate on obligations is permissible; and (4) clarify and strengthen other requirements. The benefits sought are a better understanding of the program and reduced subsidy costs, both to HUD and to the Department of the Treasury. A clear statement of what is required should reduce wasted time on the part of HUD and the parties seeking to use this type of financing.

Legal Authority

The U.S. Housing Act of 1937, §§ 8 and 11(b), 42 U.S.C. §§ 1437f and 1437i.

Major Alternatives Under Study

HUD has considered different methods for determining development cost, cost of financing and interest rates; HUD has also conducted a review of all comments received. The proposed rule states the method intended to be used.

Sectors Affected

Owners of Section 8 housing and lenders providing funds for such housing are affected in that the regulations would restrict the interest paid to lenders, the allowable costs of financing, and the total amount of the obligations that may be issued. The current volume of total obligations per year is approximately $800 million.

Estimate and Summary of Economic Effects

The cost of compliance with these ammended regulations should be reduced since the owners and lenders would have a better idea of (1) what field offices require to approve this type of financing and (2) the specific limits on the amount of obligations, including development cost and cost of financing.

Related Regulations or Actions

Internal: The Department is also considering amendment of the basic Section 8 program regulations (24 CFR Parts 880, 881 and 883), for the purpose of improving control and restriction of subsidy costs in these programs.

External: None.

Active Federal Collaboration

Aspects of 24 CFR Part 811 are being discussed with the Internal Revenue Service.

Available Documents

24 CFR Part 811, August 3, 1977.
NPRM—43 FR 30498 (July 14, 1978).

Timetable

Final Rule—February 1979.

Agency Contact

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DOJ

Title

Regulations prohibiting discrimination solely on the basis of handicap in federally assisted programs

Objectives and Benefits

The regulations will establish standards to assure nondiscrimination based on handicap in programs and activities receiving Federal financial assistance from the Department of Justice (DOJ). They will define and prohibit acts of discrimination against qualified handicapped persons in employment and as beneficiaries of programs and activities receiving assistance from the Department. Covered programs and activities would include those administered by state and local units of the criminal justice system receiving Federal assistance in the form of grants and Federal assistance contracts from the Law Enforcement Assistance Administration (e.g., police departments, prisons, courts), or training from the Federal Bureau of Investigation or other agencies within the Department of Justice. Procurement contracts and contracts of insurance or guaranty are not considered Federal assistance within the meaning of § 504 of the Rehabilitation Act.

The elimination of discrimination against the handicapped in federally assisted programs and activities will further advance the national policy against such invidious discrimination, will assure that the benefits of federally assisted programs and activities will be extended to the qualified handicapped, and will preclude the discriminatory exclusion of the handicapped as employees in programs and activities receiving Federal financial assistance.

Legal Authority

Rehabilitation Act of 1973, § 504, 29 U.S.C. § 794; Executive Order 11914, 41 FR 17871; HEW Guidelines on Rehabilitation, 3 CFR 308.53.

Major Alternatives Under Study

Executive Order 11914 requires all Federal departmental regulations implementing § 504 to be consistent with those issued by the Department of Health, Education and Welfare. Accordingly, there are no alternatives to the standards which HEW has published (43 FR 2132) in terms of scope, timing or substantive requirements obligating recipients of Federal assistance from the Department of Justice.

Sectors Affected

This regulation would affect approximately 9,000 units of state and local governments involved in law enforcement and related activities, and approximately 1,000 private entities—

such as juvenile homes, educational institutions, public interest groups, and so forth—participating in activities related to the nation's criminal justice system.

Estimate and Summary of Economic Effects

It is difficult to project the cost of compliance. Two aspects of § 504 may increase the expenditures of recipients administering federally assisted programs. The first requires that recipients make a reasonable accommodation for the known physical or mental limitations of an otherwise qualified handicapped applicant or employee. A reasonable accommodation might involve job restructuring, modified work schedules, or acquisition or modification of equipment or devices. What constitutes a reasonable accommodation must be decided on a case-by-case basis.

The second aspect requires that programs and activities receiving Federal assistance are prohibited from excluding qualified handicapped persons from federally assisted programs because a recipient's facilities are inaccessible or unusable. Structural changes to existing facilities may be unnecessary where other less costly or burdensome methods may be equally effective. Facilities constructed after final rulemaking must, however, be designed and constructed in such manner as to make them accessible to and usable by handicapped persons. No estimate or range of estimates of costs can be provided at this stage.

Related Regulations or Actions

Internal: DOJ regulations under Title VI of Civil Rights Act of 1964, 28 CFR 42.201 *et seq.*

External: HEW § 504 Regulations, 42 FR 22676.

Active Federal Collaboration

By virtue of Executive Order 11914, the President has delegated the coordination of government-wide enforcement of § 504 to the Department of Health, Education and Welfare and has directed that Federal agency regulations under § 504 be consistent with the standards and procedures established by the Secretary of Health, Education and Welfare.

Available Documents

None.

Timetable

NPRM—March 1979.
Final Rule—August-September 1979.

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DOL-ESA

Title

Labor standards provisions applicable to the Davis-Bacon and Related Acts and Contract Work Hours and Safety Standards Act

Objectives and Benefits

The purpose of the current regulation is to coordinate the administration and enforcement of the labor standards provisions of the Davis-Bacon Act—which sets standards requiring the payment of wages, on most Federally-financed construction, which the Secretay of Labor determines to be prevailing for corresponding classes of laborers and mechanics employed on projects of a character similar to projects where the work is to be performed—and the Contract Work Hours and Safety Standards Act—which generally requires overtime pay for work after 8 hours a day and 40 hours a week on Federally-financed contracts. The proposed changes represent clarification, simplification, amplification and other adjustments which are necessary to reflect current policies of the Department of Labor. The exact details are not presently developed.

Legal Authority

Davis-Bacon Act of 1931, 40 U.S.C. § 276a; Reorganization Plan 14 of 1950; Copeland Act, 40 U.S.C. § 276.

Major Alternatives Under Study

The Department is currently studying a range of issues affecting the administration of the Davis-Bacon Act.

Sectors Affected

All government procuring agencies, most goverment agencies supplying Federal assistance for construction, state and local governments receiving such assistance, construction contractors and their associations, construction workers and the building trades unions will be affected. The Contract Work Hours and Safety Standards Act, in addition, affects most Federal contractors other than supply contractors.

Estimate and Summary of Economic Effects

The changes contemplated would not alter the scope of the current regulations. Because the contemplated changes will clarify current interpretative rulings, administrative costs may be reduced for both the government and contractors. However, because these laws are of interest to a broad spectrum of Federal contractors, the revised regulations are included in the calendar.

Related Regulations or Actions

Internal: Procedure for Predetermination of Wage Rates—29 CFR Part 1, and Practice Before the Wage Appeals Board—29 CFR Part 7.

External: None.

Active Federal Collaboration

Office of Federal Procurement Policy.

Available Documents

Regulations: payment and reporting of Wages Applicable to Federally-Financed and Assisted Construction Contracts, 29 CFR Part 3.

Regulations: Labor Standards Provisions Applicable to Contracts Covering Federally-Financed and Assisted Construction, 29 CFR Part 5.

Timetable

Because of internal government review of these programs, we cannot set a definite date as to when the regulations will be revised. We will be able to set a date when the review has been completed.

Agency Contact

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DOL-ESA

Title

Proposed amendment to Equal Pay Act Interpretative Bulletin dealing with insurance and other employee benefit plans

Objectives and Benefits

The objectives of the proposed revision in the interpretative bulletin are to make clear that employee benefits are "wages" within the meaning of the Equal Pay Act, that any differential in such benefits based on sex-based acturial distinctions violates the Act, and that any sex-based differential in required employee contributions toward equal benefits similarly violates the Act. Implementation of the new proposal will forbid such practices.

This change will benefit female employees who retire on a pension paying periodic benefits for their lifetime. Their periodic benefits will have to be the same as male retirees with the same seniority and wage levels. However, the change will also benefit male employees who choose a joint and survivor pension benefit option which provides their surviving spouse with a continuing payment. These men will generally get a larger periodic payment than previously was the case.

The Department of Labor does not yet have an accurate estimate of the number of workers who would benefit or the monetary amount involved.

Legal Authority

Equal Pay Act of 1963, 29 U.S.C. § 206(d); 29 CFR Part 800.

Major Alternatives Under Study

The Department of Labor has received numerous comments on the proposed revision. It is currently reviewing these comments in view of the possibility of revising or clarifying the original proposal. Among the major areas undergoing scrutiny are: (1) whether and how the provision in the Equal Pay Act which prohibits any reduction in the rate of the higher paid sex applies; (2) the applicability of the proposal to the numerous types of fringe benefit plans (e.g., defined benefit pension plans, defined contribution pension plans, health insurance, life insurance, etc.); (3) the applicability to the various options under employee benefit plans (e.g., straight-life, joint and survivor, early retirement, etc.); and (4) the effective date of the amendments, including the issue of retroactivity and effect on accrued or vested benefits.

The nature of alternative approaches to this issue, of course, will depend on an evaluation of comments. However, it is not realistic to expect that the equal contributions or equal benefits rule, in its present form, may continue in light of the decisions in *Los Angeles Dept. of Water and Power* v. *Manhart*, 435 U.S. 702 (1978), and *EEOC* v. *Colby College*, 18 FEP Cases 1125 (C.A. 1. 1978).

Sectors Affected

The Equal Pay Act applies to the private sector as well as local, state and Federal employment.

Estimate and Summary of Economic Effects

The Department of Labor currently is conducting a study to determine an unbiased, realistic cost estimate of the effect of the revision in the interpretative bulletin. No reliable, up-to-date cost figures are available at this time. It should be noted, however, that the interpretations of the Equal Employment Opportunity Commission (EEOC) under Title VII of the Civil Rights Act of 1964 already require equal benefits between men and women covered by that law.

Related Regulations or Actions

Internal: The Office of Federal Contract Compliance has issued a similar conforming proposal—Sex Discrimination Guidelines (41 CFR Part 60-20)—applicable to Federal contractors.

External: The outside agency currently most interested in the proposed revision is EEOC. The "either-or" rule has conflicted with and impeded EEOC's enforcement efforts under Title VII. EEOC assumes responsibility for enforcement of the Equal Pay Act on July 1, 1979. Current procedures now require appropriate clearances with EEOC before a final position is taken.

Active Federal Collaboration

Equal Employment Opportunity Commission, Internal Revenue Service, and Pension Benefit Guaranty Corporation.

Available Documents

Current Interpretative Bulletin, Part 800, 29 CFR Part 800.

Proposed amendments to Interpretative Bulletin § 800.116 Part 800(d) and § 800.110, 43 FR 38029 (August 25, 1978).

Relevant EEOC guidelines appear at 29 CFR 1604.9(f).

Timetable

Final Rule—prior to July 1, 1979.

Agency Contact

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DOL-ESA

Title

Proposed amendment to the Sex Discrimination Guidelines (41 CFR Part 60-20) governing insurance and other employee benefit plans, and a general revision of the Sex Discrimination Guidelines

Objectives and Benefits

The objective of this revision is to equalize fringe benefits between female and male employees, as a requirement under Executive Order 11246. The present regulation is not violated where either the benefits to men and women are equal or where the employer makes equal contributions for all employees. Under the latter practice, women, because of the differences in life expectancies of men and women, receive smaller monthly benefits. The proposed regulation was published in the FEDERAL REGISTER, 43 FR 38029 (August 25, 1978).

The Office of Federal Contract Compliance Programs (OFCCP) also is undertaking a review of the entire sex guidelines regulation which includes fringe benefits and other guidelines. This review will place particular emphasis on rights of pregnant female employees in, among other things, terms of leave, seniority, reinstatement, and health insurance.

The economic benefit of the proposed amendment and the revisions will generally accrue to working women. However, male employees who chose a joint and survivor pension benefit option which provides their surviving spouse with a continuing payment will also benefit under the fringe benefit proposal because their periodic payments generally will be larger.

Legal Authority

Executive Order 11246, 30 FR 12319 (1965) as amended by Executive Order 11375, 32 FR 14303 (1967).

Major Alternatives Under Study

The nature of alternatives, of course, will depend on an evaluation of comments. However, it is not realistic to expect that the equal contributions or equal benefits rule may continue in its present form after the Supreme Court's Decision in *Los Angeles Dept. of Water and Power* v. *Manhart*, 435 U.S. 702 (1978).

Sectors Affected

Federal contractors will be affected.

Estimate and Summary of Economic Effects

Cost estimates on the proposed fringe benefit regulations are now being prepared.

Related Regulations or Actions

Internal: The regulations on sex discrimination guidelines under the Equal Pay Act—29 CFR Part 800—are being revised by the Wage and Hour Division in the Department of Labor for the same reason of conformity.

External: Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Disability Act of 1978, to which this regulation will conform.

Active Federal Collaboration

Equal Employment Opportunity Commission.

Available Documents

Part 60-20 Sex Discrimination Guidelines, 41 CFR Part 60-20.

NPRM—43 FR 38057 (August 25, 1978).

Timetable

A final regulation on fringe benefits will be published prior to July 1, 1979. The more general review of the guidelines with particular reference to rights of pregnant female employees will be developed and published for comment by June 30, 1979.

Agency Contact

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DOL-ETA

Title

Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from financial assistance from the Department of Labor, 29 CFR Part 32

Objectives and Benefits

The objective of these regulations will be to implement the obligations of the Department of Labor (DOL) under Section 504 of the Rehabilitation Act of 1973, which prohibits handicapped-based discrimination in programs or activities receiving Federal financial assistance, and the Department of Health, Education, and Welfare's guidelines for Federal agency regulations under Section 504, which were published January 13, 1978 (43 FR 2132). Executive Order 11914, 41 FR 17871 (April 29, 1976), designated HEW as the lead agency to coordinate enforcement of Section 504.

The benefits of these regulations will redound primarily to handicapped individuals who seek to participate in DOL-funded programs and activities. In addition to selecting beneficiaries for programs in a nondiscriminatory manner, recipients will be required to make reasonable accommodation to the handicaps of qualified job applicants and employees unless the accommodation would cause undue hardship to the programs. Such accommodation could include structural changes to buildings to make them and facilities in the buildings accessible to handicapped individuals. "Beneficiaries" refers to individuals who are eligible for and who apply for participation in DOL-funded programs, primarily those funded by the Employment and Training Administration. Such programs include on-the-job training, public service employment, etc., which are offered in a variety of buildings and facilities in urban and rural areas.

Legal Authority

The Rehabilitation Act of 1973, as amended (29 U.S.C. §§ 706 and 794).

Major Alternatives Under Study

There are no major alternative approaches to this activity under consideration in the Labor Department. Department of Health, Education, and Welfare regulations require Federal agencies which provide financial assistance to recipients to promulgate regulations implementing Section 504. Programs operated by the Labor Department are unique in the Federal establishment; thus, specific written regulations covering these programs are required.

Sectors Affected

This regulation would affect state, municipal, and county governments and private sector employers, including nonprofit organizations.

Estimate and Summary of Economic Effects

A regulatory analysis of the regulation is being conducted by the Employment and Training Administration and a cost impact study should be available by the end of January 1979.

Related Regulations or Actions

Internal: Affirmative Action obligations of Contractors and Subcontractors for Handicapped Workers regulations (41 CFR Part 60-741), which implement Section 503 of the Rehabilitation Act and require government contractors to take affirmative action to employ and advance in employment qualified handicapped individuals.

Executive Order 11758, 39 FR 2075, (January 17, 1974), which delegated authority to the Secretary of Labor to promulgate regulations implementing Section 503 of the Rehabilitation Act of 1973.

External: Executive Order 11914, 41 FR 17871 (April 29, 1976), which requires HEW to coordinate the government-wide enforcement of Section 504 of the Rehabilitation Act.

Regulations (45 CFR Part 84) issued by HEW covering its recipients under Section 504.

Federal agency coordination guidelines issued by HEW (45 CFR Part 85), which provide instructions to grant-making agencies with respect to the contents of agency 504 regulations.

Active Federal Collaboration

There will be active collaboration of these and related DOL regulations with officials of the Department of Health, Education, and Welfare and perhaps the Equal Employment Opportunity Commission under Executive Order 12067.

Available Documents

The regulation is being prepared in proposal form, will be published in the Federal Register for public comment and will be codified in 29 CFR Part 32.

Timetable

NPRM—February 1979.

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DOL-ESA

Title

Labor standards for federal service contracts

Objectives and Benefits

The Service Contract Act requires most Federal service contractors and subcontractors to pay their service employees not less than the minimum wages and fringe benefits which the Secretary of Labor finds to be prevailing in the locality. Current regulations provide rules for the administration of the Service Contract Act and official rulings and interpretations with respect to the application of the Act for the guidance of government contracting agencies, government contractors and subcontractors, and the employees who perform work under such contract. The objective of the revised regulations is to reflect the current policy of the Department of Labor (DOL) and to clarify existing regulations by using simpler language.

Legal Authority

Service Contract Act of 1965, § 4, 41 U.S.C. § 353; 29 CFR Part 4.

Major Alternatives Under Study

The Department of Labor is currently studying a range of issues affecting the administration of the Service Contract Act.

Sectors Affected

All government procurement agencies, service contractors and their associations, and service employees and their collective bargaining representatives will be affected.

Estimate and Summary of Economic Effects

Because the contemplated changes will clarify current interpretative rulings, administrative costs may be reduced for both the government and contractors. It is included in the Calendar, however, because it applies to almost all Federal service procurement and because it is of interest to the public.

Related Regulations or Actions

Internal: 29 CFR Part 6—Rules of Practice for Administrative Proceedings Enforcing Labor Standards in Federal Service Contracts.

External: None.

Active Federal Collaboration

Office of Federal Procurement Policy.

Available Documents

A reprint of the current regulation—Regulations, Part 4, Federal Service Contracts, 29 CFR Part 4.

Timetable

Because of internal government review of these programs, we cannot set a definite date as to when the regulations will be revised. We will be able to set a date when the review has been completed.

Agency Contact

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DOT

Title

Nondiscrimination on the basis of handicap in federally assisted programs and activities

Objectives and Benefits

The proposed regulation would implement a Federal statute which provides that "no otherwise qualified handicapped individual * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." In accordance with Executive Order No. 11914, HEW established specific standards and guidelines, applicable to all Federal agencies, for implementing the statute (43 FR 2132, January 13, 1978). DOT's proposed regulation would require recipients of Federal financial assistance who are employers to make reasonable accommodation to the handicaps of job applicants and employees. As providers of services, recipients, including, among others, operators of public transportation systems, would be required to make public transportation facilities such as bus, rapid transit, and commuter rail systems accessible to handicapped persons.

Legal Authority

The Rehabilitation Act of 1973, § 504, 29 U.S.C. § 794. Executive Order No. 11914, 41 FR 17871 (April 28, 1976). HEW Guidelines for Implementation of Executive Order No. 11914, 43 FR 2132 (January 13, 1978).

Major Alternatives Under Study

Major alternatives were proposed in an NPRM (43 FR 25016, June 8, 1978) and further described in the DOT draft Regulatory Analysis. The public comment period on this NPRM closed October 20, 1978. DOT has reviewed the public comments and is developing the final rule.

Sectors Affected

Sectors of the economy that would be affected by these regulations are transit operators, manufacturers of transportation equipment and components, local governments, state governments, and handicapped and elderly persons. (There are an estimated 13 million handicapped persons in this country.)

Estimate and Summary of Economic Effects

The great bulk of the money needed to implement the proposed regulation would be spent to alter existing rapid transit, commuter rail, and light rail facilities. The total capital cost of the regulation as proposed was estimated to be $1.8 billion in 1977 dollars, of which $1.1 billion is for alteration of mass transit rail stations. The proposed regulation set forth three alternatives for the compliance period for altering mass transit stations: 12 years, 20 years, and 30 years. The cost of the alterations to mass transit stations was estimated to be $2.7 billion if one assumes an annual inflation rate of 6 percent, a 12-year compliance period and a project midpoint of 1986. Assuming a 30-year compliance period, a 6 percent rate of inflation, and a project midpoint of 1995, the cost of altering such rail stations was estimated to be $4.6 billion. (In either a 12-year or 30-year compliance period, assuming a 6 percent annual inflation rate, if the project midpoint occurs earlier, the total cost would be lower, while a later project midpoint would produce a higher total.) The total capital cost of the proposed regulation, averaged over the first 12 years, was an estimated $132 million per year in 1977 dollars. These annual averages were not meant to predict the cost in any given year. After the initial 12-year period, capital costs were estimated to be negligible. The total average additional operating costs after alterations were estimated to be $71.7 million per year in 1977 dollars.

Related Regulations or Actions

Internal: Two of the operating administrations of DOT, the Urban Mass Transportation Administration and the Federal Highway Administration, have regulations which address the issue of making accommodations for elderly and handicapped persons. These regulations, which would be superceded by DOT's pending rule, are:

Advisory Information on UMTA's Requirements for Elderly and Handicapped, 49 CFR Part 13, Appendix.

Urban Transportation Planning, 23 CFR 450.120.

Special planning requirements, Appendix to 23 CFR Part 450, Subpart A.

49 CFR Part 609 (All transit related buildings must be constructed so as to be accessible to the elderly and handicapped. New transit cars must be designed to increase the comfort and convenience of elderly and handicapped persons.)

External: Department of Health, Education, and Welfare Guidelines for Implementation of Executive Order No. 11914, 43 FR 2132 (January 13, 1978).

Executive Order 11914 directs all affected Federal departments and agencies to develop regulations to implement Section 504; therefore, all affected executive branch agencies are working on or will soon have related regulations on this subject.

Active Federal Collaboration

DOT's consultations include Interstate Commerce Commission; the Department of Health, Education, and Welfare; the Regulatory Analysis Review Group; the Council on Wage and Price Stability; and the Architectural and Transportation Barrier Compliance Board.

Available Documents

Grey Advertising Study, "National Survey of Transportation of Handicapped People," June 1978; update October 1978.

NOTE: This is the basic study on the number of potential handicapped riders. In addition, there have been several internal studies based on the Grey Study data which are available in the public docket for this rulemaking.

Chase, Rosen and Wallace, "Cost/Effectiveness of Section 504 Notice of Proposed Rulemaking," October 1978.

NPRM— 43 FR 25016 (June 8, 1978).

Economic Analysis—43 FR 25038 (June 8, 1978).

Draft Regulatory Analysis.

Timetable

Final Rule—March 1979.

Agency Contact

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EEOC

Title

Recordkeeping regulations, extending the length of time certain records, already required to be kept, should be retained

Objectives and Benefits

The objective of the regulation is to require those organizations defined under "Sectors Affected" and subject

to the Equal Employment Opportunity, Commission's (EEOC) annual reporting requirements to maintain and preserve records of persons who filed a formal application, or in some informal way indicated a specific desire to be considered for employment, for 2 years, or until the termination of a Commission action or court proceeding. This will benefit the Commission by allowing it to secure specific and more adequate redress for the victims of discriminatory hiring or referral practices, especially in cases involving employment systems which exclude women and minorities.

Legal Authority

Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, § 709(c), 42 U.S.C. § 2000e-8(c).

Major Alternatives Under Study

There are no alternatives under consideration. This is a revision of existing regulations to further EEOC's enforcement capabilities and to create uniform recordkeeping requirements. At present, the Commission is utilizing a non-regulatory approach. In some instances, the Commission, subsequent to court actions, publishes "ads" in newspapers or uses other search methods in order to identify persons who may have been discriminated against by a particular organization. None of the present approaches is completely satisfactory and the Commission believes that requiring certain records to be kept for a longer period is a more efficient method for identifying persons who have been the victims of discrimination.

Sectors Affected

These regulations apply to all employers, labor organizations, state and local governments and educational institutions, as follows:

1. Employers whose workforce is 100 employees or more.
2. Joint labor-management committees which control apprenticeship programs that have five or more apprentices enrolled in the program at any time during August and September of the reporting year and represent at least one employer sponsor and at least one labor organization sponsor that are covered by Title VII.
3. Labor organizations that have 100 or more members at any time during the 12 months preceding the due date of the report and are "local unions" (as that term is commonly understood) or independent or unaffiliated unions.
4. State and local governments and every political jurisdiction with 15 or more employees.
5. Public and private elementary and secondary school systems and districts with 15 or more employees.
6. Institutions of higher education, whether public or private, with 15 or more employees.

Estimate and Summary of Economic Effects

It is the opinion of the Commission that these regulations do not require a regulatory analysis. They do not have major economic consequences for the general economy, for individual industries, geographical regions, or levels of governments. This opinion is based upon the following rationale:

1. The vast majority of medium-size and large-size employers covered by these regulations have personnel departments or offices where persons make formal written application for work or submit résumés in response to Help Wanted Advertisements. The requirements to maintain applicant flow data will, therefore, not require any business to increase personnel in processing application data.
2. Since private employers and labor unions covered by § 709(c) of Title VII of the Civil Rights Act of 1964, as amended, are currently required to maintain applications and other records for a period of 6 months, the requirements of these regulations to maintain those records for an additional 18 months will not impose an additional significant burden upon those private employers and labor unions.
3. State and local governments, public elementary and secondary schools, and institutions of higher education have been required to keep equal employment opportunity (EEO) information for 3 years. Under the new regulations, they are required to do this for only 2 years. Under our current regulations these employers are also already required to maintain for 2 years the applications and résumés submitted by jobseekers. This will remain unchanged.

Related Regulations or Actions

Internal: Reporting and recordkeeping; employer information report and recordkeeping; apprenticeship information report and recordkeeping; state and local governments information report and recordkeeping; elementary-secondary school systems, districts, and individual schools' recordkeeping; higher education information report and recordkeeping. 29 CFR Part 1602.

External: Reporting forms are submitted to the Office of Management and Budget annually. Most EEO reporting forms are used jointly with other Federal agencies (e.g. EEO-1 report form is a joint form with the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) and EEO-5 report form is a joint form with the Department of Health, Education and Welfare's Office for Civil Rights, and the National Center for Education Statistics).

Active Federal Collaboration

The Commission held public hearings on the proposed regulations on September 21, 1978. Prior to the public hearings, EEOC met with OFCCP to discuss the proposed regulations. The Commission received and is considering comments from the United States Civil Service Commission and OFCCP. The Commission also sent copies of the proposed regulation to all state and local Fair Employment Practices agencies for comment.

Available Documents

29 CFR Part 1602, "EEOC Reporting and Recordkeeping."

NPRM—43 FR 32280 (July 25, 1978).

EEOC Report on the Determination of Non-Requirement for Regulatory Analysis of Amendments to 29 CFR Part 1602.

Timetable

Final Rule—Spring 1979.

Agency Contact

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VA

Title

Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

Objectives and Benefits

The regulations will define and forbid acts of discrimination against qualified handicapped individuals in employment and in the operation of programs and activities receiving assistance from the Veterans Administration. The nondiscrimination requirement will extend to the entire range of the medical care, rehabilitation, education, housing and other programs of the Veterans Administration. If incidents of discrimination are found, the Veterans Administration may seek to resolve them through voluntary compliance, terminating financial assistance or other means that may be available under appropriate laws.

Legal Authority

The Rehabilitation Act of 1973, § 504, 29 U.S.C. § 794 (1974).

Executive Order No. 11914, 41 FR 17871 (1975).

HEW Guidelines on Rehabilitation, 3 CFR 308.53.

Major Alternatives Under Study

This regulation will implement the requirements of the Rehabilitation Act, the Executive Order and HEW guidelines. There are no major alternatives under study.

Sectors Affected

This regulation will affect all programs and activities receiving funds from the Veterans Administration, either directly or through their participants. This may include institutions receiving VA grants for education or research; educational institutions whose students receive VA educational benefits; financial institutions participating in VA home, farm and business loan programs; and employees and institutions participating in VA employment and training programs.

Estimate and Summary of Economic Effects

We believe that the economic effects of this regulation will be minimal. The greatest cost is likely to be involved in resolving those problems which may require structural changes to buildings. In those cases we expect to follow the guidelines established by the Department of Health, Education and Welfare.

Related Regulations or Actions

Internal: None.

External: Department of Health, Education and Welfare, "Nondiscrimination on Basis of Handicap, Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 3 CFR 308.53.

Active Federal Collaboration

VA's regulations will be similar to those issued by HEW, except as necessary to meet specific VA organizational, procedural, or program requirements. We expect to divide the enforcement responsibility between the VA and HEW to eliminate duplication. This would parallel the delegations of responsibility with regard to Title VI of the Civil Rights Act of 1964, where HEW has responsibility for institutions of higher learning, public schools, hospitals, and other health facilities, and the VA is responsible for proprietary schools.

Available Documents

NPRM—86 FR 19166 (May 3, 1978).

Timetable

Final Rule—February 1979.

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VA

Title

Implementation of the Veterans' Disability Compensation and Survivors' Benefits Act of 1978

Objectives and Benefits

The regulations provide for increases in service-connected disability compensation, the clothing allowance, the service-connected and nonservice-connected burial allowance, the Medal of Honor pension, dependency and indemnity compensation payable to children and surviving spouses, and the automobile allowance. In addition, dependency and indemnity compensation is now payable to a surviving spouse or child of a veteran who died of nonservice-connected causes, provided the veteran was continuously rated totally disabled for a period of 10 or more years immediately preceding death, or was continuously rated totally disabled from date of discharge from active duty until death for a minimum period of five years. Also, veterans in receipt of disability compensation for service-connected disablement evaluated as 30 percent or more disabling are eligible to receive additional amounts for dependents. Formerly, only veterans evaluated as 50 percent or more disabled received additional amounts for dependents.

Legal Authority

Veterans' Disability Compensation and Survivors' Benefits Act of 1978, 38 U.S.C. §§ 314, 315, 362, 410, 411, 414, 415, 562, 902, 903, 906, 3101, 3203.

Major Alternatives Under Study

None. The provisions of the law are very specific and leave no room for alternative approaches.

Sectors Affected

This regulation will affect veterans in receipt of disability compensation, surviving spouses and children in receipt of dependency and indemnity compensation, those persons who are responsible for payment of a deceased veteran's burial expenses and veterans in receipt of the Medal of Honor pension.

Estimate and Summary of Economic Effects

The cost for fiscal year 1979 is estimated to be $563.4 million. This sum will be paid in increased monthly benefits, except for burial benefits which are paid as reimbursement for burial expenses.

Related Regulations or Actions

None.

Active Federal Collaboration

None.

Available Documents

House Report No. 95-1226.

Senate Report No. 95-1054.

Congressional Record, September 26 and October 2, 1978.

Weekly compilation of Presidential Documents, Vol. 14, No. 42.

ANPRM—43 FR 55420 (November 28, 1978).

Timetable

Final Rule—February 1979.

Agency Contact

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VA

Title

Implementation of the Veterans' and Survivors' Pension Improvement Act of 1978

Objectives and Benefits

This regulation is intended to establish an improved program of income maintenance to eligible veterans and survivors of veterans. The program is structured so as to guarantee a level of income. For example, the maximum annual rate of pension for a veteran without dependents is $3,550. The Veterans Administration would pay the veteran the difference between his or her other income and $3,550.

Legal Authority

Veterans' and Survivors' Pension Improvement Act of 1978, 38 U.S.C. §§ 101, 415, 501, 503, 506, 512, 521, 522, 536, 541, 542, 543, 544, 3012(b), 3112, 3203(a).

Major Alternatives Under Study

None. The provisions of the law are very specific and leave no room for alternative approaches.

Sectors Affected

This regulation will affect veterans who served during a period of war (i.e. the Mexican border period, World War I, World War II, the Korean conflict and the Vietnam era) and their surviving spouses and children.

Estimate and Summary of Economic Effects

The cost for fiscal year 1979 is $523.4 million. Benefits will be paid monthly to eligible veterans and surviving spouses and children of deceased veterans.

Related Regulations or Actions

None.

Active Federal Collaboration

None.

Available Documents

House Report 95-1225.
Senate Report 95-1016.
Conference Report 95-1768.
Congressional Record Vol. 124.
NPRM—January 1979. (Full citation not available at time of Calendar publication).

Timetable

Final—March 1979.

Agency Contact

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CHAPTER 3—NATURAL RESOURCES

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DOC-NOAA

Title

Regulations implementing a fishery management plan for the groundfish fishery for the Bering Sea/Aleutian Island area under the Fishery Conservation and Management Act of 1976

Objectives and Benefits

This regulatory action is being developed under the authority of the Fishery Conservation and Management Act of 1976 (FCMA), 16 U.S.C. § 1801 *et seq.*, which established a National Fishery Management Program for the conservation and management of fishery resources subject to exclusive U.S. management authority. This program was declared by Congress as necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, and to realize the full potential of the nation's fishery resources. To meet these objectives, the National Fishery Management Program calls for the preparation of fishery management plans (FMPs) by the eight Regional Fishery Management Councils (the Councils) or, under certain conditions, by the Secretary of Commerce (the Secretary), and for the review, approval, and implementation of these FMPs by the Secretary. Each Council is required to prepare an FMP for each fishery within its geographical area of authority. Enforcement of the FCMA, including the provisions of approved FMPs and promulgated regulations, are the joint responsibilities of the Secretary and the Secretary of Transportation (who oversees the operations of the Coast Guard).

The FCMA established seven National Standards to be applied by the Councils and the Secretary in the preparation and review of any FMP and in the promulgation of regulations to implement FMPs. The National Standards require that FMPs: (1) be designed to achieve the optimum yield of a stock of fish on a continuing basis; (2) be based upon the best scientific information available; (3) be designed to manage individual stocks of fish as a unit throughout its range; (4) be nondiscriminatory between residents of different states; (5) be designed to promote efficiency in harvesting techniques or strategies; (6) be designed to take into account the variability of fishery resources and the needs of fishermen, consumers, and the general public; and (7) be designed to minimize management and enforcement costs. Optimum yield is based upon the maximum sustainable yield (MSY) of a fishery modified by relevant economic, social, or ecological factors. MSY is an average over a reasonable length of time of the largest catch which can be taken continously from a stock under current environmental conditions.

The FCMA also provides for the harvest by foreign fishing fleets of that portion of the optimum yield of a fishery which U.S. fishermen are unable to catch. In order to participate in a U.S. fishery in the Fishery Conservation Zone (FCZ) a foreign vessel must have a permit issued by the Secretary. Each permit contains a statement of the conditions and restrictions with which the foreign fishing vessel must comply.

The North Pacific Fishery Management Council (the Council) has developed an FMP for the groundfish fishery of the Bering Sea/Aleutian area off the coast of Alaska. The stocks covered by this FMP are Pacific ocean perch, pollock, Pacific cod, yellowfin sole, turbots, sablefish, other flounders and flatfish, atka mackerel, squid and "other species." Specific management objectives identified by the Council for this fishery are as follows: (1) to rebuild the halibut stock by restricting the incidental catch of juvenile halibut in the groundfish fishery; (2) to rebuild depleted ocean perch and sable fish stocks to levels of abundance that will produce the maximum sustainable yield; (3) to provide an opportunity for U.S. involvement in the Bering Sea/Aleutian groundfish fishery; and (4) to allow foreign participation in the fishery consistent with objectives 1, 2 and 3.

The Council will propose fishery management measures such as quotas, gear restrictions, fishing area closures and vessel permit requirements to achieve the management objectives.

Attainment of the management objectives will result in economic and biological benefits. Although the economic benefits cannot be easily quantified, the preferential U.S. allocation of groundfish allows opportunity for expansion of U.S. harvests as rapidly as the private sector is willing to invest in the fishery. The U.S. allocation will permit the continued harvest of groundfish, which are used as crab bait, as well as the implementation of pilot projects for food fish production. If these projects are successful, there may be an opportunity for expansion of U.S. exports of seafood products.

A biological benefit of rebuilding depleted fish stocks is the maintenance of a large amount of genetic variability in the stock to increase its chances of adapting to changes in the environment. In addition, there is the benefit of stabilizing the fishable population to reduce the likelihood of sharp yearly variations in harvest.

Economic benefits are expected from the rebuilding of stocks to levels of high abundance or to MSY levels. First, there are potential reductions in the cost of harvesting fish because of larger catches per unit of effort (i.e., greater productivity). Second, there is a strong consumer demand for halibut products, which are probably the most valuable flatfish (over $1.00 per pound exvessel, i.e., the price that the fisherman receives for his catch) presently caught by the U.S. fleet in the FCZ. A rebuilt stock, under proper management, will enable the catch of the fishery to expand and increase the supply for the U.S. consumer.

Legal Authority

The Fishery Conservation and Management Act of 1976, 16 U.S.C. § 1801 *et seq.*

Major Alternatives Under Study

In the process of preparing an FMP, the Council considers alternative management options which are expected to lead to the attainment of the plan's objectives. Before making a final decision on a particular set of management options, the Council develops a draft FMP and solicits, through public hearings or other appropriate means, the advice and recommendations of all interested persons, including states, commercial and recreational fishery interests, consumer groups, and environmental organizations. After the Council selects the preferred management options, it prepares a final FMP for submission to the Secretary for review, approval and implementation.

Alternative management measures considered by the North Pacific Council for this groundfish FMP include: (1) different levels of optimum yield which determine the rate of stock rebuilding and allocations of fish amoung U.S. and foreign fleets; (2) area closures for vessels using different types of gear in order to reduce incidental catches of juvenile halibut; (3) permit requirements for U.S. vessels; and (4) gear restrictions. The Council has not made a final decision on the alternative management options it will select.

Sectors Affected

The sectors of the Alaska economy most directly affected by this FMP are domestic fishermen and processors. In addition, the fishing fleets of Japan, Poland, Taiwan, Republic of Korea, and the Soviet Union, which combined may harvest between 92-98 percent of the catch allowed by this FMP, will be affected.

Estimate and Summary of Economic Effects

At present, there is insufficient information to estimate the economic effects of this FMP on U.S. fishermen and processors. Projections of domestic catches are not reliable for these fisheries because there has been only a limited amount of effort directed at the harvesting of groundfish in the Bering Sea/Aleutian area by U.S. fishermen. The total domestic commercial groundfish catch in the Bering Sea/Aleutian Island Area for 1978 was estimated to have been no more than 1500 metric tons, valued at $165,000. The estimate of the annual optimum yield for this fishery is 1,443,500 metric tons. The expected U.S. catch in 1979 is estimated at 24,600 metric tons. The initial total allowable level of foreign fishing (TALFF) for the same period has been set at 1,346,475 metric tons. A reserve of 72,425 metric tons has been set aside for reallocation during the year to the U.S. fleet if its catch is expected to exceed the initial estimate of 24,600 metric tons. If the U.S. fleet does not show any interest in the reserve, it will be allocated to foreign fleets later in the year.

Under the provisions of the FCMA, 16 U.S.C. § 1824(b)(10), the Secretary is authorized to collect fees from foreign nations fishing in the FCZ. These fees, which are forwarded to the Department of Treasury, partially offset the costs of management, research, administration and enforcement. The expected Federal revenue in 1978 from fees, fines and penalties in this fishery was estimated at $8 million. In 1979, this figure may approach $9 million.

The annual costs of implementing and enforcing the regulations under this FMP are estimated at $5 million, of which about 80% is attributed to Coast Guard ship and aircraft patrols.

Related Regulations or Actions

Internal: Provisions of the Marine Mammal Protection Act of 1972, 16 U.S.C. § 1361 *et seq.*, have a bearing on this FMP through restrictions on killing or harassing of seals and sea lions (50 CFR Part 216), which may prey on fish already captured in nets. Necessary precautions to avoid such events may have a marginal effect on the efficiency of fishing operators.

Juvenile halibut often migrate between the Gulf of Alaska and the Bering Sea/Aleutian Island areas. As a result, these halibut may be harvested in trawl nets incidental to fishing for other species in the groundfish fishery. The North Pacific Fishery Management Council is preparing an FMP for the halibut fishery which is expected to take into account management measures in the groundfish FMP. The halibut FMP will regulate the halibut fishery in the Gulf of Alaska, which is presently managed by the International Pacific Halibut Commission (IPHC). This FMP is being prepared because the United States plans to withdraw from the IPHC in 1979.

External: The Alaska Department of Fish and Game and the Alaska Limited Entry Commission issue state regulations which control the harvest of fishery resources in territorial waters (0-3 miles) off the coast of Alaska.

Active Federal Collaboration

Comments on this FMP were requested from the Environmental Protection Agency, the Marine Mammal Commission, and the Departments of State, Agriculture, Transportation, and the Interior.

Available Documents

The Draft Environmental Impact Statement and Fishery Management Plan for the Groundfish Fishery in the Bering Sea/Aleutian Island Area may be obtained from either:

North Pacific Fishery Management Council
P.O. Box 3136DT
Anchorage, Alaska 99501

or

National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Department of Commerce
Plan Review Division, F36
Washington, D.C. 20235

Timetable

End of public comment period on the draft FMP—January 1979.
Council adopts FMP—February 1979.
FMP submitted for Secretarial review—March 1979.
Secretarial approval of FMP—May 1979.
NPRM—May 1979.
Final Rule—July 1979.

Agency Contact

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DOC-NOAA

Title

Regulations implementing a fishery management plan for the stone crab fishery in the Gulf of Mexico Fishery Conservation Zone (FCZ) adjoining the West Coast of Florida from the Florida-Alabama line southward to and including the Florida Keys under the Fishery Conservation and Managment Act of 1976

Objectives and Benefits

This regulatory action is being developed under the authority of the Fishery Conservation and Management Act of 1976 (FCMA), 16 U.S.C. § 1801 *et seq.*, which established a National Fishery Management Program for the conservation and management of fishery resources subject to exclusive U.S. management authority. This program was declared by Congress as necessary to prevent overfishing, to rebuild overfished stocks, to ensure conservation, and to realize the full potential of the nation's fishery resources. To meet these objectives, the National Fishery Management Program calls for the preparation of fishery management plans (FMPs) by the eight Regional

Fishery Management Councils (the Councils) or, under certain conditions, by the Secretary of Commerce (the Secretary), and for the review, approval and implementation of these FMPs by the Secretary. Each Council is required to prepare an FMP for each fishery within its geographical area of authority. Enforcement of the FCMA, including the provisions of approved FMPs and promulgated regulations, are the joint responsibilities of the Secretary and the Secretary of Transportation (who overseas the operations of the Coast Guard).

The FCMA established seven National Standards to be applied by the Councils and the Secretary in the preparation and review of any FMP and in the promulgation of regulations to implement FMPs. The National Standards require that FMPs: (1) be designed to achieve the optimum yield of a stock of fish on a continuing basis; (2) be based upon the best scientific information available; (3) be designed to manage individual stocks of fish as a unit throughout its range; (4) be nondiscriminatory between residents of different states; (5) be designed to promote efficiency in harvesting techniques or strategies; (6) be designed to take into account the variability of fishery resources, and the needs of fishermen, consumers, and the general public; and (7) be designed to minimize management and enforcement costs. Optimum yield (OY) is based upon the maximum sustainable yield (MSY) of a fishery, modified by relevant economic, social, or ecological factors. MSY is an average over a reasonable length of time of the largest catch which can be taken continuously from a stock under current environmental conditions.

The Gulf of Mexico Fishery Management Council (the Council) has developed an FMP for the stone crab fishery in the Gulf of Mexico FCZ adjoining the West Coast of Florida from the Florida-Alabama line southward to and including the Florida Keys. Specific management objectives identified by the Council for the stone crab fishery are as follows: (1) provide for orderly conduct of the stone crab fishery in the management area to reduce conflict between stone crab fishermen and other fishermen; (2) establish an effective fishery statistical reporting system for monitoring the stone crab fishery; (3) attain full utilization of the stone crab resource in the management area; and (4) promote uniformity of regulations throughout the management area.

The principal reason for developing this FMP derived from the need to mitigate gear, i.e., equipment, conflicts between stone crab and shrimp fishermen in the Dry Tortugas shrimp nursery area off the Southwest Coast of Florida. The problem of gear conflicts became serious in 1976 as a result of a poor shrimp season along the South Atlantic coast and the displacement of U.S. shrimp fishermen from foreign waters by nations that extended their fisheries jurisdiction. These events led to an influx of shrimp fishermen into the Dry Tortugas nursery area, which historically had been fished primarily by stone crab fishermen. This situation was exacerbated by a Supreme Court ruling which redefined Florida's seaward boundary in the Gulf of Mexico and disrupted the provisions of the Florida nursery area statute (*United States* v. *Florida*, 420 U.S. 531, 95 S. Ct. 1162, 43 L. Ed. 2d 375 (1975)). This decision limited the area in which Florida had management authority to a territorial sea of nine nautical miles; the Dry Tortugas nursery area, however, extends beyond nine nautical miles. The management effect of this decision, coupled with the influx of shrimp fishermen, set the stage for major gear conflicts. An additional factor that may further intensify the conflict is the expected expansion of the stone crab fishery beyond the boundaries of the Dry Tortugas nursery area.

The economic benefits of this FMP stem from a proposed boundary line separating stone crab and shrimp fishermen at specified times during the fishing season. These benefits include: the expectation of larger catches of stone crabs and shrimp, increases in revenues to fishermen from these fisheries, and potential reductions in gear losses.

Biological benefits of this FMP include: (1) maintenance of an adequate reproduction potential for the stone crab stock; and (2) reduction of mortalities for declawed crabs which are returned to the water.

The statistical reporting system is expected to improve the data base for developing MSY and OY estimates and also for evaluating the effectiveness of the FMP.

Legal Authority

The Fishery Conservation and Management Act of 1976, 16 U.S.C. § 1801 *et seq.*

Major Alternatives Under Study

In the process of preparing an FMP, the Council considers alternative management options which are expected to lead to the attainment of the plan's objectives. Before making a final decision on a particular set of management options, the Council solicits, through public hearings or other appropriate means, the advice and recommendations of all interested persons including states, commercial and recreational fishery interests, consumer groups, and environmental organizations. After the Council selects the preferred management options, it prepares a final FMP for submission to the Secretary for approval and implementation.

In order to achieve the objectives identified in the stone crab FMP, the Council analyzed different management measures concerning size restrictions, harvest practices, fishing seasons, gear restrictions, vessel permit requirements, information reporting systems, and areas in the FCZ closed to fishing during certain periods of the fishing season. Additionally, different options were considered within each management measure category. For example, alternative harvest practices that were considered include: the landing of whole crabs, the taking of one claw, return of declawed crabs to the water, and prohibitions on the harvest of female and egg bearing crabs.

Sectors Affected

Sectors of the Florida economy directly affected by these regulations include fishermen, processors, restaurants, and consumers.

Estimate and Summary of Economic Effects

The adoption of a boundary line separating shrimp and stone crab harvesting is expected to have an economic impact on both groups of fishermen. Excluding shrimp trawling inside the boundary line at specified times during the fishing season is expected to eliminate the annual stone crab gear loss of 15,000 traps (due to gear conflicts), at an estimated value of $75,000. The reduced risk of trap loss will tend to increase stone crab harvesting efforts and provide fishermen with a greater choice in trap placement.

As a result of additional effort in this fishery, stone crab landings in 1979 are expected to be 2,175,000 pounds, an increase of 75,000 pounds above the 1978 catch. The value of landings in 1979 is estimated at $3,850,000, which is an increase of $28,000 above the 1978 value of $3,822,000. The exvessel price, i.e., the price that the fisherman receives for his catch, of crab claws may drop by 3 percent based on the projected increase in landings, all other factors held constant. It is possible that the price decline may be less than 3 percent if income (current dollars) rises in 1979. Price changes at the consumer level cannot be estimated because of insufficient data.

In the shrimp fishery, the impact of the boundary line and area closures involves both a poundage and value effect. The basic premise is that some of the shrimp not allowed to be harvested inside the boundary line during the closed period will be caught outside the line or may be caught inside

the line when the closure ends. The catch in the management area of shrimp in 1979 is estimated to be 1,000,000 pounds, compared to the 1978 catch of 300,000 pounds.

The value effect is based on the premise that shrimp allowed to develop inside the line during the closure will increase in size and weight and, therefore, will be more valuable. The value of the expected catch in 1979 is estimated at $2,510,000, an increase of $1,757,000 above the 1978 value of $753,000. Because the quantity of shrimp harvested in the management area is relatively small compared to the total annual U.S. supply (0.1 percent), the effect on U.S. shrimp prices would be negligible.

The Council has proposed the requirement of degradable panels on non-deteriorating stone crab traps. The compliance cost for stone crab fishermen is estimated at $26,000 annually.

The annual cost of the information reporting system incurred by NOAA is estimated at $15,000.

The annual cost of implementing the boundary line between stone crab and shrimp fishermen is estimated at $178,000. These costs are attributed to Coast Guard patrols by both boats and helicopters.

Related Regulations or Actions

Internal: NOAA has promulgated regulations covering marine mammals (manatees), 50 CFR Parts 1711 and 1721, and endangered species (green turtles) 50 CFR Parts 220, 222, 227, 1711, and 1721, which may be caught incidental to the stone crab fishery. Under provisions of the FCMA, the Council is developing a FMP for the Gulf of Mexico shrimp fishery.

External: The Bureau of Land Management, U.S. Department of the Interior, has issued regulations relating to the protection and management of viable coral communities located on the outer continental shelf, 43 U.S.C. § 1334. Certain Florida laws apply to the management of the stone crab fishery in the 0-9 mile territorial sea adjacent to the FCZ.

Active Federal Collaboration

Comments on the stone crab FMP have been requested from the Environmental Protection Agency and the Departments of State, Agriculture, Transportation, Energy, and the Interior.

Available Documents

The Draft Environmental Impact Statement and Fishery Management Plan for stone crabs is available from either:

Gulf of Mexico Fishery
Management Council
Lincoln Center, Suite 822
5401 W. Kennedy Blvd.
Tampa, Florida 33069

or

National Oceanic and Atmospheric
Administration
National Marine Fisheries Service
Plan Review Division, F36
Washington, D.C. 20235

Timetable

Council decision to adopt FMP—January 1979.

Council submits FMP for secretarial approval—February 1979.

Secretarial approval of FMP—April 1979.

NPRM—April 1979.

Final Rule—July 1979.

Agency Contact

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DOE-RA

Title

Outer Continental Shelf (OCS) sequential bidding regulations

Objectives and Benefits

The current Outer Continental Shelf (OCS) bidding process requires that all tracts be offered for sale at the same time, and it thus strains the financial resources of certain bidders. The primary purpose of this rulemaking is to increase competition for OCS leases by apportioning tracts among at least three bidding periods. This optional procedure for sequential bidding should reduce the capital constraints that affect smaller bidders more heavily.

Legal Authority

The Department of Energy Organization Act, 42 U.S.C. § 7101 *et seq;* and the Outer Continental Shelf Lands Act (OCSLA), as amended, 43 U.S.C. § 1337 *et seq.*

Major Alternatives Under Study

A major alternative under study is to permit bidders to submit a maximum aggregate winning cash bonus limit that would apply to a lease sale. This procedure would enable a firm to bid on all the sale tracts with the assurance that its winning bids will not exceed the stipulated total amount. A possible approach that may achieve results similar to sequential bidding is the holding of OCS lease sales, each with a similar number of tracts, more frequently. In order to reduce a firm's financial exposure as effectively as sequential bidding, approximately 18-24 sales would have to be scheduled each year (i.e., a sale every two or three weeks).

Sectors Affected

This rulemaking primarily affects oil and gas companies.

Estimate and Summary of Economic Effects

It is anticipated that the application of sequential bidding to an OCS lease sale would increase the revenue accruing to the government from that sale by an amount that cannot be estimated due to greater competition for leases.

Related Regulations or Actions

Internal: Current OCS lease sale bidding procedures administered by the Department of the Interior.

DOE is developing alternative bidding systems authorized by OCS Land Act Amendments of 1978.

External: None.

Active Federal Collaboration

Department of Interior, Department of Justice, Federal Trade Commission.

Available Documents

None.

Timetable

Final Regulation—Second quarter 1979.

Agency Contact

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DOE-RA

Title

Proposed Outer Continental Shelf (OCS) bidding systems regulations

Objectives and Benefits

It is anticipated that the regulations would adjust and improve the Federal Outer Continental Shelf (OCS) oil and gas leasing program. The primary purpose of the bidding systems that would be established by the regulations relate to (1) providing a fair return to the Federal government for its resources, (2) increasing competition for Federal leases, and (3) developing OCS oil and gas resources in an efficient and timely manner. The bidding systems include the terms under which payment for an OCS lease will be made by the winning bidders.

Legal Authority

The Department of Energy Organization Act, §§ 302(b)(2), 303(c)(1), 42 U.S.C. § 7152(b)(2) and (c); The Outer Continental Shelf Lands Act (OCSLA), as amended, § 8(a)(1), 43 U.S.C. § 1337(a)(1).

Major Alternatives Under Study

The proposed regulations create a regulatory framework; this framework is fundamental to the development and administration of a Federal OCS leasing program. The framework provides, at this time, options to use any combination of three proposed bidding systems under conditions stipulated by the OCSLA. There are no other acceptable regulatory alternatives that would satisfy responsibilities contained in the OCSLA and meet Congressional objectives for development of OCS resources through the use of alternative bidding systems.

Sectors Affected

These regulations primarily affect OCS oil and gas producers.

Estimate and Summary of Economic Effects

Issuance of these regulations is not expected to have an economic impact of any consequence because the promulgation of these regulations will not result in significant additional administrative costs to industry or government. The procedures for bidding and the requirements for reporting by lessees are unchanged. The Federal government's cost of administering leases once awarded will not increase. The procedural requirements imposed on the government by these regulations are not substantial.

Related Regulations or Actions

Internal: None.
External: Department of Interior regulations at 43 CFR subpart 3301.

Active Federal Collaboration

Department of Interior and Department of Justice.

Available Documents

None.

Timetable

Final Rules—Second quarter 1979.

Agency Contact

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DOE-ERA

Title

Amendments to entitlements program to reduce the level of benefits received under small refiner bias

Objectives and Benefits

The crude oil equalization ("entitlements") program roughly equalizes the cost to U.S. refiners of purchasing crude oil from various (price-controlled and non-price-controlled) sources. The Small Refiner Bias gives extra entitlements, and hence an extra subsidy, to small refiners. This program has resulted in a large number of inefficient small refineries being built or reactivated. The primary purpose of this rulemaking is to stop this trend and to mitigate other economic distortions caused by the bias. The Department of Energy (DOE) proposes to accomplish this by a reduction in the level of the subsidy, technical changes in the way the subsidy is calculated, and a grandfather clause to exclude all but existing refineries. The amendments should also reduce the cost (borne by large refiners and consumers) of providing the subsidy.

Legal Authority

Emergency Petroleum Allocation Act, 15 U.S.C. §§ 751 *et seq.*

Major Alternatives Under Study

DOE has proposed a specific level for the subsidy but will consider in this rulemaking a range anywhere between zero and the current level of the bias. A major alternative under study is to replace the Small Refiner Bias with a system called the Open Market Credit. This system would not be based on refinery size, but would provide incentives for crude oil to be traded in open market transactions so that refiners without their own crude supplies would not be at a disadvantage in obtaining them.

Sectors Affected

This program primarily affects oil refiners.

Estimate and Summary of Economic Effects

The projected reduction in the total annual benefits distributed under the Small Refiner Bias is $227 million (from $710 to $483 million). Since the subsidy is reduced most drastically for the smallest refineries, the existing disincentives to expand capacity are lessened by this amendment. The subsidy is financed from the entitlements revenues paid by refiners of price-controlled oil. Therefore, a reduction of the subsidy level will lower crude oil acquisition costs for large refiners and will tend to lower oil product prices in most markets. Some of the more inefficient refineries, which are encouraged by the current level of benefits, may find it no longer profitable to operate and may close or expand to a more efficient configuration.

Related Regulations or Actions

Internal: Small Refiners Exceptions Relief; Supplier/Purchaser Rule; Royalty Oil Disposition; Mandatory Oil Import Program; Mandatory Allocation (Buy/Sell) Program.
External: The Department of Defense has two programs to subsidize small refiners: the Small Business Set-Aside in Defense Supply Procurement and the Naval Petroleum Reserves Small Refiner Set-Aside.

Active Federal Collaboration

DOE has consulted the Federal Trade Commission on the Open Market Credit and the Department of Interior on the Royalty Oil Disposition.

Available Documents

Study of Refiner Costs ("Gordian Study").
NPRM—43 FR 54652 (November 22, 1978).
Regulatory Analysis.

Timetable

Final Rule—First quarter 1979.

Agency Contact

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DOE-ERA

Title

Amendments to impose the entitlements obligation on the first purchase of price-controlled domestic crude oil

Objectives and Benefits

The Crude Oil Equalization (Entitlements) Program roughly equalizes the cost to U.S. refiners of purchaser crude oil from various (price-controlled and non-price-controlled) sources. The first step of the operation involves imposing entitlements obligations on refiners who purchase domestic price-controlled crude, thereby raising the average price of their crude up to the average price of imported crude. The purpose of this rulemaking is to move this first step of the system from refiners to the first purchasers of domestic crude oil. In this way it will no

longer be necessary for DOE to track low-priced domestic crude oil from the producer to the refiner. Once the first purchaser has purchased the crude and paid the entitlement, domestic crude moving through the crude oil system will cost the same average price as imported crude.

Legal Authority

Emerency Petroleum Allocation Act, 15 U.S.C. § 757.

Major Alternatives Under Study

If the point at which entitlements obligations are incurred is not moved to the first purchaser, it will remain at the refiner level. This would require continuation of current reporting requirements and DOE audit efforts, all designed to track the domestic oil from the producer to the refiner.

Sectors Affected

This proposal will primarily affect crude oil resellers and refiners.

Estimate and Summary of Economic Effects

There should be no major increased costs to any sector of the industry as a result of this rulemaking. Since there are more first purchasers than refiners, an additional DOE effort may be required to ensure that entitlements obligations are met.

Related Regulations or Actions

Internal: Crude Oil Supplier/Purchaser Rule (DOE/ERA); Price Regulations on Crude Oil Resellers (DOE/ERA); Ceiling Prices on First Sales of Crude Oil (DOE/ERA). DOE is currently revising its supplier/purchaser rule.

External: None.

Active Federal Collaboration

None.

Available Documents

Notice of Inquiry—43 FR 15158 (April 11, 1978).

Timetable

NPRM—First quarter 1979.
Final Rule—Second quarter 1979.

Agency Contact

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DOE-ERA

Title

Deregulation of butane, natural gasoline, propane and other natural gas liquids

Objectives and Benefits

The current regulations under which the price and allocation of natural gas liquids (NGLs) are controlled were designed to cope with a national shortage situation. This shortage no longer exists and supplies of NGLs are ample. Continuation of regulations would result in unnecessary regulatory burdens being placed on industry with little apparent benefit to the economy. This deregulation is intended to remove those burdens and ensure the long-term availability of these fuels.

Legal Authority

Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 760(a).

Major Alternatives Under Study

Revisions to existing allocation regulations were published as a proposal in August 1977 and again in a revised proposal form in August 1978. The Federal Energy Regulatory Commission has not yet completed its review of these proposals. (Review is required under Section 404 of the DOE Organization Act.) Revisions to pricing regulations have also been proposed; further proposals are under study. The proposed revisions include: revision of product definitions to conform more closely to common industry usage; easing of restrictions on ethane-propane mixtures to allow more efficient use of this mixture, which is now in surplus supply; revision of allocation levels to reflect current market conditions; implementation of new procedures for assignment and adjustment of allocations to allow easier entry into the industry and more flexibility for the industry to respond to changing supply and demand conditions; procedures to allow for easier changes in mandated supplier/purchaser relationships to allow these relationships to track more closely the current market conditions; and clarifying limitations on use of the fuel.

Sectors Affected

Deregulation of NGLs would affect petroleum refiners and marketers, agricultural users of propane and petrochemical manufacturers.

Estimate and Summary of Economic Effects

The primary effects of deregulation would be beneficial. Reporting and compliance burdens on industry would be reduced, government expenditures on enforcement and litigation would be reduced, industry could plan with greater certainty and respond more flexibly to changes in market conditions, and adverse impacts on certain segments of the NGL retail market would be reduced. Since NGLs are no longer in a short-supply market situation, deregulation is not expected to have adverse consequences. A formal analysis of the impacts of decontrol will be made prior to issuance of regulatory actions.

Related Regulations or Actions

Internal: Deregulation of natural gas prices; simplification of crude oil price rules or deregulation; deregulation of motor gasoline and other petroleum products.

External: None.

Active Federal Collaboration

None.

Available Documents

NPRMs—42 FR 41242 (August 15, 1977); 43 FR 36264 (August 16, 1978); 43 FR 42984 (September 21, 1978).

Timetable

Final Rule—June 1979.

Agency Contact

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DOE-ERA

Title

Exemption of motor gasoline from mandatory petroleum allocation and price regulations

Objectives and Benefits

The Mandatory Petroleum Allocation and Price Regulations were originally imposed to deal with shortages of crude oil and refined petroleum products. These shortages no longer exist. In 1976, the Federal Energy Administration (DOE's predecessor) exempted from Mandatory Petroleum Allocation and Price Regulations petroleum products accounting for 45 percent of total product consumption. The exempted products included residual fuel oil, naphthas, lubricants, greases, petrochemical feedstocks, naphtha jet fuel, and middle distillates. Exemption of motor gasoline, which accounts for an additional 45 percent of petroleum product consumption, is the next logical step in the process of removing shortage-era controls. The exemption of motor gasoline from controls is expected to benefit the economy by allowing the petroleum industry to respond more

quickly and efficiently to changing market forces and to encourage needed investment in production, storage, and distribution capacity.

Legal Authority

Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 760(a).

Major Alternatives Under Study

Exemption of motor gasoline from Mandatory Petroleum Allocation and Price Regulations requires Congressional approval. If Congressional approval is not received, DOE may propose changes to these regulations to permit greater industry flexibility in responding to changing market conditions. These actions include: allowing refiners to recapture a greater share of total costs of producing all products from the sale of motor gasoline (motor gasoline tilt); allowing service station operators to pass through to consumers the costs of increased rents and vapor recovery systems; and changing the base period against which allowable costs and prices are calculated to reflect more adequately the changed market conditions and to reflect the current supplier/purchaser relationship.

Sectors Affected

Exemption of motor gasoline regulations or changes to these regulations would affect the petroleum refining industry, petroleum product wholesalers and retailers, and consumers of petroleum products.

Estimate and Summary of Economic Effects

Exemption of motor gasoline will not have an adverse impact on the availability of consumer goods and services, the Gross National Product, small businesses, supply and availability of energy resources such as fuel or feedstock for industry, overall consumer prices, or the unemployment rate.

Related Regulations or Actions

Internal: Standby Product Regulations (DOE).
External: None.

Active Federal Collaboration

None.

Available Documents

"Final Report: Findings and Views Concerning the Exemption of Motor Gasoline From the Mandatory Petroleum Allocation and Price Regulations," September 1977.

"Supplement to September 1977 Report: Findings and Views Concerning the Exemption of Motor Gasoline From the Mandatory Petroleum Allocation and Price Regulations," May 1978.

NPRM—41 FR 51832 (November 24, 1976).

Final Rule—42 FR 4416 and 42 FR 4419 (January 25, 1977).

Recission—42 FR 3036 (January 27, 1977).

NPRM—42 FR 40915 (August 12, 1977).

Timetable

Final Rule—First Quarter 1979.

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DOE-ERA

Title

Permanent revision of standby petroleum product allocation and price regulations

Objectives and Benefits

The objective of this regulation is to provide for permanent revisions of the product allocation and price program. These regulations would insure that all available petroleum supplies would be fairly and quickly allocated throughout the country, and that any shortage will not result in unreasonable price increases for petroleum products.

Legal Authority

Emergency Petroleum Allocation Act of 1973, P.L. 94-133, 89 Stat. 694, as amended; Energy Policy and Conservation Act, P.L. 94-163, 89 Stat. 871; Department of Energy Organization Act, P.L. 95-91, 91 Stat. 565.

Major Alternatives Under Study

Alternatives range from imposing strict government controls on the end uses to which allocated fuels could be put, to allowing the free market to allocate supply shortages in a mild shortage of limited duration.

Sectors Affected

All sectors of the U.S. economy would be affected. The necessary consequences of an allocation program would be for distributors and retailers to curtail deliveries to all their customers, causing cutbacks in commercial uses of petroleum, queues at gas stations, and possible shortages of home heating fuel.

Estimate and Summary of Economic Effects

Implementation of comprehensive controls would have major economic impacts. The nature of the impacts would depend on the duration and severity of the shortage. But these effects would not necessarily be more severe than the impacts of a shortage without an allocation program.

Related Regulations or Actions

Internal: Emergency Mandatory Crude Oil and Refinery Yield regulations; the program for U.S. participation in the international allocation of petroleum products; and the major gasoline rationing plan.
External: None.

Active Federal Collaboration

None.

Available Documents

Proposed "quick fix" standby product allocation and price regulation, 43 FR 29565 (July 10, 1978).

Final Rule "quick fix" standby product allocation, 44 FR 3928 (January 1, 1979).

Timetable

Final Rule (comprehensive permanent revision)—June 1979.

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DOE-BCS

Title

Energy performance standards for new buildings

Objectives and Benefits

The intent of this regulation is to reduce the amount of energy consumed in new buildings. One-third of all energy consumed in the U.S. is used to heat, cool, ventilate, and illuminate buildings. About 40 percent of this energy is wasted due to inefficient building designs and equipment.

The Department of Energy (DOE) is developing design energy consumption budget levels, measured in units of British Thermal Units of design energy consumption per square foot of floor space per year (Btu/sq ft/yr). These design energy budgets will take into account the differences in energy consumption required by climate and by different building functions. This regulation will require all new buildings to be designed to use no more energy than the corresponding energy budget.

Buildings designed to meet these energy budgets will consume about 40 percent less energy than recently-constructed buildings. This will corre-

spond to an energy savings of 3.2 quadrillion Btus per year by the year 2000 in addition to the energy savings expected from other building energy efficiency programs.

Legal Authority

Energy Conservation Standards for New Buildings Act of 1976, 42 U.S.C. §§ 6831-6840; Department of Energy Organization Act, § 304, 42 U.S.C. § 7101 *et seq.*

Major Alternatives Under Study

The legislated requirements of the Building Energy Performance Standards (the Standards) leave little leeway for alternatives. The main alternatives which must be considered deal with the way in which energy consumption is measured.

The energy consumption measured at the building site does not give any indication of the loss which occurred in transmitting the energy to the building site. The proportion of this loss varies by energy type. It takes about 7 percent more energy to deliver one Btu of oil to a building than one Btu of natural gas. Almost two Btus of energy are lost in delivering one Btu of electricity. These figures are national averages, and they can be higher or lower for specific localities depending on fuel availabilities, transportation distance and energy demand at each locality. Basing design energy budgets only on site energy consumption would overlook a significant amount of energy consumption. This was not considered to be an acceptable alternative.

The alternative used in the Proposed Standards is to develop multipliers which can be used to determine the energy actually consumed at the building site. The design energy consumption of each type of energy at the building site is multiplied by an appropriate Resource Utilization Factor (RUF), to account for energy losses due to conversion and transmission, and by a Resource Impact Factor (RIF), to account for the economic and environmental impacts that the use of such energy has on the nation. RUF factors have been determined for the nation as a whole; RIF and RUF factors for sections of the nation need to be developed.

One alternative to the use of RUFs and RIFs is to use marginal energy costs as multipliers of site energy. In a period of expanding energy consumption, the marginal cost of additional energy, which includes the costs of added energy facilities and the costs of energy conversion and transmission losses, is easier to determine for specific localities than are RUF and RIF values.

Sectors Affected

The Standards will affect the building construction industry. They will affect the general public in that the initial cost of buildings will increase, although decreased energy costs may compensate for this. The resale price of existing buildings may also be increased.

Estimate and Summary of Economic Effects

The cost of new commercial buildings will increase about 2.5 percent. The cost of residential buildings will increase slightly: the cost of a 1640 square foot one-story home will increase an average of $200. At a 10 percent real discount rate (which adjusts for the effects of inflation), the Standards may, by 1990, increase the Gross National Product by 0.1 percent, increase employment by 1.0 percent, and improve the balance of trade by 5 percent. The incremental cost of enforcement of the Standards may be about $22 million per year, compared to an estimated $38 million per year to enforce existing building energy standards.

Related Regulations or Actions

Internal: A Model Building Code is being developed which is prescriptive and component-oriented. The Standards are performance and whole-building oriented.

External: Minimum Property Standards for One and Two Family Dwellings, Department of Housing and Urban Development (HUD): Minimum Property Standards for Multifamily Dwellings, HUD Handbook 4910, Revision 5, April 1977; Proposed Increase in Thermal Insulation Requirements for the Minimum Property Standards for One and Two Family Dwellings, 43 FR 17371-17374 April 24, 1978; Farmers Home Administration, Form 424.1, 7 CFR Part 1804, Subpart A, Appendix D, Construction Standards.

Active Federal Collaboration

Department of Housing and Urban Development.

Available Documents

Phase One/Base Data for the Development of Energy Performance Standards for New Buildings (Final Report, PB-286 898; Climatic Classification, PB-286 900; Data Collection, PB-286 902; Residential Data Collection and Analysis, PB-286 899; Data Analysis, PB-286 901; Building Classification, PB-286 904; and Sample Design, PB-286 903), January 12, 1978.

ANPRM—43 FR 54512-54616 (November 21, 1978).

Timetable

NPRM—February 1979.

Public Hearings—April 1979.

Final Rule—August 1979.

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DOE-ERA

Title

Final rules with respect to the Department of Energy's contingency gasoline rationing plan

Objectives and Benefits

The objective of these rules is to provide a standby rationing plan that would be available for use in the event of a severe gasoline supply shortage. This plan should guarantee enough gasoline for essential travel while distributing remaining supplies as fairly and simply as possible.

Legal Authority

The Energy Policy and Conservation Act, P.L. 94-163, § 203(a)(1), 89 Stat. 871.

Major Alternatives Under Study

A great many specific alternatives are under consideration, but the key issue is whether a fixed number of ration coupons should be allocated to each licensed automobile or each licensed driver. The free market option of imposing an emergency tax (with or without a simultaneous rebate) was not considered, because P.L. 94-163, § 203(s)(1) specifically states that "The President shall prescribe, by rule * * * a rationing contingency." This requirement precludes consideration of alternative contingency plans in lieu of rationing.

Sectors Affected

This contingency rationing plan affects the entire nation. It will especially affect commercial and personal transportation patterns, and some sectors (e.g., the tourist industry) may be more heavily affected than others.

Estimate and Summary of Economic Effects

Compared to the adverse economic impacts which would result from a major petroleum supply interruption without any Federal response, gasoline rationing would cause a slight improvement in employment and Gross National Product. It would prevent panic queuing and ensure that all sectors would receive a fair share of the available supplies.

Related Regulations or Actions

Internal: 10 CFR Parts 210 and 211 (allocation regulations) apply except where inconsistent with the provisions of this rationing program. Regulations are being developed, required by P.L. 94-163, that will prescribe criteria for delegation of Presidential functions with respect to the rationing contingency plan to officers or local boards of states or political subdivisions thereof.

External. None.

Active Federal Collaboration

None.

Available Documents

Draft Environmental Assessment (GPO-DOE/ERA 0035).

Draft Economic and Regulatory Analysis (GPO-DOE/ERA 0009).

NPRM—43 FR 28134 (June 28, 1978).

Timetable

Final Rule—April 1979

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DOE-ERA

Title

Final rules implementing the Fuel Utilization Act of 1978

Objectives and Benefits

The Powerplant and Industrial Fuel Utilization Act of 1978 bans the use of oil and gas in all new power plants and industrial boilers in excess of 100 million British Thermal Unit (Btu) capacity or in aggregations of boilers which total 250 million Btu capacity, unless specifically exempted from the program. In addition, DOE has the power to require certain existing oil and gas burning facilities to burn coal or alternate fuels. Increased use of natural gas by electric utilities is prohibited, and use of natural gas in existing powerplants is generally banned after 1990. Exemption from both of these authorities may be granted on a number of grounds, most notably in cases where the cost of using alternate fuels substantially exceeds the cost of using imported oil. DOE proposes to prohibit powerplants which have burned coal in 1977 from increasing their use of petroleum without a permit.

The program is expected to save between 300,000 and 450,000 barrels of oil per day by 1985 without significantly affecting air quality. In addition to the projected fuel savings, and the resulting reduced dependence on imports, the program's major goals include: modernizing existing and new powerplants and major fuel-burning installations, expanding the use of synthetic fuels, and assuring that adequate supplies of natural gas are available for agricultural uses.

Legal Authority

The Powerplant and Industrial Fuel Utilization Act of 1978, P.L. 95-620, 92 Stat. 3289.

Major Alternatives Under Study

The rulemaking under the Fuel Use Act will require numerous decisions on various aspects of the program. The structure and cost hurdle used in the cost test for exemptions from the statutory prohibitions are the most important. DOE is considering two alternative methodologies for the cost test. One employs a direct cost increment to the price of imported oil as the operational definition of when the cost of using alternate fuels "substantially exceeds" the cost of using imported oil. The other employs a percentage increase for the same purpose.

DOE is also considering several alternatives for implementing the environmental exemption and the capital availability exemption. DOE may require EPA or the states to deny an environmental permit for coal or other alternative fuels before granting an environmental exemption, or DOE may decide on the exemption before or during the environmental permitting process. Regarding capital availability, DOE may grant an exemption on these grounds when the incremental capital required to use an alternate fuel is a substantial percentage of the firm's average capital budget. Alternatively, DOE may require the firm to seek the needed capital from specified private and public sources before applying for the exemption.

Sectors Affected

Implementation of this program is expected to affect the electric utility sector and many industrial sectors. The extent to which any particular industrial group would be affected depends on the rate of growth in that group, it's reliance on boilers of 100 million Btu capacity or greater for its energy needs, and DOE's treatment of exemptions.

Estimate and Summary of Economic Effects

The economic effects of this program are primarily dependent upon the cost test which will be used to exempt facilities. It is evident that companies affected by the program will experience increased capital investment but can expect a reduction in operating costs in the long run. Depending on the extent of industrial expansion in the near term, capital markets may also be affected, but this is unlikely. The regulatory analysis further indicates that the annual impact on real Gross National Product (GNP) will not exceed a decline of about 0.1 of 1 percent of total predicted GNP, or approximately $1.6 billion per year in an economy which is estimated to be about $2 trillion. The Regulation is expected to increase the inflation rate by 0.17. The regional impact will be the most severe in the Southwest, because of the large use of natural gas by utilities.

Related Regulations or Actions

None.

Active Federal Collaboration

Environmental Protection Agency and the Federal Trade Commission.

Available Documents

NPRM—43 FR 53974 (November 17, 1978).

NPRM—43 FR 54912 (November 22, 1978).

NPRM—44 FR 1694 (January 5, 1979).

Analysis Memorandum, Analysis of Proposed U.S. Department of Energy Regulations Implementing the Powerplant and Industrial Fuel Use Act, November 1978, DOE/EIA-0102/21.

Timetable

Final Rules—April 1979.

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HUD

Title

Regulations establishing departmental procedures for implementing Executive orders on floodplain management and wetlands protection

Objectives and Benefits

Because building and growth are allowed in floodplain areas, millions of dollars in property losses occur when flooding takes place. Similar problems have occurred in wetlands areas. These regulations will set out the procedures to be followed by HUD to avoid, to the extent possible, the long and short-term adverse effects associ-

ated with the occupancy and modification of floodplains and the direct or indirect support of floodplain development. The benefits of these regulations would be prevention of Federally-supported development in floodplain areas and reduction of the need for structured works to protect such areas.

Legal Authority

Executive Order 11988, Floodplain Management, 42 FR 26951 (May 24, 1977); the National Flood Insurance Act of 1968, as amended, 42 U.S.C. § 4001 *et seq.*, Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. § 4001 *et seq.;* National Environmental Policy Act of 1969, as amended, 42 U.S.C. § 4321 *et seq.;* Executive Order 11990, Protection of Wetlands, 42 FR 26961 (May 24, 1977).

Major Alternatives Under Study

The Department is reviewing various procedures and approaches for carrying out the executive orders. One alternative under consideration responds to the requirement in Executive Order 11988 that Federal agencies exercise leadership in reducing flood risk. This will require minimizing flood hazards to a level higher than that of a flood which has a 1 percent chance of occurring in any given year, i.e., 100 year flood standard.

The Department is also attempting to identify the most time- and cost-effective methods for involving the public in the decision-making process, such as through public hearings, FEDERAL REGISTER notices, newspaper publication and other mechanisms.

Sectors Affected

Since these regulations affect applicants for departmental grants and other financial assistance, there may be significant impacts on state and local governments. The Order's floodplain and wetland avoidance requirements and mitigation measures will also affect the building industry and could affect the owners of undeveloped floodplain or wetlands property.

Estimate and Summary of Economic Effects

HUD is studying the projected costs of compliance with the President's orders. The actual cost of compliance will, under most departmental grant programs, be borne by Federal funds. Private contract lessors and others furnishing structures for use by the Federal government, or for use by federally-funded programs, will be affected by the regulations. The costs to these parties may increase, but the total amount of any increase is still unknown. Specific economic impacts have been developed through HUD and U.S. Water Resources Council (WRC) research. Annual flood losses are now estimated to approach $3 billion and are continuing to rise (WRC estimate).

A less restrictive approach than that required by the Floodplains Management Order is estimated by HUD to be capable of holding flood losses in 1980 to 23 percent lower than a "no regulation" approach. The estimate for 1990 is 61 percent lower than with no regulation. This discrepancy between the regulation and non-regulation approaches will widen, with annual losses decreasing over the long term.

Related Regulations or Actions

Internal: Executive Order 11988 is the Federal counterpart to the Federal Insurance Administration's (FIA) National Flood Insurance Program (NFIP). The Order sets floodplain management standards for the Federal government, while the NFIP sets similar, though less comprehensive and less stringent, standards for local government. The NFIP standards are the basis for the provision of subsidized flood insurance in flood hazard areas. These areas are being systematically mapped by the FIA. Executive Order 11988 references these maps as the main source of flood hazard information for its implementation.

External: The Department of the Interior is presently identifying all wetlands areas. The Corps of Engineers under Section 404 of the Federal Water Pollution Control Act Amendments of 1972 has adopted regulations governing dredge and fill activities in wetlands.

The executive orders direct all Federal agencies to adopt regulations governing their own activities affecting floodplains and wetlands.

Active Federal Collaboration

Federal Insurance Administration, Water Resources Council, and Council on Environmental Quality.

Available Documents

Water Resources Council Guidelines;

Flood Insurance Study Reports;

Flood Insurance Rate Maps, and Flood Hazard Boundary Maps for all areas the Federal Insurance Administration has mapped;

March 7, 1975 report by GAO relating to Federal activities within floodplains; Regulations of the National Flood Insurance Program.

Timetable

NPRM—March 1979.

Agency Contact

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DOI-FWS

Title

Endangered Species Act, section 4, regulations for listing endangered and threatened wildlife and plants.

Objectives and Benefits

The intent of this regulation is to interpret and implement the provisions of Section 4 of the Endangered Species Act of 1973 and the 1978 Amendments thereto. It includes revisions to the formats, with attendant definitions and explanatory notes, for the lists of Endangered and Threatened Wildlife and Plants. More specifically, this regulation implements the Amendments by requiring expanded contact with affected local government units and the interested public, as well as consideration of economic and other relevant impacts, before designation of Critical Habitat. Critical Habitat, which is a specific area essential to the conservation of an Endangered or Threatened Species, must now be identified at the time of species listing, to the maximum extent prudent.

This regulation will strengthen the credibility and effectiveness of the Endangered Species list and increase public involvement in the listing process. Species listed under Section 4 of the Act, in accordance with these regulations, will benefit from the resultant protection and recovery measures provided to them under other sections of the Act.

Legal Authority

Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531-1543.

Major Alternatives Under Study

This regulation further defines an already explicit process, required by the Endangered Species Act as amended, for determining whether any species is Endangered or Threatened. The only alternative is the priority in which species are listed, not whether they should or should not be listed.

Sectors Affected

No industries or levels of government are directly affected by this regulation since it is an internal procedure guiding the listing of qualified species. However, once a species and its Critical Habitat have been listed, in accordance with this regulation, all Federal agencies and the general public are affected under other sections of the Act which now apply. Under Section 7, all Federal agencies shall ensure that activities authorized, funded, or carried out by them do not

jeopardize the continued existence of an Endangered or Threatened species or adversely modify its Critical Habitat. Under Section 9 of the Act, no person shall import, export, possess, sell, deliver, carry, transport, or ship any Endangered or Threatened Species unless authorized by permit under Section 10 of the Act. The extent to which implementing these sanctions may indirectly affect the economy is undetermined. Any sector of the economy affected by Federal actions or benefiting from Federal projects could be affected.

Estimate and Summary of Economic Effects

In determining the Critical Habitat of any Endangered or Threatened Species, the Secretary of Interior shall consider the economic impact and any other relevant impact of specifying any particular area as Critical Habitat, unless he determines that the failure to do so will result in the extinction of the species. Further predictions as to the exact economic impacts are unknown at this time.

Related Regulations or Actions

Internal: The following regulations are also being developed to implement the 1978 Amendments to the Endangered Species Act: Amendment of Procedures to Apply for an Exemption, Amendment of the Endangered Species Committee, Amendments to Section 7 (consultation), New Raptor Regulations, Disposal Antique Regulations, New Section 6 Regulations (cooperation with states), New Self-Defense Regulations, and Quarantine Station and Licensing Regulations. (No citations on any of the above related regulations were available at the time of the publication of the Calendar.)

External: Marine Mammal Protection Act of 1972, 116 U.S.C. § 1361 *et seq.*, Convention on International Trade in Endangered Species of Wild Fauna and Flora, and the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere.

Active Federal Collaboration

The National Marine Fisheries Service under the Department of Commerce will be consulted in developing this regulation.

Available Documents

None.

Timetable

Review Draft Prepared—March 10, 1979.
NPRM—April 10, 1979.
Final Rule—November 10, 1979.

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DOI-BLM

Title

Surface management of mining claims located on the public lands

Objectives and Benefits

The objective of these regulations is to assure environmental protection to public lands and their resources by preventing unnecessary degradation of the lands and resources that may result from mining operations authorized by United States mining laws.

The benefit of these regulations is that they will lessen the degradation of the public lands caused by careless mining practices while having a minimal impact on the legitimate mining industry.

Legal Authority

Revised Statutes, § 2319, 30 U.S.C. § 22.
Revised Statutes, § 2478, 43 U.S.C. § 1201.
The Federal Land Policy and Management Act of 1976, §§ 302(b) and 603(c), 43 U.S.C. § 1701 *et seq.*

Major Alternatives Under Study

At the heart of the question of how much control can be exercised over hardrock mining on the public lands is the right granted by the Mining Law of 1872 to anyone who wishes to enter the public lands for the purpose of exploring for and developing hardrock minerals. The alternatives being considered vary from the present non-control to the most stringent control possible without denying an individual the right of entry granted by the 1872 Mining Law.

The primary method being considered as a method of regulation is setting a threshold or level of permissible mining activity that will be allowed without requiring an individual to obtain a permit to carry on mining activity. The principal alternatives have to do with the level of the threshold of allowed activity. Once the allowed level is determinined, a permit will be required for all mining activity that exceeds that level. Since the Department has never regulated this activity before, we have no estimate of the numbers of individuals who will be affected by the regulations. It is clear that the lower the level of activity that is allowed without a permit, the higher will be the number of individuals who will be affected by the regulation.

The aim of the regulations is to balance the right of entry permitted by the law against the need to protect, to the greatest extent possible, the public lands from unnecessary degradation.

In determining the level of mining activity that will be allowed without imposing a requirement for a permit, the Department has worked closely with all sectors of the mining industry, state and local governments, and environmentalists.

Sectors Affected

This rule would affect the mining industry; all members of the public who engage in mining on the public lands, either as a profession or as a hobby; all members of the public who use the public lands for general purposes; and the general public, to the extent that increased mining costs are passed on to that public.

Estimate and Summary of Economic Effects

The Department cannot estimate the extent of economic effects because this activity has never been regulated and there is no basis for determining the number of individuals, number of mines, or areas that will be affected by the regulations. The objective is to keep the financial impact as low as possible, consistent with the effort to provide adequate protection for the public lands.

Related Regulations or Actions

None.

Active Federal Collaboration

The Department of Agriculture and the Environmental Protection Agency.

Available Documents

NPRM—41 FR 53429 (December 6, 1976).
5,000 comments received during the comment period.

Timetable

NPRM—February 28, 1979.
Public Hearing—July 31, 1979.
Final Rule—August 31, 1979.

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DOI-OSM

Title

Permanent regulatory program implementing section 501(b) of the Surface Mining Control and Reclamation Act of 1977

Objectives and Benefits

The intent of these regulations is to minimize the adverse surface effects of coal mining operations by instituting, through state legislative processes or Federal controls imposed in lieu of state legislation, a nationwide set of procedures and minimum performance standards to be used by the coal mining industry in conducting coal mining and reclamation operations. For example, in steep-slope mining, the operator would be prohibited from placing spoil or overburden (residues) on the slope below the mine site, except under certain limited circumstances.

Publication of the Office of Surface Mining's (OSM) permanent regulatory program will establish the procedures and requirements for the states to prepare and submit their regulatory programs for approval by the Secretary of the Interior. Once a state's program is approved, the Office of Surface Mining will monitor state enforcement. If a state's program is not approved, the Federal regulations will be imposed on all surface coal mining activity within the state.

These regulations will bring about significant benefits to the environment by protecting and preserving air quality, surface and ground water resources, and soil materials for use in reclaiming and stabilizing land area being mined for coal. In addition, fish and wildlife habitat will be enhanced through restoration of mined lands with appropriate vegetation.

Restrictions will be placed on areas which should not be mined due to the need for conserving important nonmineral values.

Legal Authority

Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1201.

Major Alternatives Under Study

Public Law 95-87, Section 501(b) specifically mandates that the Secretary of the Interior promulgate and publish in the Federal Register permanent regulations governing procedures and minimum performance standards for surface and underground coal mining and reclamation operations.

Within the regulations themselves, various alternatives for achieving the minimum environmental standards may be given full consideration. In particular, the "state window" concept allows each state to propose specific methods of achieving the standards which differ from those set forth in the regulations. If approved, such alternative methods would be applicable in that state.

Sectors Affected

These Federal regulations would affect the entire coal mining industry throughout the United States. In 1976, approximately 3,700 surface coal mines were in operation under state-issued permits or Federal permits. Specific geographic areas having extensive coal mining operations include: Appalachia, the Midwest and South Central states, the Northern Rocky Mountain area, and the Western region.

State governments would be affected if they elect to implement and enforce state laws meeting the minimum Federal standards and procedures rather than deferring to Federal implementation and enforcement.

The general public would be affected to the extent that increases in the cost of producing coal are attributable to implementation of the Act, causing major users such as manufacturers and utilities to pass these increased costs on to the consumer.

Estimate and Summary of Economic Effects

The OSM draft Regulatory Analysis (RA) evaluates the economic impacts of those areas of the proposed permanent-program regulations for which OSM could consider alternative regulatory mechanisms or for which major economic impact was likely. The method employed involved the development of representative-mine models for the major coal-producing regions in the United States and application of those models to an engineering-cost analysis. Results of that analysis were then used to adjust the Department of Energy's National Coal Model to evaluate long-term aggregate impacts on a national and regional basis.

The incremental cost of implementing the discretionary areas of the regulations analyzed in the draft RA for surface mined coal ranges from $2.16 per ton in the steep contour mining regions of Appalachia to $0.02 to $0.05 per ton for the area mining operations of the North Rocky Mountains and the West. The national production-weighted average incremental cost was estimated at $0.75 per ton.

The long-term analysis projects a continued growth in coal production through 1985 in all prodicing regions. The net effect on the rates of this growth will be observed as a slight decline (0.2 percent) in Appalachia, a slight growth in the Midwest and no change in the South Central, North Rocky Mountain and Western regions.

It was concluded in the draft RA that implementation of the permanent program regulations administered by OSM will have insignificant impacts on the national economy in terms of prices, employment, and Gross National Product. The impacts on the mining sector and the principal domestic coal users for steam-boiler fuel will be small. In addition, it was determined that implementation of the analyzed regulations will have minimal economic impacts on the coal industry, the electric utility industry and the energy consumer. The final RA, scheduled for release in February, expands the analysis conducted for the draft report.

Related Regulations or Actions

Internal: The Office of Surface Mining has promulgated in final form the five regulations listed below which implement certain sections of the Act.

Surface Mining Reclamation and Enforcement Provision—Final Rules 42 FR 62638 (December 13, 1977);

Protection of Employees, 42 FR 62712 (October 20, 1977);

Indian Coal Mining Regulations, 42 FR 6394 (December 16, 1977);

Mining and Mineral Research Institutes, 43 FR 38556 (August 28, 1978);

Abandoned Mined Land Reclamation, 43 FR 49932 (October 25, 1978).

In addition, four Federal-State cooperative agreements for the joint regulation of coal mine operations on Federal coal lands have been concluded with the States of Utah, Wyoming, Montana, and North Dakota.

External: A number of Federal agencies have programs and responsibilities which relate to the OSM regulations. The Bureau of Land Management (BLM) has authority under 30 U.S.C. § 181 to determine leasing arrangements for federally owned coal estates. The Environmental Protection Agency (EPA) is responsible under 33 U.S.C. § 466 *et seq.* and 42 U.S.C § 7401 *et seq.* for establishing and enforcing air and water pollution standards. The Corps of Engineers under 33 U.S.C. § 401 *et seq.* has responsibility for construction affecting navigable waters. The Department of Agriculture-Soil Conservation Service under P.L. 95-87 has responsibilities for the the Rural Abandoned Mine Program. The Departments of Energy and Labor have certain responsibilities which do not significantly affect OSM regulations.

Active Federal Collaboration

The departments and agencies listed below will be solicited for their comments concerning possible conflicting of duplicative regulations and for general coordination:

Department of Agriculture; Department of Commerce; Department of Defense; Department of Energy; Department of Health, Education, and Welfare; Department of Housing and Urban Development; Department of Labor; Department of Transportation;

Appalachian Regional Commission; Community Services Administration; Council on Wage and Price Stability; Environmental Protection Agency; General Services Administration; Interstate Commerce Commission; Office of Management and Budget; Tennessee Valley Authority; Water Resources Council.

Available Documents

42 FR 62638 (December 13, 1977).
"Surface Mining Reclamation and Enforcement Provision—Final Rules."
NPRM—30 FR Chapter VII (September 21, 1978).
"Draft Regulatory Analysis."
NPRM—30 FR Chapter VII (October 4, 1978).
"Draft Environmental Impact Statement."

Timetable

Final Rules—February 1979.

Agency Contact

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202/343-4222

DOT-NHTSA

Title

Fuel economy standards for model years 1984-86 passenger cars

Objectives and Benefits

The National Highway Traffic Safety Administration (NHTSA) has previously established an average fuel economy standard of 27.0 miles per gallon for 1984 model year passenger cars. In establishing an average fuel economy standard of 27.5 miles per gallon for post-1984 model year passenger cars, Congress gave the Department of Transportation discretionary authority to amend that standard to require the maximum feasible average fuel economy for those vehicles. NHTSA will re-examine the 1984-86 standards to determine if they require the maximum feasible average fuel economy. In 1976, more than half of the total U.S. petroleum consumption was used in transportation. Of that amount, more than 60 percent was consumed by passenger cars. By improving the fuel economy of passenger cars, the nation would conserve fuel and reduce dependence upon imported oil. The actual benefits of the proposed regulations would be in direct proportion to the improvement in fuel efficiency of the new car fleet. Thus, the actual amount of fuel saved cannot be determined until prospective standards are established.

Legal Authority.

The Motor Vehicle Information and Cost Savings Act, § 502(a)(4), 15 U.S.C. § 2002 (1978).

Major Alternatives Under Study

Specific information is currently under development and is not available at this time. Reconsideration of the 1984 model year standard and modification of the post-1984 standard must satisfy the statutory criterion of achieving the maximum feasible average fuel economy and reflect the considerations of technological feasibility, economic practicability, impact of other Federal motor vehicle standards, and the need of the nation to conserve energy. NHTSA is currently assessing the capabilities of car manufacturers to attain various levels of fuel efficiencies and their associated costs. Based on that review and consideration of the other relevant factors, NHTSA will determine whether to raise, lower or retain the standards applicable for model years 1984-86.

Sectors Affected

The standards would affect passenger car manufacturers, material and component suppliers, buyers of new cars, the petroleum industry, and state and local governments.

Estimate and Summary of Economic Effects

Specific information is currently under development and is not available at this time. The general economic effect will probably be as follows. Vehicle manufacturers will incur capital expenditures and variable manufacturing cost increases to implement fuel efficient technologies. The absolute amount of such increases depends upon the level of the standards. Material suppliers would incur changes in demand. For example, substitution of aluminum for steel would increase demand for aluminum and reduce demand for steel. New vehicle components, such as computerized controls to improve the efficiency of the engine, may be installed. Thus, demand for them would increase. The petroleum industry will face a reduced increase in demand for gasoline. State and local governments will face a loss in gasoline tax revenue due to a reduction in the increase of the demand for gasoline. The initial purchase price of passenger cars may increase due to a potential manufacturing cost increase. Buyers would also realize operating cost savings as the fuel efficiency improves. To date, these savings have far overshadowed any price increases. For example, NHTSA estimates that the current 1981-1984 average fuel economy standards will result in a decrease in total consumer costs (retail price, maintenance costs and gasoline costs) of $450 per car. The decreased increase in demand for oil is anticipated to have a favorable impact on the balance of trade. The standards should have an insignificant impact on GNP, inflation, urban areas, and employment. However, the magnitude of the impact would depend upon the extent of potential retail price increases and potential consumer cost savings.

Related Regulations or Actions

Internal: NHTSA has already issued fuel economy standards for 1981-1984 model year passenger cars (49 CFR Part 531).

External: Fuel economy standards for the 1978, 1979, and 1980 model year passenger cars were set by the Congress (15 U.S.C. § 2002). The Environmental Protection Agency has issued regulations governing how motor vehicle fuel economy is to be measured (40 CFR Part 600) and the Federal Trade Commission has issued guidelines governing fuel economy advertising for motor vehicles (16 CFR Part 259).

Active Federal Collaboration

NHTSA principally coordinates its fuel economy standards program with the Department of Energy and the Environmental Protection Agency. NHTSA also reviews its program with the Department of Commerce and the Council of Wage and Price Stability.

Available Documents

None presently available. When rulemaking is begun, NHTSA will prepare and make available to the public a Regulatory Analysis, an Environmental Impact Statement and a Rulemaking Support Paper, which will contain information on the technical and economic basis of the rulemaking.

Timetable

NPRM—Summer 1979.
Final Rule—Winter 1980.

Agency Contact

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Washington, D.C. 20590
202/472-5906

DOT-NHTSA

Title

Fuel economy standards for model years 1982-84 light trucks

Objectives and Benefits

The National Highway Traffic Safety Administration (NHTSA) will identify and establish maximum feasible average fuel economy standards for model year 1982-84 light trucks. In

1976, more than half of the total U.S. petroleum consumption was used in transportation. Approximately 20 percent of that amount was consumed by the light truck fleet. Since light truck sales are rising, and are projected to rise even more, light truck fuel consumption will continue to increase. In the absence of fuel economy standards, the gap between the improving fuel efficiency of passenger cars and the low fuel efficiency of light trucks would widen further and would be contrary to the national objective of fuel conservation. The actual benefits of the proposed regulation would be in direct proportion to the improvement in fuel efficiency of the new light truck fleet. Thus, the actual amount of fuel saved cannot be determined until prospective standards are established.

Legal Authority

The Motor Vehicle Information and Cost Savings Act, § 502(b), 15 U.S.C. § 2002 (1978).

Major Alternatives Under Study

Specific information is currently under development and is not available at this time. A final standard would be one which satisfies the statutory criterion of maximum feasible average fuel economy and reflects the considerations of technological feasibility, economic practicability, impact of other Federal motor vehicle standards, and the need of the nation to conserve energy. NHTSA is assessing the capabilities of light truck manufacturers to attain various levels of fuel efficiencies and their associated costs. Simply extending the 1981 standard will not be an alternative unless it meets the maximum feasible criterion.

Sectors Affected

The standards would affect light truck manufacturers, material and component suppliers, buyers of new light trucks, the petroleum industry, and state and local governments.

Estimate and Summary of Economic Effects

Specific information is currently under development and is not available at this time. The general economic effect will probably be as follows. Vehicle manufacturers will incur capital expenditures and variable manufacturing cost increases to implement fuel efficient technologies. The absolute amount of such increases depends upon the level of the standards. Material suppliers would incur changes in demand. For example, substitution of aluminum for steel would increase demand for aluminum and reduce demand for steel. New vehicle components, such as computerized controls to improve the efficiency of the engine, may be installed. Thus, demand for them would increase. The petroleum industry will face a reduced increase in demand for gasoline. State and local governments will face a loss in gasoline tax revenue due to a reduction in the increase of the demand for gasoline. The amount would depend upon the decrease in consumption. The initial purchase price of light trucks may increase due to a potential manufacturing cost increase. Buyers would also realize operating cost savings as the fuel efficiency improves. To date, these savings have far overshadowed any price increases. For example, NHTSA estimates that the current 1980-1981 light truck fuel economy standards will result in a retail price increase in the range of $60. This relatively small increase compares to a lifetime operating cost reduction of about $600 per vehicle, due to the reduction in gasoline consumption for these light trucks. The decreased increase in demand for oil is anticipated to have a favorable impact on the balance of trade. The standards should have an insignificant impact on GNP, inflation, urban areas, and employment. However, the magnitude of the impact would depend upon the extent of potential retail price increases and potential consumer cost savings.

Related Regulations or Actions

Internal: NHTSA has already issued fuel economy standards for 1979, 1980 and 1981 model year light trucks (49 CFR Part 533).

External: The Environmental Protection Agency has issued regulations governing how motor vehicle fuel economy is to be measured (40 CFR Part 600) and the Federal Trade Commission has issued guidelines governing fuel economy advertising for motor vehicles (16 CFR Part 259).

Active Federal Collaboration

NHTSA principally coordinates its fuel economy standards program with the Department of Energy and the Environmental Protection Agency. The program is also reviewed with the Department of Commerce and the Council on Wage and Price Stability.

Available Documents

None presently available. During the rulemaking, NHTSA will prepare and make available to the public a Regulatory Analysis, an Environmental Impact Statement and a Rulemaking Support Paper, which will contain information on the technical and economic basis of the rulemaking.

Timetable

NPRM—Spring 1979.
Final Rule—Fall 1979.

Agency Contact

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202/472-6902

DOT-USCG

Title

Offshore oil pollution and liability and compensation fund

Objectives and Benefits

This regulation will implement the requirements of the Outer Continental Shelf Lands Act Amendments of 1978 (the Act), that requires a scheme of strict liability and compensation for the economic consequences of oil spilled as a result of activities on the outer continental shelf (OCS).

The proposed regulation will do three things: (1) It will establish a fund to pay for removal and to compensate for damages as a result of any oil that is spilled or discharged on the OCS when payment is not made by the pollutor. (2) It will require proof of financial responsibility for each facility that is involved in production of oil on the OCS. The purpose of this financial responsibility is to insure that the facility can pay at least a minimum amount for damages and cleanup if it is involved in a pollution incident. (3) It will establish a mechanism whereby those who are financially hurt by a pollution incident can receive compensation.

The benefit of the regulation is the availability of funds to mitigate the damages usually associated with an oil pollution incident.

Legal Authority

Outer Continental Shelf Lands Act Amendments of 1978, §§ 302, 305, 306, and 307, 92 Stat. 672-682 (1978).

Major Alternatives Under Study

The Act establishes the size and limits of the fund as well as the maximum fee that can be charged per barrel of oil produced in order to build the fund. The Coast Guard has only limited latitude to study any alternatives. Only such alternatives as what reporting forms will be required and what percentage of the maximum per barrel fee should be charged are open to study.

Sectors Affected

Owners of OCS oil at the time it is produced, owners or operators of vessels and facilities involved with oil production on the OCS, and persons sustaining an economic loss as a result of oil pollution arising from OCS activities will be primarily affected. Con-

sumers will be affected because oil producers will pass on the costs of maintaining the fund.

Estimate and Summary of Economic Effects

The implementing regulations are basically procedural in nature and will not have a significant impact in terms of costs, consumer prices, or production. The fund must be maintained at a level between $100 million and $200 million; that amount is to be raised by an initial minimum per barrel fee of $.03 imposed on owners of OCS oil at the time it is produced. In addition, the costs for establishing evidence of financial responsibility, removal of pollution, and damage claims payments are estimated to be an additional $.05 per barrel. These costs are expected to be passed on to the consumer of OCS oil. The Coast Guard expects that expenditures from the fund will amount to $4 million per year for pollution removal costs, $5 million per year for damage claims payments, and $2 million per year for fund administration. It is impossible to estimate the total cost of this regulation since at this time the Coast Guard cannot estimate the total oil production from the OCS.

It should be noted that due to the nature of the liability imposed by the Act, there is some question as to whether the option of using sureties, guarantees or insurance will be available to those who may desire to establish evidence of financial responsibility by one of those methods. The consequence of such options not being available could mean that relatively small firms (those unable to self-insure) would have to cease petroleum operation on the OCS. In such a case there might be a reduction in competition in the industry, a reduction in production volume, and, ultimately, an increase in the cost of OCS petroleum to the consumer.

Related Regulations or Actions

Internal: None.

External: Various states may have their own requirements. The Act does not preempt existing state liability requirements or preclude a state from imposing, within state jurisdiction, new or additional requirements for liability, either damages or removal costs, or both.

Active Federal Collaboration

The Coast Guard has consulted with the following agencies: Federal Maritime Commission; Bureau of Land Management; Geological Survey; Department of Energy; Department of Treasury; and Department of Justice.

Available Documents

NPRM—43 FR 56840 (December 4, 1978).
Draft Regulatory Analysis.
Environmental Assessment.

Timetable

Final Rule—March 1979.

Agency Contact

Mr. F. Martin
U.S. Coast Guard (G-WDWP/61)
Washington, D.C. 20590
202/426-2606

DOT-USCG

Title.

Construction standards for the prevention of pollution from new tank barges due to accidental hull damage; and regulatory action to reduce pollution from existing tank barges due to accidental hull damage

Objectives and Benefits

These regulations will help to eliminate the discharge of oil into the navigable waters of the United States. Specifically, the proposals will address accidental discharges which result from hull damage to tank barges. Since most of the oil spilled by tank barges enters highly sensitive inland waters, the effect on the marine environment is more significant than the effect of oil that enters the high seas. The amounts of pollution entering the waters from tank barges is not decreasing. While there is considerable year-to-year fluctuation, no overall downward trend in the amount of tank barge pollution is discernible. Thus, the present regulations dealing with pollution prevention, which regulate essentially the loading and unloading operations only, are insufficient to reduce oil pollution from tank barges. The Coast Guard has concluded, based upon a study entitled the "Tank Barge Oil Pollution Study," prepared by Automation Industries, Inc., that the lack of construction standards for tank barges is a major factor in pollution caused by tank barges. The objective of these regulations, then, is to correct this regulatory deficiency and extend the coverage of the Coast Guard's comprehensive set of pollution prevention regulations to tank barges.

Legal Authority

Port and Tanker Safety Act of 1978, P.L. 95-474, § 5, 92 Stat. 1480 (1978).

Major Alternatives Under Study

In 1971 the Coast Guard proposed a requirement for double walls on new tank barges constructed for the carriage of oil in specified trades. It included a provision that would preclude the complete "rebuilding" of existing vessels, and allow only limited repair to damaged areas. This provision was designed to gradualy reduce the number of existing single hull barges. Another proposed alternative was to specify a date after which owners and operators could not use single hull barges.

Because of the extensive comments received, the double wall construction requirement for new tank barges was not imposed. The Coast Guard decided additional study of the design and construction standards for tank barges was needed before taking further action.

As a result, two studies were conducted and have now been completed. The first, titled "Alternative Inland Tank Barge Designs for Pollution Avoidance," developed design and construction alternatives and evaluated them for effectiveness. The second study, titled "Tank Barge Study," evaluated design, construction, and equipment standards for tank barges which carry oil. These studies have convinced the Coast Guard that a double hulled tank barge fleet is necessary to prevent pollution due to hull damage.

The present barge fleet contains about 1200 full double hull barges, 2200 single hull barges and 423 barges with partial double skins. Hastening the retirement of single hull barges could significantly affect the economic viability of many individual tank barge operators, as well as affect the tank barge industry's collective ability to respond to the nation's bulk liquid cargo transportation needs. The comments received in response to the 1971 NPRM indicated that while the industry supported the intent of the regulations to prevent pollution, there were strong objections to the methods proposed to accelerate the retirement of existing, single hull vessels and to substitute double hulled barges. No comments were received suggesting means to achieve an accelerated retirement of these vessels in an economically acceptable manner. The Coast Guard will issue an ANPRM detailing specific approaches to the future utilization of single hull tank barges and will solicit comments on the economic consequences. The alternatives under consideration are early retirement, conversion to other service, restricted routes, increased inspection standards, and reducing the numbers of barges towed together as a single unit.

Sectors Affected

The primary effect of these regulations will be upon the barge owners and operators. Of course, there will be a secondary effect on the cost of prod-

ucts transported, because higher construction costs will be passed on.

Estimate and Summary of Economic Effects

The cost of a double hull inland tank barge would be $25,000 to $146,000 more than for a single hull inland barge of comparable size (in 1978 dollars). In 1974, added costs for ocean barges ranged from $700,000 to $1,700,000. The cost for converting the existing fleet is calculated to exceed $357 million.

The resulting freight rate increase per unit volume has been calculated for both inland and ocean and coastal tank barges for the various size categories. This calculation was performed based on a 25 year life for the barges. The numbers of trips per year were determined by utilizing Waterborne Commerce Statistics from the Army Corps of Engineers based on 1976 data. The volume carried by barges in the various size categories was determined from Coast Guard data on inspected tank barges. The volume utilized was an average for each size category. The increases in freight rates per unit volume were calculated by multiplying the trips per year by 25 years and multiplying this by volume per trip. This number was then divided into the associated cost differential. The composite increase in freight rate for both inland and ocean tank barges has been estimated at 0.02 cents per gallon of oil product. Consumers in all parts of the nation would not actualy see a direct increase of this amount since tank barges carry only part of the total oil products moved in the U.S.

Related Regulations or Actions

Internal: The Coast Guard is also considering double hull requirements as a possible solution to spillage of hazardous materials.

External: Restrictions on the handling and transport of hazardous materials are being developed by the Environmental Protection Agency; they may make double hulls more attractive economically to barge owners and operators.

Active Federal Collaboration

In developing this regulation the Coast Guard has consulted with the Maritime Administration and the Environmental Protection Agency.

Available Documents

NPRM—36 FR 24960 (December 24, 1971).

Karlson, E. S., et al., "Alternative Inland Tank Barge Designs for Pollution Avoidance," May 22, 1974.

C.G. 487, "Polluting Incidents In and Around U.S. Waters," annual reports for 1971 through 1977.

Joint Coast Guard/Maritime Administration Study, "Tank Barge Study," October 1974.

Bender, A., et al., "Tank Barge Oil Pollution Study," prepared for Coast Guard by Automation Industries, Inc., 1978.

Timetable

NPRM addressing new construction—February 1979.
ANPRM addressing existing barges—February 1979.

Agency Contact

For new tank construction:
LCDR Johnson (G-MMT/82)
202/426-4432
For existing tank barge construction:
LCDR Sampson (G-MVI/82)
202/426-2190
U.S. Coast Guard
Washington, D.C. 20590

DOT-USCG

Title

Implementation of the Port and Tanker Safety Act of 1978 and the International Conference on Tanker Safety and Pollution Prevention (TSPP) by requiring segregated ballast tanks, dedicated clean ballast tanks and crude oil washing systems for certain new and existing tank vessels

Objectives and Benefits

The Coast Guard will address in this regulation one of the most important factors in pollution of the seas by oil, operational pollution. The primary means of reducing this pollution is to require tank vessels which carry petroleum products and crude oil to keep the cargo separate from the ballast water and substitute crude oil for water in tank washing systems. Most transportation-related oil pollution is caused by operational discharges of slop oil and ballast water contaminated by oil.

This action is being taken in response to both Presidential and Congressional mandates for increased environmental protection. Since pollution of the oceans by oil is a global problem, the Coast Guard has decided to implement the agreements reached at the International Convention for Tanker Safety and Pollution Prevention. This will promote international cooperation in attacking the pollution problem and permit a long-term, unified, multi-national response to the oil pollution problem.

Legal Authority

Port and Tanker Safety Act of 1978, P.L. 95-474, § 5, 92 Stat. 1480 (1978).

Major Alternatives Under Study

The technical details of this proposal, including implementation schedules, were agreed to at the International Tanker Safety and Pollution Prevention Conference of 1978, and are reflected in the Ports and Tanker Safety Act of 1978.

Sectors Affected

The primary sector affected would be tanker owners and operators who will have to pay the cost of compliance, and who will pass those costs on to the U.S. public. The secondary sector affected would be the total marine environment, which would benefit from reduced levels of pollution.

Estimate and Summary of Economic Effects

The Coast Guard estimates that implementation of the requirements of the Tanker Safety and Pollution Prevention Protocols for existing foreign and domestic tankers trading in U.S. ports could cost 3.0 billion dollars or more, spread out over a period of about 15 years. The initial investment is estimated at 1.6 billion dollars or more. All costs are dependent upon such factors as which options for compliance are chosen; the size, configuration and age of the vessel, and what equipment is selected for installation.

Detailed estimates of costs for both U.S. and foreign vessels categorized by vessel displacement and possible option are contained in the document. "Cost Model and Analysis for Estimating Costs for Implementation of the Results of the International Conference on Tanker Safety and Pollution Prevention."

An upper estimate of the total number of tankers affected could range from 831 to 953 for foreign crude tankers, and from 396 to 475 for foreign product tankers. About 232 U.S. product and crude tankers could be affected. The average cost per tanker will vary between 2 and 3 million dollars.

The Coast Guard estimates the proportional increase in the cost per gallon of gasoline to the U.S. consumer due to the minimum cost Tanker Safety and Pollution Prevention option to be one-tenth of a cent.

Because of the current worldwide tanker surplus and the expected increase in domestic pipeline transportation of oil, very few new tankers are expected to be constructed between now and 1985. Planned tanker construction beyond 1985 is unknown at this time. For these reasons, the Coast Guard can not presently estimate how

much this regulation will add to new ship construction costs.

Related Regulations or Actions

Internal: The Coast Guard is proposing a full range of regulations related to tanker safety and pollution prevention. The other major regulation is discussed in this calendar. (See the entry on Requirements for Inert Gas Systems.)

External: None.

Active Federal Collaboration

The Coast Guard has consulted with the following agencies: Council on Environmental Quality; Council on Wage and Price Stability; Department of Commerce, Maritime Administration and National Oceangraphic and Atmospheric Administration; Department of Energy, Strategic Petroleum Reserve Office; Department of Interior; and Environmental Protection Agency.

Available Documents

President's Message to Congress on Tanker Safety, March 17, 1977.
White House Fact Sheet on Tanker Safety, March 16, 1977.
NPRM—42 FR 24868 (May 16, 1977).
Background and Summary Regarding the International Conference on Tanker Safety and Pollution Prevention held in London, England, March 24, 1978.
Draft Regulatory Analysis
"Cost Model and Analysis for Estimating Costs for Implementation of the Results of the International Conference on Tanker Safety and Pollution Prevention," November 1978.

Timetable

NPRM—February 1979.

Agency Contact

CDR. George Ireland
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Washington, D.C. 20590
202/426-9178

EPA-OANR

Title

Prevention of significant deterioration regulations for carbon monoxide, nitrogen dioxide, and ozone

Objectives and Benefits

The objective of this regulation is to protect and enhance air quality in areas of the country where the air is cleaner than the health related ambient standards for carbon monoxide, nitrogen dioxide, and ozone. The regulation will require states to develop plans and regulations to prevent any significant deterioration of air quality for the pollutants noted above. It will also provide for direct Federal regulatory action until the states act.

The regulation will give special emphasis to protecting air quality in certain national parks and wilderness areas and will ensure that economic growth takes place in a manner consistent with the preservation of clean air. These objectives will be attained by requiring controls on new sources of air pollution before they are built and by regulating the location of new sources.

Legal Authority

The Clean Air Act Amendments of 1977, § 166, 42 U.S.C. § 7476.

Major Alternatives Under Study

These regulations are at an early stage of development and alternatives have not been sharply defined. The new sources of air pollution which will be affected by this regulation are already required to install the best available control technology by EPA's Prevention of Significant Deterioration regulations for sulfur dioxide and particulates (40 CFR 51.24). The regulations under consideration here will affect the sites where such sources would and would not be able to locate. Two major alternatives are currently being examined.

The first alternative is an "ambient increment" approach. This approach would allow emissions of the pollutants noted above as long as their ambient impact did not exceed a specified increment above existing ambient air quality. In this approach, sources would be allowed to locate in an area if they installed the best available control technology and if their resulting emissions did not exceed the specified ambient air quality increment. The second alternative is an "emissions increment" approach. In this approach, new emissions of the subject pollutants would be allowed as long as their total did not exceed a specified increment above all existing emissions. In this alternative, sources would be allowed to locate in an area if they installed best available control technology and if their resulting emissions did not exceed the specified emissions increment.

Other alternatives are still being identified.

Sectors Affected

This regulation will potentially affect energy, transportation, and manufacturing industries.

Estimate and Summary of Economic Effects

As noted above, these regulations are at an early stage of development and it is not possible to estimate compliance costs. The affected sources are already required to install best available control technology (40 CFR 51.24); therefore, the major remaining costs will involve site location. An analysis of the economic impact of these regulations will be completed prior to their proposal.

Related Regulations or Actions

Internal: The EPA's Prevention of Significant Deterioration (40 CFR 51.24) regulations for sulfur dioxide and particulate place air pollution control requirements on the sources which will be affected by this regulation.

External: None.

Active Federal Collaboration

Collaboration is limited to the National Academy of Sciences at present.

Available Documents

None.

Timetable

NPRM—December 1979.
Final Rule—October 1980.

Agency Contact

Richard G. Rhoads, Director
Control Programs Development Division
Environmental Protection Agency
Research Triangle Park, N.C. 27711
919/541-5251 (FTS 629-5251)

EPA-OANR

Title

Standards of performance to control atmospheric emissions from new utility fossil-fuel-fired steam generators

Objectives and Benefits

The objective of this action is to reduce the emissions of air pollutants, i.e., particulate matter, nitrogen oxide, and sulfur dioxide, to the atmosphere from new, modified and reconstructed utility power plants firing coal and other fossil fuels. The standard will require application of the best system of continuous emission reduction, and will establish a uniform percentage reduction requirement. The standard will take into consideration environmental, economic, and energy impacts.

Legal Authority

The Clean Air Act Amendments of 1977, § 111, 42 U.S.C. § 7411.

Major Alternatives Under Study

The Clean Air Act Amendments of 1977 specifically require that the current standard of performance for power plants be revised. Alternatives under consideration involve the structure of regulations and their stringency. The principal issue is whether plants burning low sulfur coal should be required to achieve the same per-

centage reduction as those firing high sulfur coal.

Sectors Affected

Utility fossil fuel-fired steam generators capable of firing more than 250 million British Thermal Units an hour.

Estimate and Summary of Economic Effects

EPA has conducted extensive analysis of the economic effects of the various alternatives under consideration. The results of these analyses have been published in the FEDERAL REGISTER and are included in the docket. The most recent analyses (conducted in November) indicate that control costs will add $1.5 billion to $2 billion to 1990 annualized utility costs (about 0.5% of total utility costs) and between $16 billion and $23 billion (1978 dollars) to the net present value of annualized utility costs between now and 1990. This present value estimate includes capital costs through 1990 and operating and maintenance costs, fuel costs, and energy penalties through 2020. These expenditures will cost the consumer an average of about $1.50 per month in 1990 in terms of increased residential electric bills and increased cost of consumer goods. The revised standard will result in increased oil use in the utility sector. While 1990 utility oil use will be less than 1975 levels, consumption will be approximately 100,000-200,000 barrels per day more than if the standard were not revised.

Related Regulations or Actions

Internal: Effluent guidelines and standards of performance for new fossil-fuel-fired steam generators (40 CFR Part 60) are in effect. Revised effluent guidelines (Best Available Technology) and Resource Conservation and Recovery Act regulations are being developed.

External: Regulations are being developed pursuant to the National Energy Plan.

Active Federal Collaboration

Department of Energy and Tennessee Valley Authority

Available Documents

NPRM—43 FR 42154 (September 19, 1978).

Additional Information—43 FR 57834 (December 8, 1978).

Timetable

Final Rule—March 1979.

Agency Contact

Don Goodwin
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919/541-5271 (FTS 629-5271)

EPA-OANR

Title

Visibility plan requirements

Objectives and Benefits

The intent of this regulation is to improve and protect visibility in and around certain national parks and wilderness areas by controlling manmade air pollution. The regulation will require states to develop their own plans and regulations to control sources of air pollution which reduce or impair visibility.

The Congress has set a national goal of preventing any future, and remedying any existing, impairment of visibility around certain parks. The national parks and wilderness areas are set forth by the Congress and are called "mandatory Class I areas." Air pollution can reduce visibility and thereby reduce the scenic value of these areas. The visibility regulation will reduce the impairment of scenic views from haze, discoloration, and smokestack plumes in parks and wilderness areas. The regulations will require states to control existing pollution sources and ensure that new sources do not exacerbate the problem.

Legal Authority

The Clean Air Act Amendments of 1977, § 169A, 42 U.S.C. § 7491.

Major Alternatives Under Study

These regulations are at a very early stage of development and the regulatory alternatives are still being formulated.

Sectors Affected

This regulation would primarily affect electric power plants and nonferrous smelters located near certain national parks and wilderness areas.

Estimate and Summary of Economic Effects

As noted above, these regulations are at an early stage of development and as a result it is not possible to estimate compliance costs. The economic impacts are expected to fall on the electric power industry and thereby the general public through rate increases. The impacts will be concentrated in the western U.S. because of the location of the national parks involved. An anaylsis of the economic impact of the regulations will be completed before the regulations are proposed.

Related Regulations or Actions

Internal: The Environmental Protection Agency's (EPA) Prevention of Significant Deterioration regulations (40 CFR 51.24), which govern new air pollution sources in unpolluted areas, require strict controls on sources proposing to locate near certain national parks. In addition, EPA's proposed emission standard for new electric power plants (40 CFR Part 60 Subpart Da) will affect many of the sources covered by this regulation.

External: None.

Active Federal Collaboration

Departments of Interior, Agriculture, and Energy.

Available Documents.

None.

Timetable

NPRM—October 1979.
Final Rule—August 1980.

Agency Contact

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Development Division
Environmental Protection Agency
Research Triangle Park, N.C. 27711
919/541-5251 (FTS 629-5251)

EPA-OWWM

Title

Effluent guidelines and standards controlling the discharge of pollutants from steam-electric power plants into navigable waterways

Objectives and Benefits

Effluent limitations guidelines for the steam electric industry were promulgated on October 8, 1974. Parts of the guidelines were challenged and remanded by the U.S. Court of Appeals for the Fourth Circuit. The guidelines are being reviewed and revised to address the concerns expressed by the Court of Appeals and to expand toxic pollutant coverage as required by the Clean Water Act Amendments of 1977 and by a decree of the U.S. District Court for the District of Columbia. The major objectives of the revised regulations are: (1) to further reduce the discharge of 65 families of toxic substances from power plants, primarily metals and chlorinated organic compounds, and (2) to reduce the discharge of heat. The major benefit resulting from the guidelines will be the improvement of the aquatic environment.

Legal Authority

The Federal Water Pollution Control Act, as amended, §§ 301, 304, 306, 307, 501(a), 33 U.S.C. § 1251 *et seq.*

Major Alternatives Under Study

The major waste water treatment technologies being considered as a

basis for control of chemical discharges include chlorine reduction for cooling water discharge, complete or partial recirculation for ash transport systems, and use of alternative chemicals and/or materials of construction. Technologies for heat removal and/or dispersion are also under consideration. They include such technologies as dry cooling towers, wet/dry towers, wet towers, spray ponds, cooling lakes/canals, and diffusers. The revised guidelines can take the form of effluent limitations and best management practices. The options available to the Agency range from minimal control to almost zero discharge. The guidelines may be different for various categories of plants in the industry.

Sectors Affected

These guidelines would directly affect establishments engaged in the generation, transmission and/or distribution of electric energy for sale.

Estimate and Summary of Economic Effects

The projected cost of compliance with the revised guidelines for the discharge of chemicals ranges from a $240 million to a $1.5 billion increase in cumulative utility capital costs through 1985. The high cost estimate is less than 1% of total utility capital costs through 1985. This would result in an increase in annual operating revenue requirements of up to $300 million in 1985. These cost increases will be spread over the utility system, resulting in a national average cost increase to consumers of less than 0.5%. The revised thermal guidelines could result in a cumulative capital cost increase through 1985 of $1 billion to $4 billion. None of these requirements is expected to cause plant closings; however, they could slightly affect the generation levels from specific plants.

Related Regulations or Actions

Internal: The scrubber systems required to comply with air pollution regulations may result in the discharge of contaminated water. The implementation of the water guidelines on recirculating cooling systems may be in conflict with air particulate emission requirements in certain localized areas. The proposed air New Source Performance Standards requirement will increase the number of facilities with scrubber systems in the future.

The thermal regulation pursuant to § 316(a) of the Clean Water Act provides a mechanism for each plant to obtain waivers from the thermal segment of the effluent limitation guidelines.

Section 316(b) of the Clean Water Act authorized the Agency to require the best technology available in the location, design, construction, and capacity of cooling water intake structures which would minimize adverse environmental impact.

Requirements for the management of solid wastes under the Resource Conservation and Recovery Act may affect the economic and environmental factors associated with various waste water treatment technologies.

External: The recent emphasis on converting oil-fired power plants to other fuel types and the problems associated with nuclear waste disposal will affect the generating capacity distribution by fuel types of the industry and, therefore, the amount of pollutants that would be discharged and controlled.

Active Federal Collaboration

The Nuclear Regulatory Commission, the Department of the Interior and the Department of Energy have provided assistance by supplying the Agency with information and/or providing review of materials.

Available Documents

The Draft and Final Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Steam Electric Power Generating Point Source Category, EPA (March and October of 1974, respectively);

Supplement for Pretreatment to the Development Document for the Steam Electric Power Generating Point Source Category, EPA (April 1977); and

Technical Report for the Revised Effluent Limitations Guidelines for the Steam Electric Power Generating Point Source Category, EPA (December 1978).

Timetable

NPRM—May 1979.
Final Rule—December 1979.

Agency Contact

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FERC

Title

Regulations implementing incremental pricing under Title II of the Natural Gas Policy Act of 1978

Objectives and Benefits

Within 12 months after enactment of the Natural Gas Policy Act of 1978 (NGPA), the Federal Energy Regulatory Commission must promulgate a rule (12-month rule) implementing incremental pricing of large industrial facilities that burn natural gas to produce steam or electricity. Under incremental pricing, the higher prices for natural gas which are permitted by the legislation will be selectively channelled to large industrial boiler fuel users whose natural gas supplies are produced in another state and are therefore, delivered through interstate pipelines. The intended result of incremental pricing is to bring the price of gas to these large interstate industrial customers up to the price of competing or alternative fuels, which will normally be fuel oil. When this result is achieved, interstate pipelines will face a strong incentive to keep the bidding price for natural gas as low as possible for fear that higher prices will drive the incrementally-priced users from the system. This objective is of particular importance after January 1, 1985, when new gas is freed from price controls. Aside from the benefit of reducing chances that post-1984 deregulated prices will rise precipitously, incremental pricing will also serve to shield residential and other non-incrementally priced users from some of the wellhead price increases that will occur under the legislation. Within 18 months after enactment of the NGPA, the Commission must propose amendments to the 12-month rule which may extend incremental pricing to other industrial uses such as chemical manufacturing (feedstock use) or paint drying (process use).

Legal Authority

The Natural Gas Policy Act of 1978 (NGPA), P.L. 95-621, Title II, 92 Stat. 3371.

Major Alternatives Under Study

The option presently favored by the Commission staff task force would require that pipelines accumulate purchased gas cost increases subject to recovery from incrementally priced users in a seperate surcharge account. The surcharge account will be stated as a flat dollar amount that has accumulated over a six month period. The pipeline will then recover this amount from all its incrementally priced users during a subsequent six month period. Recovery from each incrementally priced industrial user will be based on both volumes of gas consumed by the user during the prior 6 month period and the gap between the user's alternative fuel price and his delivered natural gas price. In this manner, a user's obligation to pay further amounts into the surcharge account will vanish when and if he reaches the alternative fuel price. The reason for having this alternative fuel cost ceiling on how high incremental prices can go is to avoid the decision by industrial users to switch off of natural gas, thereby forcing all other users to pay higher

prices in order to meet the revenue requirements of their pipeline utilities.

Options generally involve whether to base incremental surcharge account recovery on historical (actual) or future (estimated) volumes delivered to incrementally priced users. Another major option concerns the determination of what fuel should be considered as the alternative to natural gas in each region. The type and quality of fuel chosen could significantly affect how high a user's delivered natural gas price will go.

Sectors Affected

Electric utilities are specifically not subject to incremental pricing, even where natural gas is consumed as boiler fuel. Large interstate industrial boiler fuel users (who represent about 10 percent of the current interstate market) will be adversely affected. All interstate natural gas users not subject to incremental pricing will benefit in that the cost of natural gas will be born disproportionately by those facilities subject to incremental pricing.

Estimate and Summary of Economic Effects

In the aggregate, there should be no overall short-term economic effect attributable to incremental pricing. Some users will pay more, others will pay less; the rule requires that the increased costs are of equal magnitude to the benefits. Over the longer term, the incremental pricing rule could have a positive economic effect if it serves the purpose of restraining wellhead prices.

Related Regulations or Actions

None.

Active Federal Collaboration

Department of Energy (Energy Information Agency) is assisting in data collection.

Available Documents

Notice of Informal Public Conference and Inquiry, January 12, 1979.

Incremental Pricing Public Comments Survey, December 28, 1978.

Timetable

First-stage incremental pricing rule required within one year after enactment (November 9, 1979).

A second-stage rule, amending the first rule, may be submitted to the Congress for review within 6 months after the first rule.

Agency Contact

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FERC

Title

Regulations implementing section 401 of the Natural Gas Policy Act of 1978

Objectives and Benefits

The regulations will specify to the interstate natural gas pipeline companies the method for implementing Section 401 of the Natural Gas Policy Act (NGPA). This section is intended to give essential agricultural uses of natural gas priority for deliveries during a shortage. The statute requires that essential agricultural uses, as certified by the Secretary of Agriculture, not have their deliveries from interstate pipelines reduced unless such reduction is necessary to serve high priority users. High priority users are defined as residential customers, small commercial establishments, schools, hospitals and any other use the Secretary of Energy designates as necessary for the maintenance of life, health or physical property.

Legal Authority

Natural Gas Policy Act of 1978, P.L. 95-621, § 401, 92 Stat. 3394.

Major Alternatives Under Study

The statute requires that curtailment plans—the plans followed by interstate pipelines to reduce deliveries during a shortage—be modified to conform to the statute. Individual pipeline plans may require different treatment, but this is not foreseeable at this time.

Sectors Affected

Essential agricultural uses to be afforded this protection will be certified by the Secretary of Agriculture. Industrial users of natural gas will be affected during a shortage because they will now be classified below essential agricultural uses.

Estimate and Summary of Economic Effects

The economic effects of this rule are not clear at this time. The economic effects will vary depending on the length and severity of any shortage of natural gas and the availability and cost of alternative fuels.

Related Regulations or Actions

Internal: None.

External: The Economic Regulatory Administration of the Department of Energy has issued an NPRM in Docket No. ERA-R-78-22, 43 FR 54660 (November 22, 1978). The Secretary of Agriculture has issued a proposed rule which would certify essential agricultural uses of natural gas, 43 FR 54938 (November 24, 1978).

Active Federal Collaboration

The Department of Agriculture and the Economic Regulatory Administration of the Department of Energy.

Section 401(b) of the NGPA requires FERC to determine whether alternate fuels are available and economically practicable in consultation with the Secretary of Agriculture.

Available Documents

NPRM—44 FR 3725 (January 18, 1979), Docket No. RM 79-15.

Timetable

Final Rule—March 1, 1979 (statutory deadline).

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FERC

Title

Mandatory requirements for the collection and reporting of information associated with the costs of providing electric service

Objectives and Benefits

The purpose of the proposed regulation is to provide a valid information base for electric utility rate decision-making. The aim is to encourage: (1) conservation by the end-users of electricity; (2) effective and efficient use of facilities and resources, including capital, by electric utilities; and (3) equitable rates to consumers. The Conference Report on Section 133 of the Public Utility Regulatory Policies Act of 1978 specifically states: "The conferees intend that good information with regard to costs of providing electric service must be readily available on a timely basis to everyone concerned."

Legal Authority

The Public Utility Regulatory Policies Act of 1978 (PURPA) P. L. 95-617, § 133, 92 Stat. 3132.

Major Alternatives Under Study

Since the promulgation of such rules is mandated by statute, there is no alternative to the issuance of a regulation on this subject. Within this context, the agency will consider the extent to which exemptions from collecting and reporting all or part of the information should be granted to utilities. Examples of some criteria under consideration are: the extent to which

state regulatory authorities presently require such information, whether the utility has a load research program, and the size of the utility. We are also considering establishing circumstances and criteria which may warrant granting additional time for certain utilities to comply with the provisions of the proposed regulations, e.g., availability of an adequate supply of demand recording meters or the need for additional time to install and test equipment and train staff.

Sectors Affected

Affected sectors include all electric utilities with total yearly retail sales in excess of 500 million kilowatt-hours (approximately 260), consumers, state authorities responsible for regulating retail electric rates, and manufacturers of demand recording meters and associated equipment.

Estimate and Summary of Economic Effects

The costs of compliance cannot be qualified realistically at this stage. To a large degree, the costs will be determined by such factors as: how much of the information utilities already collect; the number of customers included in the sample for recording demand; costs and availability of equipment (if the utility does not already have necessary equipment); interest rates; and the extent of savings in capital, facilities, fuel, etc., realized as a result of using the information required. In either case, additional expenditures or savings will be passed on to consumers in retail rates.

Related Regulations or Actions

Internal: Some of the information already must be submitted in annual reports, FERC Form 12, Form I or Form I-M, by regulated utilities and municipal utilities, respectively.

External: None.

Active Federal Collaboration

None. The only Federal agency with an active interest in this area is the Department of Energy. However, DOE participates as an intervenor in retail rate proceedings and is therefore treated as other interested parties.

Available Documents

Notice of informal Public Conference, 43 FR 55257 (November 22, 1978) and public file available for public inspection.

Timetable

NPRM—February 1979.

Final Rule—May 9, 1979 (Statutory deadline).

Agency Contact

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ICC

Title

Investigation of railroad freight rates for recyclable commodities (Ex Parte No. 319)

Objectives and Benefits

The supply of natural resources is limited. It has become apparent in recent years that alternative sources of basic minerals must be developed. The recycling of certain materials has provided an alternative source. The object of the proceeding is to evaluate the differing railroad rate structures for the transportation of recyclable materials and competing virgin materials, and to establish rate levels on recyclables, if necessary, which would permit their use as a source of raw material.

The benefit of such a scheme to the users of recyclable materials would be direct in the form of lower transportation costs; the benefit to the general public would be indirect in the form of natural resource conservation.

Legal Authority

The Railroad Revitalization and Regulatory Reform Act of 1976, § 204, 45 U.S.C. § 793 (1976).

Major Alternatives Under Study

The most promising alternative would be the establishment of a rate structure which would vary according to various weight minima. A rate structure of this kind would essentially establish proportionately lower transportation charges for users of heavy volumes of recycled materials.

A second alternative would provide for the creation of a tax credit for processors or manufacturers using recyclable materials. Producers of virgin resources have a depletion allowance available to enable the recovery of the value of minerals permanently removed from the earth.

The third alternative would reduce the amount of the depletion allowance currently available to producers of virgin minerals. This would have an ultimate effect of reducing the recoverable value of virgin resources in any given year. This would tend to discourage a certain portion of virgin resource production and favor the use of recycled commodities.

Sectors Affected

The results of the proceeding would conceivably affect all producers of virgin resources and processors and users of recycled materials with an alternative or competing virgin natural source.

Estimate and Summary of Economic Effects

At the present time, the demand for recyclables as a source of raw materials is relatively unaffected by any change in transportation charges. This is due to the present level of technology regarding processing recycled materials, the quality of the end product relative to the same product produced from virgin materials, and the geographic locations of processing capabilities.

As availability of virgin resources dwindles, or as extraction costs increase, the use of recyclables as substitutes can be expected to become much more significant. Moreover, a dramatic reduction in freight rates, if assured over a long period of time (20-30 years), could affect the choice of processing technologies as well as design and geographic location of plants for those commodities where transportation costs represent a significant proportion of the product price.

However, the best economic forecasts indicate that a reduction in rail freight rates at present demand levels for recyclables would produce a substantial diminution in rail earnings with no appreciable increase in the processing of recyclables.

Related Regulations or Actions

Internal: Ex Parte No. 357, Increased Freight Rates and Charges, Nationwide—8 percent, is a general rate increase proceeding in which the railroads seek to recoup increases in expenses applicable generally to all rail carriers. A corrollary issue in the proceeding is the application of a lesser increase on freight rates for recyclables.

Ex Parte No. 252 (Sub-No. 2), Incentive Per Diem-Gondolas, is a proceeding studying the use of incentive per diem charges on gondola rail cars since the majority of recyclable materials moved by rail are in cars of this type. Incentive per diem funds, if received, would be limited to the purchase of additional gondola cars in an effort to bolster a limited supply of cars in the national fleet.

External: None.

Active Federal Collaboration

Environmental Protection Agency.

Available Documents

Ex Parte 319, Investigation of Frt. Rates Recyclable Commodities, 356 I.C.C. 113 (1977).

The Impact of the 4-R Act Railroad Ratemaking Provisions, Report to Congress by the Interstate Commerce Commission, October, 1977. (Interstate Commerce Commission Publication.)

Order—Reopening Proceeding on Court remand, served December 13, 1978.

Timetable

Final Order—June 1979.

Agency Contact

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CHAPTER 4—TRADE AND COMMERCE

U.S. DEPARTMENT OF AGRICULTURE

AGRICULTURAL MARKETING AGREEMENT ACT OF 1937

Proposed Federal milk marketing order for Boise, Idaho 11457

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

HOUSING AND URBAN DEVELOPMENT ACT OF 1965

Administrator qualifications and procedures for HUD building products certification programs 11458

DEPARTMENT OF THE INTERIOR

RECLAMATION ACT (IRRIGATION OF ARID LANDS)

Rules and regulations for acreage limitation under Federal reclamation law 11459

DEPARTMENT OF THE TREASURY

FEDERAL ALCOHOL ADMINISTRATION ACT

Advertising regulations under the Federal Alcohol Administration Act 11460
Partial ingredient labelling and advertising of wine, distilled spirits, and malt beverages 11460

USDA-AMS

Title

Proposed Federal Milk Marketing Order for Boise, Idaho

Objectives and Benefits

The proposed milk order is the only proceeding in progress that deals with the initial promulgation of a Federal milk marketing order for an unregulated area.

A Federal order would provide minimum uniform milk prices paid by handlers according to classified uses. A handler buys milk from farmers and delivers it to processing plants. A classified use plan establishes prices according to the use of milk by handlers.

A higher price is needed for fluid (drinking) milk to assure consumers of an adequate supply. Without a higher price for milk that is bottled, there would be no reason for farmers to incur the higher costs involved in getting high-quality milk to bottling plants in the city. Instead, the milk would be sent to the nearest butter or cheese plant for manufacturing purposes.

Sales of fluid milk are fairly even the year round, while production is seasonally higher in the spring than in the fall. The milk for fluid consumption is priced separately under a marketing order at one level and the remainder is priced at a lower level in line with the value of the manufactured dairy products. Class I milk generally includes bottled products such as whole milk, lowfat milk, flavored milk, and other milk drinks that must be produced from milk that is in compliance with the inspection requirements of a health authority. Milk that is used in other classes, i.e., Class II and III, is used mainly for manufactured dairy products such as butter, cheese, and ice cream, which are not subject to the same problems of perishability.

Federal milk orders contain a "pooling" mechanism for providing uniform prices to producers. A single price is accomplished by combining the class use value of all milk that handlers use and then paying all dairy farmers an average return. Producers are assured of a reasonable minimum price for their milk throughout the year. Consumers are assured of an adequate supply of milk to meet their needs throughout the year without wide fluctuations in price.

As part of an integrated national program, the local order, such as the one for Boise, Idaho, would contain provisions that are common to all orders. Such provisions provide for appropriate price alignment among orders for fluid milk and reserve supplies. Also, they facilitate the movement of milk among orders so that there is no impediment or barrier to such movement.

Legal Authority

Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. § 601 *et seq.*

From the time that a hearing notice is issued until the final decision, Department of Agriculture (USDA) employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding, pursuant to § 900.16 (a) and (b) of the Rules of Practice and Procedure Governing Proceedings to Formulate Marketing Agreements and Marketing Orders. The ex parte rules are derived from 5 U.S.C. § 557 (Administrative Procedures Act).

Major Alternatives Under Study

The major alternatives considered are either to recommend Federal milk regulation for the area or to deny it. The Department considers proposals initiated by milk producers, normally through their cooperative associations, and/or by other parties rather than initiating proposals of its own.

The Boise, Idaho order was proposed by three cooperative associations representing producers. Their proposal represented a complete order to regulate the handling of milk in 18 southwestern Idaho and five eastern Oregon counties. It included definitions for determining which plants would be pool plants, i.e., fully regulated plants. A pool distributing plant would be one that disposed of 50 percent or more of its total milk receipts on routes, with 10 percent or more of the distribution in the marketing area. A pool supply plant would be one that transferred 50 percent or more of its Grade A milk receipts from dairy farmers to pool distributing plants. Plants that distributed less than the standards proposed would not be fully regulated, but they would be affected by provisions relating to partially regulated plants. The class prices applied to the classified use plan would include a Class I milk price computed at the level of the Minnesota-Wisconsin price for the second preceding month plus $1.75 per hundredweight. The Class II price would be the Minnesota-Wisconsin price for the month plus 10 cents per hundredweight. The Class III price would be the Minnesota-Wisconsin price for the month. The Minnesota-Wisconsin price is a price computed each month by the Economics, Statistics and Cooperatives Service of the USDA. It represents an average of the prices paid for milk at unregulated manufacturing plants processing only Grade B milk in the two states.

As stated in the Act itself, the declared purpose of the Agricultural Marketing Agreement Act 7 U.S.C. § 601 *et seq.* is "to establish and maintain such orderly marketing conditions . . . as will establish . . . [prices which] are reasonable in view of the price of feeds, the available supplies of feeds, and other economic conditions, [and which will] insure a sufficient quantity of pure and wholesome milk, and be in the public interest."

Sectors Affected

These regulations would directly affect the fluid milk distribution sector and local dairy producers; consumers and distant dairy producers would be affected indirectly.

Estimate and Summary of Economic Effects

The information concerning economic effects is tentative because the analysis of evidence in the hearing record is in progress and no regulation based on the record has been formulated. However, we anticipate the following general impacts if an order were implemented.

All milk used by regulated handlers would be classified according to how it is used and a minimum price would be established for each class of milk. The prices would be aligned with prices established in other Federal milk orders. The Class I differentials of Federal milk orders in the general vicinity of Boise are: $1.90—Great Basin (Salt Lake City, Utah); $1.95—Inland Empire (Spokane, WA); $1.95—Oregon-Washington (Portland, OR); and $1.85—Puget Sound (Seattle, Washington).

Often it is not known what prices are actually paid for milk in an unregulated market because this information is not always presented by milk dealers. Most often it is the unequal distribution among producers of the higher valued Class I sales of a market and the lower valued surplus disposition which results in varying prices that create market instability for producers. As a result it may not be known precisely whether and by how much a classified price plan may increase the price levels of an unregulated market. On a hundredweight basis, the proposed order prices for December 1978 would have been $11.93—Class I, $10.70—Class II, and $10.60—Class III. The Class II and Class III prices are similar to those provided in other Federal milk orders. The average Class I price for all milk orders in December 1978 was $12.18 for milk testing 3.5 percent butterfat.

Related Regulations or Actions

Internal: There are 47 Federal milk orders in operation. In 1977, about 123,000 producers delivered 78 billion pounds of milk to regulated plants. About 41 billion pounds, or 53 percent, of the deliveries were used in Class I. The milk deliveries represented about two-thirds of all milk marketed by the nation's dairy farmers.

External: Duly constituted agencies of state governments designate which milk is Grade A (for fluid consumption).

Active Federal Collaboration

None.

Available Documents

In deciding whether a Federal milk order should be established for the Boise Idaho, area, the Department is restricted by law to the public hearing record. It is on file with the Hearing Clerk, U.S. Department of Agriculture under Docket No. AO-380. The hearing notice appears at 43 FR 49704 (Oct. 24, 1978). In addition to the testimony, evidence, and exhibits that are introduced by participants at the hearing, the Department usually introduces into the record factual material from such official documents as:

1. Federal Milk Order Market Statistics, Summary of Major Provisions in Federal Milk Marketing Orders, Dairy Market News Report, and Sources of Milk for Federal Order Markets by State and County (Dairy Division—Agricultural Marketing Service, U.S. Department of Agriculture),
2. Market Administrators' Statistical Publications (various market administrators' offices),
3. Agricultural Prices, Dairy Situation, Milk Production, and Dairy Products Reports (Economics, Statistics, and Cooperatives Service, U.S. Department of Agriculture).

NOTE.—If any of these documents are not introduced in evidence at the hearing, the Department can take official notice of factual material from them in formulating a recommended decision.

Timetable

Recommended decision—July 1979.
Final decision—September 1979.

Agency Contact

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HUD-FHA

Title

Administrator qualifications and procedures for HUD building products certification programs

Objectives and Benefits

The intent of this rule is to reduce detailed Federal regulation of the technical suitability of building products by widening the use of existing recognized procedures for quality control found in the private sector.

The program which the rule will establish will use third parties to validate a manufacturer's certification that a product complies with standards specified by the private sector and agreed to by the Department of Housing and Urban Development (HUD). After a specific standard is promulgated, the private business sector, as well as professional validators and testing laboratories, is used for monitoring and certifying compliance with the standard. The Department of Housing and Urban Development/Federal Housing Administration (HUD/FHA) plays a minimal role in monitoring the operation of the program.

Under this program, manufacturers and suppliers will be placed on an equal competitive basis when submitting bids to contractors for housing materials. The products used by a contractor will have been validated as conforming to a specified standard, thereby affording protection to mortgage lenders, HUD/FHA, and consumers.

Legal Authority

Housing and Urban Development Act of 1965, § 216, 12 U.S.C. § 1715e (1965).

Major Alternatives Under Study

HUD/FHA is not aware of any available alternative which could place the administration of certification programs into the hands of private industry. Consequently, the only alternative to this rule would be establishment of a government staff to administer certification programs. The latter option is now under study by HUD/FHA.

Sectors Affected

This rule will affect consumers using HUD/FHA mortgage insurance programs and the manufacturers of products to be certified for use in these insurance programs.

Estimate and Summary of Economic Effects

Although the cost of certification programs will vary according to the product being certified, the cost in all cases has minimal. For example, the total estimated cost of the complete certification process in the carpet program is less than one cent per square yard of carpet. This rule will not affect the rate at which mortgages are insured by HUD/FHA. All houses with mortgages currently insured by HUD/FHA were required to have certified products when such certification programs were found to be necessary.

Related Regulations or Actions

Internal: Existing HUD/FHA third-party certification programs include:

1. Grademarking of Lumber—Use of Materials Bulletin 38
2. Aluminum Windows and Door—Use of Materials Bulletin 39
3. Grademarking of Plywood—Use of Materials Bulletin 40
4. Carpet—Use of Materials Bulletin 44
5. Pressure Treated Lumber—Use of Materials Bulletin 48

6. Structural End-Jointed Lumber—Use of Materials Bulletin 51
7. Wood Doors—Use of Materials Bulletin 52
8. Wood Windows—Use of Materials Bulletin 59
9. Glued Plywood Flooring—Use of Materials Bulletin 60
10. Textured Plywood Siding—Use of Materials Bulletin 64
11. Plywood Flooring—Use of Materials Bulletin 66
12. Particleboard Stair Treads—Use of Materials Bulletin 70
13. Plastic Plumbing Fixtures—Use of Materials Bulletin 73

New Certification programs under consideration are:

1. Insulating glass
2. Urea-formaldehyde Insulation
3. Particleboard (other than stair treads)
4. Kitchen Cabinets

External: None.

Active Federal Collaboration

The Department of Housing and Urban Development has been the lead agency for building product certification programs in the United States. Criteria were published as an NPRM (43 FR 33888 August 1, 1978) and have been reviewed, in whole or in part, by the following agencies: Federal Trade Commission, National Bureau of Standards, Department of Commerce, Consumer Product Safety Commission, Department of Defense, Department of Transportation and General Services Administration.

HUD/FHA certification programs are used by the following agencies: Department of Agriculture (Farmers Home Administration), Veterans Administration, Corps of Engineers, Navy, Army and Air Force.

Available Documents

Federal Trade Commission Standards and Certification, 16 CFR Part 457.

American Society for Testing and Materials (ASTM) draft proposal for certification criteria.

American National Standards Institute (ANSI) Z 34.1 (Third-Party Certification).

HUD/FHA Carpet Standard and Certification Program—UM 44c.

Technical Suitability of Product Handbook 4950.1.

Department of Commerce National Laboratory Accreditation Progam.

Consumer Product Safety Commission, 16 CFR Part 1201, Safety Standard for Architectural Glass.

Timetable

Final Rule—April 1979.

Agency Contact

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DOI-LBR

Title

Rules and regulations for acreage limitation under Federal Reclamation Law

Objectives and Benefits

Since its inception in 1902, Federal Reclamation Law has limited the use of water made available for irrigation purposes by or through facilities of projects governed by Reclamation Law to 160 acres per individual landowner, except for projects where specific exemptions or modifications to the law have been granted. Land owned in excess of this acreage may receive project water if the owner enters into a contract with the United States agreeing to sell the excess land to an eligible nonexcess landowner under terms and conditions satisfactory to the Secretary of the Interior and at a price not reflecting project benefits. The contract specifies the time period in which the excess landowner is allowed to sell the excess land. If the land is not sold within that period, a power of attorney vests with the Secretary of the Interior to sell the land.

The purposes of the acreage limitation provisions are to promote the owner-operated farm, provide opportunity for a maximum number of farmers on the land served with Federal project water, distribute widely the benefits of Federal Reclamation projects, and preclude speculative gain in the disposition of land served with project water. In the past, these provisions have been administered through irrigation districts and other entities which have contracted with the United States for the Federal Reclamation project on a case-by-case basis, based on court decisions and opinions of the Solicitor of the Department of the Interior. Formal rules and regulations for acreage limitation have never been promulgated.

The administrative practices followed in the past have resulted in lax enforcement of the acreage limitation provisions with regard to ownership and operation of project lands and in a lack of uniformity in enforcement among Reclamation projects. In August 1976, a United States district court ordered the Secretary of the Interior to prepare and publish rules and regulations dealing with acreage limitation (*National Land for People, Inc.* v. *The Bureau of Reclamation of the Department of the Interior*, 417 F. Supp. 449 (D.C.D.C. 1977)). Such rules and regulations will be designed to provide the needed guidelines for the uniform administration of the acreage limitation provisions in a manner to assure that the purposes of Reclamation Law are carried out.

Legal Authority

The Reclamation Act of 1902, as amended and supplemented, 43 U.S.C. § 371 *et seq.*

Major Alternatives Under Study

On August 25, 1977, proposed rules and regulations for acreage limitation were published in the FEDERAL REGISTER (43 CFR Part 426). During the 128-day comment period on these proposed rules, over 11,000 written comments were received and testimony from 1,075 witnesses at the 17 public hearings was heard. The proposed rules were revised, taking into consideration these comments and will serve as the basis for the environmental impact statement (EIS) on the proposed rules the Department of the Interior is preparing to comply with the order of a United States District Court issued December 7, 1977. The Order halted the rulemaking until an EIS had been completed. The EIS will assess the economic, social, community, and environmental impacts of the proposed rules.

A range of alternatives based on legislative proposals to amend the acreage limitation provisions of Reclamation law and rules that can be established under existing law will be considered in the EIS. The alternatives will contain provisions dealing with the size of ownerships and operations eligible for Federal project water, residency requirements, ownership arrangements, and procedcures to be followed in the sale of land. Included will be a small farm alternative (not to exceed 320 acres), an alternative based on the Department of the Interior legislative proposal that reflects the revised proposed rules on which the EIS is being prepared, and an alternative based on past procedures used to administer the acreage limitation provisions that did not limit the size of the farm operation. Other alternatives also will be considered.

Sectors Affected

The regulations will apply to irrigation water deliveries to over 12 million acres of land in about 150,000 farm operations, situated in projects governed by Federal Reclamation law, in the 17 Western states. The main thrust of the regulations is to place a limit on the size of a farm operation eligible to receive Federal project water; however, they would also impose other eligibility requirements on the landowner and farm operator. The change in the number and size of farm operations may have an effect on the agribusiness

establishments in the area where the regulated lands are located. The nature and extent of these effects will be addressed in the EIS being prepared.

Estimate and Summary of Economic Effects

The major impact of the proposed rules will be the reduction in the size of farm operations and an increase in the number of family farms that may result. This change in the agricultural sector could result in economic effects on the production efficiency of agriculture, income to the farm family, and community income and employment. The EIS on the proposed rules will analyze these effects. Until this statement is complete, it is difficult to provide reliable estimates of the direct and indirect costs of the regulations to the sectors affected. The regulations would place a limit of 960 acres on a farm operation eligible to receive Federal project water. Under past practices, larger farm operations have been permitted and do exist on some projects. While the reduction in these large-scale farming operations may bring a change in the number of farming opportunities, the change in income to the agriculture sector affected as a whole should be minimal.

Related Regulations or Actions

None.

Active Federal Collaboration

The Department of Agriculture is cooperating in preparing the EIS on the proposed regulations.

Available Documents

NPRM—43 CFR Part 426 (August 25, 1977).

"Department of the Interior, Bureau of Reclamation, Acreage Limitations Reclamation Rules and Regulations." "Environmental Assessment of the Impact of Proposed Rules and Regulations for Acreage Limitation Administration as published in the FEDERAL REGISTER. August 25, 1977." Prepared by the Bureau of Reclamation, January 1978, United States District Court record in *National Land for People* v. *The Bureau of Reclamation of the Department of the Interior,* 417 F. Supp. 449 (D.C.D.C. 1977).

Timetable

Publication of Draft EIS—March 7, 1980.
Public Hearings—March-April 1980.
Final Rule—November 1980.

Agency Contact

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Treasury

Title

Advertising regulations under the Federal Alcohol Administration Act

Objectives and Benefits

Treasury is responsible for ensuring that alcoholic beverage advertisments contain certain mandatory information relating to the product and that they are not false or misleading. Current regulations have remained basically unchanged since their adoption in the mid-1930s. Advertising techniques and practices, and consumer education and awareness, have changed significantly in the past forty years and Treasury's regulations in this area are being reviewed for updating and possible revision.

Legal Authority

Federal Alcohol Administration Act, § 5, as amended, 27 U.S.C. § 205.

Major Alternatives Under Study

No specific alternatives are under review. Treasury will be guided by industry and consumer response to the ANPRM.

Sectors Affected

Principally the manufacturers, distributors, advertisers, and consumers of wine, distilled spirits, and malt beverages will be affected by this regulation project.

Estimate and Summary of Economic Effects

At this time there is no estimate of the economic effect of this project. Consolidating interpretive notices and issuing comprehensive, definitive guidelines would likely result in savings to the Treasury and distributors of alcoholic beverages. Public comment in response to the ANPRM will be used in analyzing costs and benefits of possible revisions.

Related Regulations or Actions

Internal: Treasury is considering ingredient labelling requirements for alcoholic beverages also.

External: The Federal Trade Commission is responsible for regulations covering advertising of nonalcoholic products.

Active Federal Collaboration

Treasury is working with the Federal Trade Commission on this matter.

Available Documents

ANPRM—Notice No. 313, 43 FR 51808 (November 21, 1978).

Timetable

NPRM—Spring 1979.
Public Hearing—Summer 1979.

Agency Contact

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202/566-8435

Treasury

Title

Partial Ingredient Labelling and Advertising of Wine, Distilled Spririts, and Malt Beverages

Objectives and Benefits

Labels on alcoholic beverages do not identify the ingredients or additives they contain. Consumers, especially those who are allergic to certain ingredients, need this information. Ingredient labelling regulations will insure that this information is made available to consumers.

Legal Authority

Federal Alcohol Administration Act, § 5, as amended, 27 U.S.C. § 205.

Major Alternatives Under Study

In reviewing the alternative options for ingredient labelling and discussing them with other agencies, Treasury has considered the following options:

(1) full ingredient labelling;

(2) partial ingredient labelling allowing the use of generic terms to describe the basic ingredients (such as grains or fruits) but with a requirement to list all additives used;

(3) partial ingredient labelling allowing the bottler to list the range of possible essential components (those necessary to develop the character of the product, such as corn or rye for distilled spirits, or grapes for wine, or barley for malt beverages) in agriculturally identifiable terms but with a requirement of listing all additives used;

(4) partial ingredient labelling with the requirement to list only the additives used;

(5) no ingredient labelling in any form.

Sectors Affected

This regulation will affect manufacturers of wine, distilled spirits, and malt beverages.

Estimate and Summary of Economic Effects

While the proposed rulemaking seeks to minimize costs, at this time there is no reliable estimate of the costs of ingredient labelling of alcoholic beverages. The costs are not expected to be substantial, however. With information provided in response to the NPRM, Treasury will prepare a regulatory analysis. Moreover, Treasury will strive to minimize the cost of implementing the ingredient labelling requirements ultimately adopted.

Related Regulations or Actions

Internal: Treasury provides advertising guidelines for marketing alcoholic beverages and is currently reviewing these regulations as well.

External: The Food and Drug Administration is responsible for ingredient labelling on nonalcoholic commodities.

Active Federal Collaboration

Treasury has worked closely with the Food and Drug Administration in developing ingredient labelling requirements and will continue to do so.

Available Documents

Withdrawal of Notice of Ingredient Labelling of Alcoholic Beverages—Notice No. 285, 40 FR 52613 (November 11, 1975).

Timetable

NPRM—February 1979.
Final Rule—Summer 1979.

Agency Contact

Ms. Catherine Milton
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CHAPTER 5—TRANSPORTATION AND COMMUNICATION

DEPARTMENT OF ENERGY

EMERGENCY PETROLEUM ALLOCATION ACT OF 1973

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DEPARTMENT OF TRANSPORTATION

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Design standards for highways—geometric design standards for resurfacing, restoration, and rehabilitation of streets and highways other than freeways 11462
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CIVIL AERONAUTICS BOARD

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INTERSTATE COMMERCE ACT

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POSTAL RATE COMMISSION

POSTAL REORGANIZATION ACT

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United States Postal Service Surchange Rate Request for Nonstandard Mail, Docket R 78-8, Filed with the Commission on April 25, 1978 11469

DOE-ERA

Title

Exemption of Aviation Fuel from the Mandatory Petroleum Allocation and Price Regulations

Objectives and Benefits.

This rulemaking action would remove aviation gasoline (avgas) and kerosene base jet fuel (keroject) from mandatory allocation and price control regulations. Decontrol will improve the long-term availability of these aviation fuels.

Legal Authority

Emergency Petroleum Allocation Act of 1973, § 12, 15 USC § 760(a).

Major Alternatives Under Study

There are no alternatives under study. If this is not made effective, the current control system will remain in effect. Under this system, sellers of aviation fuel are generally restricted to price increases which reflect their own increased costs. Also, purchasers of aviation fuel are assured of continued supply from their base period suppliers.

Sectors Affected

Both suppliers are purchasers of aviation fuel would be affected.

Estimate and Summary of Economic Effects

Decontrol will probably cause small price increases in the vicinity of one to two cents per gallon. By permitting a more efficient supply and distribution system to develop, however, decontrol will in the long run cause lower prices.

Related Regulations or Actions

Internal: Standby product regulations would be imposed on decontrolled products (including aviation fuel) in the event of a severe supply emergency. See 10 CFR Part 211, Subpart C, Special Rule No. 10.

External: None.

Active Federal Collaboration

The Federal Energy Regulatory Commission has approved the proposed actions and Congress will review the actions before they become effective.

Available Documents

NPRM—43 FR 6611 (February 15, 1978).

Request for additional comments—43 FR 38848 (August 31, 1978).

Timetable

The proposed exemption should be submitted to Congress before the end of January 1979. If Congress does not disapprove the proposals within 15 days of submissions, the decontrol actions take effect.

Agency Contact

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DOT-FHWA

Title

Design Standards for Highways—geometric design standards for resurfacing, restoration, and rehabilitation (RRR) of streets and highways other than freeways

Objectives and Benefits

The 1976 and 1978 highway acts provided for a Federal-aid program to assist the states in resurfacing, restoration, and rehabilitation (RRR) of streets and highways. The intent of this action is to establish regulations to carry out this program. Many highways in need of RRR work are old and do not meet the higher design standards currently required for new construction for such things as banking of curves, roadway and bridge width, and horizontal clearances to obstructions. In light of this, the Federal Highway Administration (FHWA) is considering the establishment of separate design standards for highway resurfacing, restoration, or rehabilitation work.

Benefits from this program will be gained primarily from prolonging the life of the existing highway system. These highways otherwise would continue to deteriorate to the point of structural failure, requiring a much larger reconstruction expenditure. The FHWA expects that implementation of this program would have the benefits of reducing vehicle operating costs and future highway repair costs and increasing comfort, convenience, and safety.

Legal Authority

Federal-Aid Highway Act of 1976, 23 U.S.C. §§ 101(a), 109, 315.

Major Alternatives Under Study

Major alternatives were explored through the publication of an ANPRM. The three alternatives discussed in the ANPRM were: (1) continue FWHA design approval operations within the provisions of the current regulations (23 CFR Part 625) by granting exceptions to existing design standards on an individual project basis for RRR projects; (2) incorporate by reference the American Association of State Highway and Transportation Officials (AASHTO) "Geometric Design Guide for Resurfacing, Restoration, and Rehabilitation (RRR) of Highways and Streets" as the acceptable criteria for Federal-aid RRR work; and (3) develop with state officials individual RRR standards for each state by using the above-cited AASHTO "RRR Guide" and other guides. After reviewing the ANPRM comments on all three alternatives, an FHWA task force formulated new recommendations. The task force rejected all three previous proposals and recommended a new set of proposed FHWa geometric design standards for RRR projects. These new RRR standards were published as an NPRM in August 1978. The FHWA is now reviewing the comments received on NPRM and is identifying for consideration alternatives to issuing separate RRR geometric design standards.

Sectors Affected

This regulation would affect all state and local governments, suppliers, and contractors concerned with highway construction and maintenance.

Estimate and Summary of Economic Effects

The FHWA is in the process of preparing a Regulatory Analysis of the impact of these regulations and major alternatives. This Analysis will be available in May 1979 when the next rulemaking action is scheduled to take place.

Related Regulations or Actions

Internal: FHWA has regulations establishing geometric design standards for highway construction projects (23 CFR Part 625.3).

External: None.

Active Federal Collaboration

None.

Available Documents

ANPRM—42 FR 42876 (August 25, 1977).

NPRM—43 FR 37556 (August 23, 1978).

Draft Regulatory Evaluation of the proposed regulation.

Timetable

Final Rule—May 1979.

Agency Contact

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DOT-FHWA

Title

Withdrawal of interstate segments and substitution of alternative projects

Objectives and Benefits

The objective of this regulation is to implement statutory provisions which permit state and local governments to withdraw construction projects for nonessential Interstate highway system routes from their transportation plans and substitute for them alternative projects such as mass transit construction, equipment purchases for mass transit or construction of primary, secondary, urban, or other Interstate system roads. In this regulation, the Federal Highway Administration (FHWA) will give guidance to the states on how to proceed with the withdrawal of Interstate routes and the substitution of alternative projects. The benefits of this program will be to increase transportation choices and to permit a shift of resources from Interstate construction to other transportation projects which have become more attractive because of the need for reduced fuel consumption.

Legal Authority

Federal-Aid Highway Act of 1973, 23 U.S.C. §§ 103(e)(2) and (e)(4).

Federal-Aid Highway Act of 1976, 23 U.S.C. §§ 103(e)(2) and (e)(4).

Surface Transportation Assistance Act of 1978, 23 U.S.C. §§ 103(e)(2) and (e)(4).

National Mass Transportation Assistance Act of 1974, 49 U.S.C. §§ 1602, 1603, 1604.

Major Alternatives Under Study

There are no alternatives possible under the statutory provisions.

Sectors Affected

This regulation would affect state highway agencies, transportation planning groups and transit operators in specific urbanized areas which choose to take advantage of these provisions.

Estimate and Summary of Economic Effects

As a result of the proposed rule, billions of dollars which were to be expended for Interstate construction may be withheld and like amounts expended on other transportation projects. Over $5 billion has been made available for use for public mass transit projects or alternate highway projects since this program was first en-

acted in 1973. The FHWA estimates that an additional $2 to $3 billion may become available for alternate projects in lieu of Interstate segments before the legal authority to approve substitute projects expires in 1986.

Related Regulations or Actions

Internal: Current FHWA regulations require states and local governments to develop transportation plans for urban areas (23 CFR Part 450). Other FHWA regulations prescribe requirements and standards for the disposition and use of property acquired by states' Federal-aid highway funds in connection with projects which are modified or terminated (23 CFR Part 480).

External: None.

Active Federal Collaboration

None.

Available Documents

Regulations were issued June 12, 1974, which provided rules for initial implementation of 23 U.S.C. § 103 (e)(4), 39 FR 20663.

Timetable

NPRM—March 1979.
Final Rule—July 1979.

Agency Contact

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DOT-FHWA

Title

Certification of vehicle size and weight enforcement

Objectives and Benefits

The objective of the proposed regulations is to cause each state to increase the effectiveness of its enforcement of vehicle size and weight laws.

Highway maintenance obligations of the states have been increasing much more rapidly than anticipated. The inflation of the past few years has sent maintenance cost soaring and has reduced the amount of work that could be done with the money available, thereby creating an undersirable backlog of deferred maintenance. Contributing most significantly to increasing maintenance needs is the sheer volume of vehicular traffic, particularly heavy trucks which cause pavement damage. This is most dramatic on the Interstate system. Truck weight surveys report that approximately 8 percent of trucks are overweight, with the great majority being less than 10 percent over the legal limits. These overweight trucks contribute to the pavement damage.

The Federal Highway Administration (FHWA) would require each state to submit for review and acceptance a size and weight enforcement program for the next year. The program would set forth, among other things, staffing levels that would be devoted to size and weight enforcement, the proposed use of fixed and portable scales, the manner in which excessive loads would be handled in order to make them legal, and the manner in which repeated offenders would be handled. Upon acceptance of the state's program by FHWA, the progran would then be the norm by which FHWA would measure the state's activity for that year and determine whether or not the vehicle size and weight laws are being enforced adequately in the state. The Surface Transportation Assistance Act of 1978 provides for a penalty of 10 percent of a state's highway apportionments if the state fails to enforce size and weight law adequately.

The benefit will be to reduce the number of overweight vehicles and thus lengthen the life of pavement and structures, as well as to help maintain the safe condition of the highways.

Legal Authority

Federal-Aid Highway Amendments of 1974, §§ 106, 107, 23 U.S.C. §§ 127, 141.

Surface Transportation Assistance Act of 1978, P.L. 95-599, §§ 161, 123, 92 Stat. 2689.

Major Alternatives Under Study

The FHWA is considering two alternatives to the one described above:

(1) Rescind present regulations which require the submission of substantial data on enforcement, and require only a statement by the state that the laws were enforced;

(2) Adopt a purely quantitative approach to evaluate enforcement in each state in terms of the number of weighings, arrests, etc. (actually only an expansion of present regulations).

Sectors Affected

State governments and operators of cargo carrying trucks would be affected.

Estimate and Summary of Economic Effects

It is not possible to document the number of illegally loaded trucks that might be removed from the traffic stream, nor is it possible to accurately predict the resulting savings in maintenance costs accruing to the respective state highway departments. While the absolute number of illegally loaded trucks may not be large, the American Association of State Highway and Transportation Officials Road Test has demonstrated that pavement and structure damage occurs at an exponential rate as axle and gross vehicle loadings are increased above the legal limits.

The effect of the proposed revision will vary from state to state according to the extent of each state's present enforcement program. Those states with extensive size and weight enforcement programs will probably only incur the modest costs of additional reporting requirements. However, those states with limited enforcement programs will incur some substantial costs through increases in personnel and equipment.

Related Regulations or Actions

Internal: The Department is currently conducting an inventory of the existing system of penalties for violations of state vehicle weight laws, rules, and regulations and the existing systems in the states for the issuance of special permits that authorize a vehicle to exceed the relevant weight limitation. The inventories are to be completed and reported upon by May 5, 1979.

The Department is also conducting a Congressionally mandated study covering vehicle sizes and weights, and their effect upon construction, reconstruction and maintenance of roads; the relationship of highway design, construction practices and maintenance costs in states having weight laws above the Federal maximum; the adequacy of current highway and bridge design standards with respect to the present and future transportation needs; and the need for and desirability of uniformity in maximum truck size and weight limits throughout the United States. The study is to be completed and reported upon no later than January 15, 1981.

External: None.

Active Federal Collaboration

None.

Available Documents

ANPRM—43 FR 2634 (January 18, 1978).

Timetable

NPRM—February 1979.
Final Rule—August 1979.

Agency Contact

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202/426-1993

CAB

Title

Air carrier: insurance and liability

Objectives and Benefits

These regulations will ensure that airlines maintain adequate insurance policies or self-insurance programs to cover liability for personal injury, death, or property damage. They will benefit air travelers and others who may incur damages resulting from the operation of aircraft.

Legal Authority

The Federal Aviation Act of 1958, § 401(q), 49 U.S.C. 1371(q), as amended by the Airline Deregulation Act of 1978, § 22(d), P. L. 95-504, 92 Stat. 1722.

Major Alternatives Under Study

The main alternative being considered are minimum standards for insurance policies, minimum standards for self-insurance plans, and combinations of those two approaches. The standard would be tailored to the type of airline.

Sectors Affected

Airlines, insurance companies, the traveling public, and shippers would be affected.

Estimate and Summary of Economic Effects

It is too early in the development of this regulation to estimate its cost or other economic impacts; however, they are not expected to be major. Most existing airlines already maintain insurance policies or self-insurance programs.

Related Regulations or Actions

Internal: Insurance requirements for special classes of air carriers:

Air Freight Forwarders—14 CFR Part 296.

Air Taxis—14 CFR Part 298.

All-Cargo Carriers—14 CFR Part 291.

Charter Carriers—14 CFR Part 208.

External: We are researching related regulations of other agencies.

Active Federal Collaboration

Discussions are being held with the Federal Aviation Administration.

Available Documents

None.

Timetable

NPRM—Spring 1979.
Final Rule—Summer 1979.

Agency Contact

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202/673-5088

CAB

Title

Market entry policies

Objectives and Benefits

Airlines generally must obtain a certificate from the Civil Aeronautics Board (CAB) before they are allowed to provide air service. One requirement is that the service in question be consistent with the public convenience and necessity. This regulation will implement the Board's evolving "multiple permissive" policy of certificating all qualified airlines that apply for authority to serve a particular domestic market. This approach allows the public convenience and necessity aspects of airline selection to be made by the market instead of the Board.

Legal Authority

The Federal Aviation Act of 1958, § 401, 49 U.S.C. § 1371, as amended by the Airline Deregulation Act of 1978, P. L. 95-504, 92 Stat. 1705.

Major Alternatives Under Study

The major alternatives include continuing a case-by-case approach to multiple permissive entry and instituting a series of major route investigations or major regional route investigations. In thsee investigations, the Board would examine the air service needs of communities or regions. The possibility of proceeding without oral evidentiary hearings in each of these situations is also being considered.

Sectors Affected

Airlines and all of the traveling public would be affected.

Estimate and Summary of Economic Effects

The economic effects include substantially increased competition, resulting in lower prices and a wider range of price/service options for air travelers.

Related Regulations or Actions

Internal: Oakland Service Case, Docket 30699. Chicago Midway Low Fare Route Proceeding, Docket 30277. Chicago Midway Expanded Service Proceeding, Docket 33019.

External: None.

Active Federal Collaboration

Departments of Justice and Transportation, Federal Trade Commission, and Council on Environmental Quality.

Available Documents

Docket 30699: Orders 78-4-121 (instituting order) and 78-9-96 (interim order).

Docket 30277: Orders 78-7-40 (tentative findings) and 78-8-203 (award of certificates).

Docket 33019: Orders 78-7-41 (instituting order) and 78-10-40 (reconsideration of institutng order).

These documents can be obtained from the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428 202/673-5432.

Timetable

NPRM—Spring 1979.
Final Rule—Summer 1979.

Agency Contact

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Bureau of Pricing and Domestic Aviation
Civil Aeronautics Board
Washington, D.C. 20428
202/673-5448

CAB

Title

Revision of airline passenger rules tariffs

Objectives and Benefits

The contractual relationship between airlines and passengers is largely defined by rules tariffs. These are documents that the airlines file with the Civil Aeronautics Board (CAB). They include not only ticket prices but also the basic ground rules for passenger rights and airline responsibility, covering such areas as baggage mishandling and schedule irregularities. These regulations will set limits on the use of certain tariff provisions in order to make the contracts fairer. They will also change the format of the rules tariffs to make them more intelligible to passengers and others who must use them.

Legal Authority

The Federal Aviation Act of 1958, as amended, §§ 403, 404, and 411, 49 U.S.C. §§ 1373, 1374, and 1381.

Major Alternatives Under Study

The alternatives include prohibiting certain types of tariff provisions, prescribing certain types of provisions, and improving the disclosure of these provisions.

Sectors Affected

Airlines and all of the traveling public (over 250 million passengers) will be affected.

Estimate and Summary of Economic Effects

It is too early in the development of this regulation to estimate its costs or other economic impacts; however, they are not expected to be major.

Related Regulations or Actions

Internal: Exemption of U.S. and Foreign Air Carriers from Tariff Observance Requirements to Permit Resolution of Consumer Complaints, Docket 34189.

External: None.

Active Federal Collaboration

None.

Available Documents

Docket 34189: Order 78-12-49, Exemption of U.S. and Foreign Air Carriers from Tariff Observance Requirements to Permit Resolution of Consumer Complaints.

This document can be obtained from the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428; 202/673-5432.

Timetable

NPRM—Early 1979.

Final Rule—Summer 1979. (There may be several final rules on these tariffs.)

Agency Contact

Ms. Patricia Kennedy
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Washington, D.C. 20428
202/673-5158

CAB

Title

Air carrier fitness

Objectives and Benefits

To obtain and keep a certificate, which permits it to provide air service, an airline is required by statute to be "fit, willing, and able" to provide the service authorized by the certificate and to comply with the Federal Aviation Act and Civil Aeronautics Board (CAB) regulations. This regulation will establish evidentiary standards for demonstrating fitness, willingness, and ability (often referred to merely as "fitness").

Legal Authority

Federal Aviation Act of 1958, § 401, as amended, 49 U.S.C. § 1371; particularly section 401(r) as added by the Airline Deregulation Act of 1978, § 22(d), P. L. 95-504, 92 Stat. 1722.

Major Alternatives Under Study

The major alternatives include continuing the case-by-case approach to evidentiary standards and codifying those standards in a regulation.

Sectors Affected

Air carriers, prospective air carriers, travelers, and shippers will be affected.

Estimate and Summary of Economic Effects

It is too early in the development of this regulation to estimate its costs or other economic impacts; however, they are not expected to be major. Moreover, including the standards in a regulation is likely to reduce the procedural costs of obtaining certificate authority.

Related Regulations or Actions

Internal: Fitness determinations, including evidentiary requirements, have historically been made on a case-by-case basis. Requirements for the submission of information are found in 14 CFR Parts 201 and 241.

External: Federal Aviation Administration safety regulations:

14 CFR Part 121, Certification and Operations: Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft.

14 CFR Part 135, Air Taxi Operators and Commercial Operators of Small Aircraft.

Active Federal Collaboration

Discussions are being held with the Federal Aviation Administration.

Available Documents

None.

Timetable

NPRM—Winter, 1979.
Final Rule—Spring, 1979.

Agency Contact

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202/673-5448

FMC

Title

Amendment to financial reports by common carriers by water in the domestic offshore trades

Objectives and Benefits

The Federal Maritime Commission intends to publish substantive guidelines for determining what constitutes a just and reasonable rate of return or profit for common carriers by water in the domestic offshore trades of the United States. "Domestic Offshore Trade" means that trade carried on by common carriers by water operating: (1) between the United States and its territories, possessions, and Puerto Rico; (2) between or within those territories, possessions and Puerto Rico; (3) between the continental United States and Hawaii and Alaska; and (4) between, but not within, Hawaii and Alaska. The Commission's authority to regulate rates in the domestic offshore trades has been altered by an amendment to the Intercoastal Shipping Act of 1933. In order to properly implement the amendment, the Commission is directed to prescribe by regulation the guidelines for determining the justness and reasonableness of rates of return or profits for common carriers by water in the domestic offshore trades.

Legal Authority

Amendment to the Intercoastal Shipping Act of 1933, P.L. 95-475, 92 Stat. 1494.

Major Alternatives Under Study

There are no realistic alternatives to issuing the guidelines, as their issuance is explicitly mandated by the above cited legal authority. The range of alternatives to be considered for the guidelines include different criteria based on type of carrier, different reporting requirements based on size of carrier, cost justification by type of cargo, cost justification by specific commodity, and cost analysis with respect to general, overall rate levels.

Sectors Affected

Sectors of the economy affected by these regulations are shippers and oceangoing common carriers between the noncontiguous or domestic offshore areas and the continental United States and between any two or more of the following areas: Alaska, Hawaii, Puerto Rico, U.S. Virgin Islands, Guam, American Samoa, Wake Island, Midway Island, Northern Marianas, and Johnston Island.

Estimate and Summary of Economic Effects

Information on economic effects is not available at this time. However, it is not expected that there will be any substantial impact on rates.

Related Regulations or Actions

Internal: Commission Rules of Practice and Procedure and Commission General Order 38 (Publishing, Filing and Posting of Tariffs In Domestic Offshore Commerce.)

External: None.

Active Federal Collaboration

None.

Available Documents

Commission General Order 11 (Financial Reports By Common Carriers By Water In the Domestic Offshore Trades), Commission Rules of Practice and Procedure, 46 CFR Part 502.

ANPRM—43 FR No. 53046-53047 (November 15, 1978).

Timetable

NPRM—Spring 1979.
Final Rules—Fall 1979.

Agency Contact

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ICC

Title

Policy statement on motor carrier regulation (Ex Parte No. MC-121)

Objectives and Benefits

The objective of the proceeding is to notify the public that the Interstate Commerce Commission (ICC) will alter its standard of proof in cases involving the entry of motor carriers into the fields of interstate transportation of passengers and property, and the acquisition of operating rights of existing carriers, primarily by other established, regulated motor carriers. Past regulatory practice has emphasized the need to protect existing motor carriers against excessive competition and the assumption of excessive debt. In light of the maturity of the motor carrier industry and changing economic conditions, the Commission has concluded that more weight should be given to the benefits of competition in carrying out its regulatory responsibilities. The standards developed in this proceeding will determine the significance to be given to new or additional competition in considering operating authority applications; they will also identify merger and acquisition situations which have the potential for lessening competition.

The benefits from these standards will include easing entry controls in the motor carrier field and the encouragement of healthy competition within the industry. This should act as an effective force for regulating prices and service quality. Moreover, use of guidelines to avoid adjudication of routine motor carrier financial transactions will enable the Commission to focus its time and resources only on those transactions which have discernible public consequences.

Legal Authority

Interstate Commerce Act, 49 U.S.C. §§ 10321(a), 10921, 10922, 10923, 10928, 11343, and 11344; Administrative Procedure Act, 5 U.S.C. § 553.

Major Alternatives Under Study

The most promising alternative is the implementation of a standard which will allow the ICC to grant an application for common carrier (carriers offering their services to the general public) or contract carrier (carriers limiting their services by contractual arrangements) operating authority unless carriers opposing the application demonstrate the grant will endanger or impair existing operations. The Commission, traditionally, has relied on a presumption that carriers presently in the industry would be harmed by new entrants. The new standards would essentially reverse the presumption to favor a grant unless detriment is shown.

The ICC is also considering implementing a standard discouraging mergers or acquisitions where the motive is solely to obtain access to new markets. Customarily, the Commission has presumed a merger or consolidation would necessarily have public benefit. In some instances, the mergers have resulted in curtailed service. The new standard would tentatively allow mergers but condition approval on the maintenance of existing services. Carriers seeking merely to enter a particular market would be encouraged to file applications for new operating authority.

Sectors Affected

The new standards will affect all carriers of property or passengers seeking new operating authority or petitioning for approval of merger or consolidation plans, the general public (especially those who use interstate passenger bus transportation or ship goods in interstate commerce), and competing transportation systems.

Estimate and Summary of Economic Effects

The increased competition resulting from implementation of the standards is expected to become an effective force in controlling prices and quality of services. A precise estimate is unknown.

Related Regulations or Actions

Internal: Ex Parte No. 55 (Sub-No. 26), Protest Standards in Motor Carrier Applications Proceedings, 43 FR 50908 (1978).

Ex Parte No. MC-120, Petition to Relax Entry on the Transportation of Small shipments Weighing 500 Pounds or Less, 43 FR 37329 (1978).

External: None.

Active Federal Collaboration

None.

Available Documents

Liberty Trucking Company—Ext.—General Commodities, 130 M.C.C. 243 (1978).

Ex Parte No. MC-107. Transportation of Government Traffic, 129 M.C.C. 623 (1978).

NPRM—43 FR 56978, (November 5, 1978).

Timetable

Hearing—February 1979 (Modified Procedure).
Final Rule—May 1979.

Agency Contact

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ICC

Title

Rail general exemption authority—fresh fruits and vegetables [Ex Parte No. 346 (Sub-No. 1)]

Objectives and Benefits

The objectives of the proposed nationwide exemption from regulation of rail transportation of fresh fruits and vegetables is to enable the Commission to commit its limited resources to areas where they are most needed. In addition, the proposal is designed to eliminate the present inequity under the Interstate Commerce Act which exempts trucks when transporting these commodities. The projected benefit of this action will be an increased market share for the railroads in the transportation of fresh fruits and vegetables by allowing the railroads greater freedom to adjust their charges for services in competitive markets. This will promote a balanced transportation system and will be more efficient, both in terms of energy and the environment, by shifting a portion of this traffic from trucks to the railroads.

Legal Authority

The Railroad Revitalization and Regulatory Reform Act of 1976, § 207, 49 U.S.C. § 10505 (1978).

Major Alternatives Under Study

The major alternative under study involves the exemption of all aspects of regulation over the rail transportation of fresh fruits and vegetables, with the exception of certain informational reporting requirements.

A second alternative is the partial exemption of the same commodity grouping, which would retain the various common carrier obligations such as provision of service at non-discriminatory rates, reasonable dispatch requirements, liability for loss and damage to lading, and car service regulations and orders.

A long-range alternative is the exemption of remaining unmanufactured agricultural commodities which are now exempt when moving by truck.

Sectors Affected

The railroads, shippers and purchasers of fresh fruits and vegetables, and exempt truckers would be affected.

Estimate and Summary of Economic Effects

Data indicate that the railroads' share of the national transportation market for fresh fruits and vegetables is currently less than 10 percent. The effects of the proposed exemption are unknown at this time. However, it is anticipated that the increased flexibility in rail transportation pricing, which the exemption will provide, will increase this percentage.

Related Regulations or Actions

Internal: Ex Parte No. 284, Investigation Into the Need For Defining Reasonable Dispatch (Perishable Commodities), 111 (1962), on remand, 356 I.C.C. 95 (1976).

External: Experimental Technology Incentives Program of the National Bureau of Standards—Experimental Project.

Active Federal Collaboration

Department of Justice, Department of Agriculture, and Department of Transportation.

Available Documents

ANPRM—Ex Parte No. 346, Rail General Exemption Authority, served May 31, 1978.

NPRM—Ex Parte No. 346 (Sub-No. 1), Rail General Exemption Authority—Fresh Fruits and Vegetables, 43 FR 58205, December 13, 1978.

Timetable

Final Rule—March 1979.

Agency Contact

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PRC

Title

U.S. Postal Service request for changes in the domestic mail classification schedule as it relates to bulk parcel post, Docket MC 78-1, filed with the Commission on September 8, 1978

Objectives and Benefits

The Postal Service believes that a restructuring and rate reduction of bulk parcel post will help bring back the necessary volume to the Postal Service, in order to maintain a viable parcel post delivery service to every business and household in the United States.

In its request, the Service feels a rate reduction in bulk parcel post is proper because it reflects the differing cost characteristics of bulk mail and of single-piece mail. Bulk mailers can bypass many of the costly handling operations of mail, and thus reduce the Service's costs.

The Service's proposal is designed to reduce the minimum number of pieces for bulk mailings from 300 to 50 and require certain acceptance standards such as containers acceptable to the Postal Service to increase operating efficiency.

Legal Authority

The Postal Reorganization Act of 1970, as amended, §§ 3621, 3622 and 3623, 39 U.S.C. § 3601 (1970).

Major Alternatives Under Study

The following are the requirements and rate and zone structures for the Postal Service's proposed bulk parcel post subclass:

Payment of Postage: Mailers would have the option of paying postage by: (1) affixing a meter strip covering the full postage amount on each parcel, or (2) affixing a meter strip covering a per-piece charge only and having the Service compute the per-pound charge, which would be assessed against an advance deposit account. Mailers who choose the first option would not be required to sort parcels by rate area; mailers who choose the second method would be required to do so. Furthermore, mailers choosing the second option would be required to maintain an advance deposit account.

Place of Acceptance: Bulk parcel mail would be accepted at offices having both the capability for bulk acceptance and direct transportation to a parent Bulk Mail Center (BMC)/Auxiliary Service Facility (ASF).

The Service is excluding nonmachinable parcels (parcels weighing over 35 pounds) from the bulk subclass, but does recommend a surcharge of a $1.50 for each nonmachinable parcel in addition to the applicable single-piece rate. The Service proposes to reduce the minimum weight level from 16 ounces to 8 ounces, which would allow mailers presently using third-class single-piece to take advantage of the lower bulk parcel post rate.

Mailers of bulk parcels would also have available to them two special services, C.O.D. and insurance. These fees would be included in the postage meter strip, or shown on a separate meter strip.

Rate and Zone Structure: The Service's rate structure consists of two various per-piece and per-pound charge combinations. The present 8-zone structure is unaltered in the proposal. The rates for the proposed restructured bulk parcel-post subclass are as follows:

	Intra-Bulk Mail Center	Inter-Bulk Mail Center—Zones						
		1 and 2	3	4	5	6	7	8
Per-piece	$1.05	$1.25	$1.26	$1.26	$1.26	$1.26	$1.26	$1.26
Per-pound	3.5¢	3.3¢	5.3¢	7.2¢	11.9¢	17.1¢	21.9¢	34.2¢

The per-piece charges are designed to cover all non-transportation costs, except those relating to space utilization in processing facilities and building depreciation. The intra-BMC rate is applicable to all BMC/ASF parcels addressed to delivery points within the service area of the originating BMC/ASF. The per-piece charge differential between intra-BMC and inter-BMC bulk parcels reflects the processing received by inter-BMC parcels at the second (destinating) BMC/ASF, and avoided by intra-BMC parcels.

The per-pound charge is intended to recover longer and short-run variable transportation costs as well as space-related costs and building depreciation. The charge per-pound varies by rate area, i.e., the BMC service area for intra-BMC parcels, and existing zones in all other instances, but is constant within each one.

Intervenors are interested parties in the Service's proposal who present

their case before the Commission in open evidentiary hearings.

Intervenors, except the Officer of the Commission, who represents the public's interests, are large volume business mailers who, with one exception, may benefit by the Postal Service's proposal. They are American Business Press, Inc., American Retail Federation, Associated Third Class Mail Users, Association of American Publishers, Inc., Direct Mail/Marketing Association, Inc., Growers and Shippers League of Florida and Florida Gift Fruit Shippers Association, Magazine Publishers Association, Inc., Mail Order Association of America, National Association of Greeting Card Publishers, National Industrial Traffic League, Parcel Shippers Association, J. C. Penney Company, United Parcel Service, Dr. George M. Wattles and the Officer of the Commission.

Sectors Affected

Any volume business mailers with mailings of a minimum of 50 parcels, not under 8 ounces or over 35 pounds per parcel.

Estimate and Summary of Economic Effects

Until the Commission issues its decision, the law governing the operations of the Postal Rate Commission prohibits the Commission from commenting on the economic effects of the Service's proposal. However, witnesses for the Postal Service believe that its proposal will increase the Service's annual revenues by $20.7 million. More importantly, the Service believes that the restructuring and rate reduction of bulk parcel post will revive its declining parcel post volume. This potential volume increase will have an impact on the Service's parcel post competition, particularly its strongest, United Parcel Service.

Related Regulations or Actions

None.

Active Federal Collaboration

None.

Available Documents

Initial Postal Service Request for Changes in the Domestic Mail Classification Schedule, 43 FR 41441 (September 18, 1978).

Transcripts of Hearings as well as Direct Testimony, Rebuttal and Surrebuttal Testimony, Exhibits, Workpapers, Library References/Studies, Interrogatories and Answers, Requests for Oral Cross-Examination and Written Cross-Examination.

Commission Orders and Notices.

Presiding Officer's Orders, Rulings, Motions, and Notices.

Petitions for Leave to Intervene and Request for Limited Participation.

Commission's Recommended Decision (when issued) for Docket MC78-1.

Timetable

Filing of each participant's case (including that of the Officer of the Commission)—January 15, 1979.

Hearings on Postal Service's case—January 23-February 2, 1979.

Completion of all discovery directed to the Intervenors—February 20, 1979.

Hearings on each intervenor's case—March 5-16, 1979.

Rebuttal evidence of the Postal Service and each participant. (No discovery to be permitted on this rebuttal evidence; only oral cross-examination.)—March 26, 1979.

Beginning of hearings on rebuttal evidence—April 10, 1979.

Close of evidentiary record—April 18, 1979.

Initial briefs filed—May 21, 1979.

Reply briefs filed—May 31, 1979.

Oral argument (if scheduled)—June 7, 1979.

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PRC

Title

U.S. Postal Service request for a recommended decision on establishing an electronic computer originated mail (ECOM) subclass, Docket MC78-3, filed with the Commission on September 8, 1978

Objectives and Benefits

ECOM is a proposed new service for computer originated messages sent in volumes of at least 200 per mailing. The service, a subclass of first-class mail, is designed to provide highly reliable two-day delivery of messages tendered to the Postal Service for electronic transmission to a post office near the addressee, where the message will be printed in hard copy for delivery. The receiving post office will print a hard copy of the message and deliver it to the addressee.

Legal Authority

The Postal Reorganization Act of 1970, as amended, §§ 3621, 3622 and 3623, 39 U.S.C. § 3601 (1970).

Major Alternatives Under Study

The following is the Postal Service's pricing schedule for ECOM. Docket MC78-3, which the Postal Rate Commission (PRC) is considering:

ECOM Pricing Schedule

	Fee per message	Second page add'l fee per message	Minimum volume per input
Messages per month:			
5,000 to 24,999	$0.55	$0.10	200
25,000 to 49,999	.40	.10	1,000
50,000 and up	.30	.10	2,000

This pricing schedule permits low volume users to use ECOM, provided that the minimum requirement of 200 pieces per mailing is met. The Postal Service will require higher volume users to submit a greater number of messages per mailing. The Service believes that large volume mailers will achieve economies in transmission costs as the volume of messages transmitted increases. Similarly, transmission economies are experienced on the second page of a message.

In addition, the Postal Service believes that the productivity level at the receiving office will improve as the volume of messages received increases, since higher volumes per transmission will reduce the nonproductive time in the ECOM unit and will increase the number of messages that are batched for transfer from the printing operation to the bursting, folding, inserting and sealing operation.

There are also interested parties or intervenors in the Service's proposal who will present their case before the Commission in open evidenciary hearings.

Intervenors, except the Officer of the Commission, who represents the public interests, are larger business mailers, some of which already have a stake in electronic communications. They include American Bankers Association, American Business Press, American Cable and Radio Corporation, American Newspapers Publishers Association, American Retail Federation, Association of American Publishers, Computer and Business Equipment Manufacturers Association, Council of Public Utility Mailers, DHL Communications, Inc., Direct Mail/Marketing Association, Federal Communications Commission, Graphnet Systems, Inc., GTE Service Corporation, U.S. Department of Justice, Magazine Publishers Association, Mail Order Association of America, MCI Telecommunications Corporation, National Association of Greeting Card Publishers, National Industrial Traffic League, National Telecommunications and Information Administration, J. C. Penney Company, TDX Telecommunications, Inc., United Parcel Service, Dr. George M. Wattles, Xerox Corpo-

ration, American Facsimile Systems, Inc., and RCA Global Communications, Inc.

Sectors Affected

The government and business communities who need a fast, reliable communication service for sending bills and large volume mailings will be affected.

Estimate and Summary of Economic Effects

Until the Commission issues its decision, the law governing the operations of the Postal Rate Commission prohibits the Commission from commenting on the economic effects of the Service's proposal. However, witnesses for the Postal Service beleive that ECOM mail will increase the Service's annual revenues by $2.4 million. The Service feels that if it does not take advantage of this technology, it will restrict its development in communications, limit the efficiencies available through electronics and fail to honor its commitment to the public. If the Commission recommends the Service's request, then electronic messages will fall under the Private Express Statutes, which prohibit private carriage of mail. The impact of such action could severely limit such services presently provided by such companies as Xerox, Western Union and RCA Global Communications.

Related Regulations or Actions

None.

Active Federal Collaboration

None.

Available Documents

Initial Postal Service Request for Changes in the Domestic Mail Classification Schedule, 43 FR 41441 (September 18, 1978);

Transcripts of Hearings as well as Direct Testimony, Rebuttal and Surrebutral Testimony, Exhibits, Workpapers, Library References/Studies, Interrogatories and Answers, Requests for Oral Cross-Examination and Written Cross-Examination;

Commission Orders and Notices;

Presiding Officer's Orders, Rulings, Motions, and Notices;

Petitions for Leave to Intervene and Request for Limited Participation;

Commission's Recommended Decision (when issued) for Docket MC78-3.

Timetable

Filing of the case of each participant (including that of the Officer of the Commission)—January 30, 1979.

Hearings on Postal Service's case—February 5-9, 1979.

Completion of all discovery directed to the intervenors—March 28, 1979.

Hearings on Intervenors' case—April 24-May 2, 1979.

Rebuttal evidence of the Postal Service and each participant—May 14, 1979 (No discovery to be permitted on this rebuttal evidence; only oral cross-examination).

Beginning of evidentiary hearings on rebuttal evidence—May 29, 1979.

Close of evidentiary record—June 11, 1979.

Agency Contact

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PRC

Title

U.S. Postal Service surcharge rate request for nonstandard mail, Docket R78-1, filed with the Commission on April 25, 1978

Objectives and Benefits

The Postal Service filed with the Postal Rate Commission (PRC) a request for a recommended decision on a 13-cent surcharge for nonstandard mail consisting of first-class mail weighing one ounce or less and single-piece third-class mail weighing two ounces or less, meeting any of the following size standards:

1. Length greater than 11.5 inches
2. Height greater than 6.125 inches
3. Thickness greater than .25 inches
4. An aspect ratio (ratio of height to length) between 1:1.3 and 1:2.5 inclusive.

NOTE.—The Postal Rate Commission does not have final authority on its decisions, and must submit its recommended or tentative decisions to the Governors of the Postal Service for final approval. Section 3625 of the Postal Reorganization Act of 1970, as amended, states that the Governors may approve, allow under protest, reject, or modify any recommended decision of the Postal Rate Commission.

Legal Authority

The Postal Reorganization Act of 1970, as amended, §§ 3621, 3622 and 3623, 39 U.S.C. § 3601 (1970).

Major Alternatives Under Study

Intervenors are interested parties in the Postal Service's proposal who present their views in open hearings before the Postal Rate Commission. Intervenors' cases are sometimes presented in the form of alternatives to the Postal Service's proposal and are considered by the Commission during its decision-making process.

Intervenors, except the Officer of the Commission, who represents the public interest, can be characterized as businesses and organizations who would be adversely affected if the surcharge proposal were inplemented.

Intervenors are the Officer of the Commission, Association of American Publishers, Envelope Manufacturers Associations, the National Association of Greeting Card Publishers, J. C. Penney, Inc., National Council for the Handicapped, National Industrial Traffic League, Photo Marketing Association International, American Retail Federation, States of Maine, Indiana, Connecticut and New Mexico.

Sectors Affected

Anyone mailing nonstandard pieces—particularly businesses and Government mailers using first-class mail (under one ounce), Government and franked mail (under one ounce)—receiving equivalent first-class service and single-piece third-class mail service (under two ounces).

Estimate and Summary of Economic Effects

Until the Commission issues its decision, the law that governs the operations of the Postal Rate Commission prohibits the Commission from commenting on the economic effects of the Service's proposal. However, witnesses for the Postal Service believe that the proposed 13-cent surcharge will increase annual revenues by $86.5 million and reduce costs by $28.5 million for a total improvement in the Postal Service's financial position of $115.0 million.

Related Regulations or Actions

None.

Active Federal Collaboration

None.

Available Documents

Initial Postal Service Request for Rate Increase, 43 FR 19308 (May 4, 1978);

Transcripts of Hearings as well as Direct Testimony, Rebuttal and Surrebuttal Testimony, Exhibits, Workpapers, Library References/Studies, Interrogatories and Answers, Requests for Oral Cross-Examination and Written Cross-Examination;

Commission Orders and Notices;

Presiding Officer's Orders, Rulings, Motions, and Notices; Petitions for Leave to Intervene and Request for Limited Participation;

Commission's Recommended Decision (when issued) for Docket R78-1.

Timetable

Commission's Recommended Decision will be issued by February 24, 1979.

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- ● *Italicized numbers indicate anticipated regulatory effects*

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AGENCY	TITLE	PAGE NO.	CONSUMER PROTECTION 1. Market Maintenance; 2. Market Cost & Quality	HEALTH & SAFETY 1. Health Care; 2. Consumer; 3. Environmental; 4. Occupational	HUMAN RESOURCES 1. Education; 2. Veterans Aid; 3. Community Development; 4. Non-Discrimination;	NATURAL RESOURCES 1. Conservation; 2. Flora & Fauna Management; 3. Other Resource Management	ENERGY 1. Conservation; 2. Development (except Coal); 3. Power Plants; 4. Refining & Pipelines	GOVERNMENT 1. Federal; 2. State & Local	TRANSPORTATION 1. Aviation; 2. Maritime; 3. Land (Non-Rail); 4. Rail	COMMUNICATIONS 1. Postal Service	FINANCE BANKING & INSURANCE 1. Finance; 2. Insurance	CONSTRUCTION 1. Housing; 2. Non-housing	FOOD & AGRICULTURE 1. Crops; 2. Fishing; 3. Processing	MANUFACTURING 1. Multiple Sub-categories 2. Chemical; 3. Motor Vehicles; 4. Metals; 5. Other	MINING 1. Coal; 2. Non-Coal	GENERAL COMMERCE 1. General; 2. Government Contractors; 3. Government Added		
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DOT - FHWA	Hours of Service of Drivers.	11402		2,4						*3*								
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DOT - NHTSA	Fuel Economy Standards for Model Years 1984-86 Passenger Cars.	11448	2					1								*3*		
DOT - NHTSA	Fuel Economy Standards for Model Years 1982-84 Light Trucks.	11448	2					1								*3*		

DOT - USCG	Construction and Equipment for Existing Self-propelled Vessels Carrying Bulk Liquified Gases.	11403		4		1			2					5		
DOT - USCG	Requirements for Inert Gas Systems for Oil Tankers of Over 20,000 Dead Weight Tons.	11403		4		1			2							
DOT - USCG	Offshore Oil Pollution and Liability and Compensation Fund.	11449				1	2		2		2					
DOT - USCG	Construction Standards for the Prevention of Pollution from New Tank Barges Due to Accidental Hull Damage; and Regulatory Action to Reduce Pollution from Existing Tank Barges Due to Accidental Hull Damage.	11450				1			2					5		
DOT - USCG	Implementation of the Port and Tanker Safety Act of 1978 and the International Conference on Tanker Safety and Pollution Prevention by Requiring Ballast Tanks, Dedicated Clean Ballast Tanks and Crude Oil Washing Systems for Certain New and Existing Tank Vessels.	11451				1			2							
Treasury	Advertising Regulations Under the Federal Alcohol Administration Act.	11460	2											5		1
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EPA - OANR	Review, and Possible Revision, of the National Ambient Air Quality Standards for Carbon Monoxide.	11404		3					3					3		
EPA - OANR	Review, and Possible Revision, of the National Ambient Air Quality Standards for Nitrogen Dioxides.	11405		3		1	3		3					1,3		
EPA - OANR	Review, and Possible Revision, of the National Ambient Air Quality Standards for Particulate Matter.	11405		3		1	3							1		
EPA - OANR	Review, and Possible Revision, of the National Ambient Air Quality Standards for Sulfur Oxides.	11406		3		1	3							1		
EPA - OANR	Standards of Performance to Control Atmospheric Emissions from Industrial Boilers.	11407		3		1								1		

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KEY:

- NUMBERS INDICATE AREA SUB-CATEGORIES
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EPA – OANR	Gaseous Emission Regulations for 1985 and Later Model Year Heavy-duty Engines.	11409		3		1	*1*		*3*						*3*	
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EPA – OANR	Proposed Emission Regulations for 1983 and Later Model Year Light-duty Trucks.	11410		3		1	*1*								*3*	
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EPA - OWWM	Hazardous Waste Regulations: Core Regulations to Control Hazardous Solid Waste from Generation to Final Disposal.	11414		3		1			3, 4					1		
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CAB	Market Entry Policies.	11464	2						1							
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CAB	Air Carrier Fitness.	11465	2						1							

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CPSC	Proposed Amendment to Cellulose Insulation Standard, Proposed Labelling Rule for Cellulose Insulation, Proposed Certification Rule.	11420		2											*5*	
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FERC	Regulations Implementing Incremental Pricing Under Title II of the Natural Gas Policy Act of 1978.	11454	1												*1*	
FERC	Regulations Implementing Section 401 of the Natural Gas Policy Act of 1978.	11455												1	*1*	
FERC	Mandatory Requirements for the Collection and Reporting of Information Associated with the Costs of Providing Electric Service.	11455	1					1, 3	2							
FMC	Amendment to Financial Reports by Common Carriers by Water in the Domestic Offshore Trades.	11465	2							2						
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PRC	U.S. Postal Service Request for Changes in the Domestic Mail Classification Schedule as it Relates to Bulk Parcel Post, Docket MC 78-1, Filed with the Commission on September 8, 1978.	11467	2							1						
PRC	U.S. Postal Service Request for a Recommended Decision on Establishing an Electronic Computer Originated Mail Subclass, Docket MC 78-3, Filed with the Commision on September 8, 1978.	11468	2							1						
PRC	U.S. Postal Service Surcharge Rate Request for Nonstandard Mail, Docket R 78-1, Filed with the Commission on April 25, 1978.	11469	2							1						1

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USDA - AMS	Proposed Federal Milk Marketing Order for Boise, Idaho.	11457				O						●					
USDA - FNS	Regulation by the Secretary of Agriculture of Foods Sold on School Premises in Competition with the National School Lunch Program.	11391		N				●									
DOC - EDA	Special Economic Development and Adjustment Assistance Grants.	11425		N			●										
DOC - NOAA	Regulations Implementing a Fishery Management Plan for the Groundfish Fishery for the Berring Sea/Aleutian Island Area Under the Fishery Conservation and Management Act of 1976.	11436		N						●							
DOC - NOAA	Regulations Implementing a Fishery Management Plan for the Stone Crab Fishery in the Gulf of Mexico Fishery Conservation Zone Adjoining the West Coast of Florida from the Florida/ Alabama Line Southward to and Including the Florida Keys Under the Fishery Conservation and Management Act of 1976.	11437		N					●								
DOE - BCS	Energy Performance Standards for New Buildings.	11442		N			●										
DOE - ERA	Amendments to Entitlements Program to Reduce the Level of Benefits Received Under Small Refiner Bias.	11440			F			●									
DOE - ERA	Amendments to Impose the Entitlements Obligation to the First Purchase of Price Controlled Domestic Crude Oil.	11440		N				●									
DOE - ERA	Deregulation of Butane, Natural Gasoline, Propane and other Natural Gas Liquids.	11441			F						●						
DOE - ERA	Exemption of Motor Gasoline from Mandatory Petroleum Allocation and Price Regulations.	11441			F			●									
DOE - ERA	Permanent Revision of Standby Petroleum Product Allocation and Price Regulations.	11442			F						●						
DOE - ERA	Final Rules with Respect to the Department of Energy's Contingency Gasoline Rationing Plan.	11443			F				●								
DOE - ERA	Final Rule Implementing the Fuel Utilization Act of 1978.	11444			F				●								
DOE - ERA	Exemption of Aviation Fuel from the Mandatory Petroleum Allocation and Price Regulations.	11461			F		●										
DOE - RA	Outer Continental Shelf Sequential Bidding Regulations.	11439			F					●							

DOE - ERA	Proposed Outer Continental Shelf Bidding Systems Regulations.	11439			F					●								
HEW	Nondiscrimination on the Basis of Age in Activities Receiving Federal Financial Assistance.	11426			F				●									
HEW - HCFA	Uniform Reporting Systems for Health Services Facilities and Organizations.	11393			F											●		
HEW - HCFA	Life Safety Code in Hospitals[1] Nursing Facilities and Intermediate Care Facilities[2]	11394			F[1] F[2]										●	●		
HEW - HCFA	Conditions of Participation for Skilled Nursing Facilities and Intermediate Care Facilities.	11394		N						●								
HUD - FIA	Regulations Establishing Departmental Procedures for Implementing Executive Orders on Floodplain Management and Wetlands Protection.	11444		N				●										
HUD - HOUS	Standards for the Design, Construction, and Alteration of Residential Structures to Insure Accessibility by the Physically Handicapped.	11427		N			●											
HUD - HOUS	Tax Exemption Under Section 11(b) of the United States Housing Act of 1937, of Obligations Issued by Public Housing Agencies to Finance Section 8 Projects.	11428			F		●											
HUD - HOUS	Administrator Qualificatons and Procedures for HUD Building Products Certification Program.	11458			F				●									
DOI - BLM	Surface Management of Mining Claims Located on the Public Lands.	11446		N			●											
DOI - FWS	Endangered Species Act, Section 4, Regulations for Listing Endangered and Threatened Wildlife and Plants.	11445		N					●									
DOI - LBR	Rules and Regulations for Acreage Limitations Under Federal Reclamation Law.	11459			F													●
DOI - OSM	Permanent Regulatory Program Implementing Section 501(b) of the Surface Mining Control and Reclamation Act of 1977.	11447			F		●											
DOJ	Regulations Prohibiting Discrimination Solely on the Basis of Handicap in Federally Assisted Programs.	11428		N				●										
DOL - ESA	Labor Standards Provisions Applicable to the Davis-Bacon and Related Acts and Contract Work Hours and Safety Standards Act.	11429					Not Available.											
DOL - ESA	Proposed Amendment to Equal Pay Act Interpretative Bulletin Dealing with Insurance and other Employee Benefit Plans.	11429			F							●						
DOL - ESA	Proposed Amendments to the Sex Discrimination Guidelines Governing Insurance and other Employee Benefit Plans, and a General Revision of the Sex Discrimination Guidelines.	11430			F							●						

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DOL - ESA	Labor Standards for Federal Service Contracts.	11431					Not Available.										
DOL - ETA	Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Financial Assistance from the Department of Labor.	11431		N			●										
DOL - OSHA	Identification, Classification and Regulation of Toxic Substances Posing a Potential Occupational Carcinogenic Risk.	11398			F					●							
DOL - OSHA	Occupational Exposure Standards to Hexavalent Chromium.	11399		N						●							
DOL - OSHA	Occupational Exposure to Pesticides.	11399		N						●							
DOL - MSHA	Mandatory Safety Standards for Surface Coal Mines and Surface Areas of Underground Coal Mines.	11395	A						●								
DOL - MSHA	Regulations Providing for Automated Temporary Roof Support Standards.	11396	A								●						
DOL - MSHA	Requirements for Construction and Maintenance of Impoundments and Tailings Piles at Metal and Nonmetal Mines.	11396	A					●									
DOL - MSHA	Requirements to Provide Self-contained (Oxygen-generating) Self-rescuers to Underground Metal and Nonmetal Miners.	11396		N					●								
DOL - MSHA	Safety and Health Standards for Construction Work on Mine Property.	11397	A				●										
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DOT	Nondiscrimination on the Basis of Handicap in Federally Assisted Programs and Activities.	11432			F			●									
DOT - FAA	Flammability Standard for Crewmember Uniforms.	11400		N					●								
DOT - FAA	Wind Shear Equipment Requirements.	11401	A					●									
DOT - FHWA	Hours of Service of Drivers.	11402		N												●	
DOT - FHWA	Minimum Cab Space Dimensions.	11402		N								●					
DOT - FHWA	Design Standards for Highways - Geometric Design Standards for Resurfacing, Restoration, and Rehabilitation of Streets and Highways other than Freeways.	11462			F					●							

DOT - FHWA	Withdrawal of Interstate Segments and Substitution of Alternative Projects.	11462		N				●										
DOT - FHWA	Certification of Vehicle Size and Weight Enforcement.	11463		N			●											
DOT - FRA	Alerting Lights Display - Locomotives.	11401		N			●											
DOT - NHTSA	Fuel Economy Standards for Model Years 1984-86 Passenger Cars.	11448		N									●					
DOT - NHTSA	Fuel Economy Standards for Model Years 1982-84 Light Trucks.	11448		N						●								
DOT - USCG	Construction and Equipment for Existing Self-propelled Vessels Carrying Bulk Liquified Gases.	11403		N										●				
DOT - USCG	Requirements for Inert Gas Systems for Oil Tankers of Over 20,000 Dead Weight Tons.	11403		N			●											
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DOT - USCG	Construction Standards for the Prevention of Pollution from New[1] Tank Barges Due to Accidental Hull Damage; and Regulatory Action to Reduce Pollution from Existing[2] Tank Barges Due to Accidental Hull Damage.	11450	A[2]	N[1]			● ●											
DOT - USCG	Implementation of the Port and Tanker Safety Act of 1978 and the International Conference on Tanker Safety and Pollution Prevention by Requiring Ballast Tanks, Dedicated Clean Ballast Tanks and Crude Oil Washing Systems for Certain New and Existing Tank Vessels.	11451		N			●											
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Treasury	Partial Ingredient Labelling and Advertising of Wine, Distilled Spirits, and Malt Beverages.	11460		N			●											
EPA - OANR	Review, and Possible Revision, of the National Ambient Air Quality Standards for Carbon Monoxide.	11404		N									●					
EPA - OANR	Review, and Possible Revision, of the National Ambient Air Quality Standards for Nitrogen Dioxides.	11405		N				●										
EPA - OANR	Review, and Possible Revision, of the National Ambient Air Quality Standards for Particulate Matter.	11405		N												●		
EPA - OANR	Review, and Possible Revision, of the National Ambient Air Quality Standards for Sulfur Oxides.	11406		N												●		
EPA - OANR	Standards of Performance to Control Atmospheric Emissions from Industrial Boilers.	11407		N														●

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EPA - OANR	Reducing Benzene Emissions to the Atmosphere. (Maleic Anhydride.)	11407		N						●							
EPA - OANR	Listing of Coke Oven Emissions as a Hazardous Air Pollutant and Reducing Emissions.	11408				O					●						
EPA - OANR	Gaseous Emission Regulations for 1983 and Later Model Year Heavy-duty Engines.	11408		N			●										
EPA - OANR	Gaseous Emission Regulations for 1985 and Later Model Year Heavy-duty Engines.	11409		N												●	
EPA - OANR	Particulate Regulation for Light-duty Diesel Vehicles.	11410			F								●				
EPA - OANR	Proposed Emission Regulations for 1983 and Later Model Year Light-duty Trucks.	11410		N				●									
EPA - OANR	Noise Emission Standard for Newly Manufactured Motorcycles.	11412			F										●		
EPA - OANR	Noise Emission Standard for Newly Manufactured Wheel and Crawler Tractors.	11413		N					●								
EPA - OANR	Environmental Standard for Inactive Uranium Mill Tailings.	11418		N									●				
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EPA - OANR	Standards of Performance to Control Atmospheric Emissions from Utility Fossil-Fuel-Fired Steam Generators.	11452			F			●									
EPA - OANR	Visibility Plan Requirements.	11453		N											●		
EPA - ORD	Fuels and Fuel Additives Testing Regulation.	11411		N				●									
EPA - OTS	Pesticides Registration Guidelines. (See text.)[1]	11411	N[1] F							● ●							
EPA - OTS	Standards and Rules for Testing Chemical Substances and Mixtures. (See text.)[1]	11416	N[1] N				●					●					
EPA - OTS	Rules and Notice Forms for Premanufacture Notification of New Chemical Substances.	11417			F								●				
EPA - OWM	Hazardous Waste Regulations: Core Regulations to Control Hazardous Solid Waste from Generation to Final Disposal.	11414			F										●		

EPA - OWWM	Control of Organic Chemicals in Drinking Water.	11415			F					●								
EPA - OWWM	Effluent Guidelines and Standards Controlling the Discharge of Pollutants from Steam-Electric Power Plants into Navigable Waterways.	11453		N						●								
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VA	Implementation of the Veterans' and Survivors' Pension Improvement Act.	11434			F			●										
CAB	Air Carrier Insurance and Liability.	11464		N						●								
CAB	Market Entry Policies.	11464		N						●								
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CAB	Air Carrier Fitness.	11465		N											●			
CPSC	Blade Contact Standards[1] for Walk-behind Power Lawn Mowers and Proposed Certification Rule.[2]	11418		N[2]	F[1]		● ●											
CPSC	Proposed Amendment to Cellulose Insulation Standard, Proposed Labelling Rule for Cellulose Insulation, Proposed Certification Rule.	11420		N				●										
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FERC	Regulations Implementing Section 401 of the Natural Gas Policy Act of 1978.	11455			F			●										
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NRC	Disposal of High Level Radioactive Waste in Geological Repositories.	11423		N					●								
NRC	Decommissioning and Site Reclamation of Uranium and Thorium Mills. (Uranium.)	11423		N			●										
PRC	U.S. Postal Service Request for Changes in the Domestic Mail Classification Schedule as it Relates to Bulk Parcel Post, Docket MC 78-1, Filed with the Commission on September 8, 1978.	11467				O	●										
PRC	U.S. Postal Service Request for a Recommended Decision on Establishing an Electronic Computer Originated Mail Subclass, Docket MC 78-3, Filed with the Commision on September 8, 1978.	11468				O	●										
PRC	U.S. Postal Service Surcharge Rate Request for Nonstandard Mail, Docket R 78-1, Filed with the Commission on April 25, 1978.	11469				O	●										

APPENDIX I—PUBLICATION DATE FOR REGULATORY AGENDAS

EXECUTIVE AGENCIES

Name of Agency	Date
Administrative Conference of the United States	Not applicable.
Department of Agriculture	November 15, 1978
Department of Commerce	March 1, 1979 (approximately)
Department of Energy	October 31, 1978
Department of Health, Education and Welfare	January 19, 1979
Department of Housing and Urban Development	February 1, 1979
Department of the Interior	February 1979
Department of Justice	March 1, 1979
Department of Labor	January 26, 1979
Department of Transportation	September 21, 1978
Department of the Treasury	February 1, 1979
Environmental Protection Agency	November 30, 1978
Equal Employment Opportunity Commission	January 31, 1979
General Services Administration	November 17, 1978
National Credit Union Administration	December 15, 1978
Veterans Administration	December 18, 1978

INDEPENDENT REGULATORY AGENCIES

Civil Aeronautics Board	March 1979 (approximately)
Commodity Futures Trading Commission	January 23, 1979
Consumer Product Safety Commission	Not known at present.
Federal Communications Commission	Not known at present.
Federal Deposit Insurance Corporation	Not known at present.
Federal Election Commission	Not known at present.
Federal Energy Regulatory Commission	Not known at present.
Federal Home Loan Bank Board	Not known at present.
Federal Maritime Commission	Not known at present.
Federal Mine Safety and Health Review Commission	Not known at present.
Federal Reserve System	February 2, 1979
Federal Trade Commission	January 1, 1979
Interstate Commerce Commission	February 1979
National Labor Relations Board	Not applicable.
Nuclear Regulatory Commission	Not known at present.
Occupational Safety and Health Review Commission	Not applicable.
Postal Rate Commission	Not known at present.
Securities and Exchange Commission	Not known at present.
United States International Trade Commission	Not applicable.

APPENDIX II—ADDITIONAL COMMENTS FROM AGENCIES WITH ENTRIES IN THIS EDITION OF THE CALENDAR

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

February 5, 1979

SUBJECT: Regulatory Council Calendar

TO: Douglas Costle, Chairman
Regulatory Council

The following items were not submitted for the Regulatory Council Calendar for the following reasons:

Net Weight Labeling

FSQS has asked the ESCS to develop further material on issues that have arisen with respect to the proposal on accurate net weight labeling. The Economics, Statistics, and Cooperatives Service will analyze various issues involved including the need for change in the regulations and prepare a report which will be made available to the public. The study will be completed in about six months. The Department will then decide how to proceed in the rulemaking effort.

Nitrates and Nitrites Regulation

The nitrates and nitrites regulation and review consists of two actions. One action involves the promulgation of a regulation allowing the labeling of products containing reduced levels of or no nitrates or nitrites at all. This action will be issued shortly as a final regulation. The second action consists of a monitoring program to determine the level of nitrosamines in bacon pursuant to a final regulation published April 15, 1978 and as announced in Federal Register, Vol. 43, No. 221, Wednesday, November 15, 1978. This monitoring system has been operational since December 5, 1978.

for
CAROL TUCKER FOREMAN
Assistant Secretary
Food and Consumer Services

Department of Energy
Washington, D.C. 20585

FEB 12 1979

Honorable Douglas M. Costle
Chairman
United States Regulatory Council
401 M Street SW
Washington, DC 20460

Dear Doug:

The Department of Energy has appreciated the opportunity to alert the public about forthcoming DOE regulations through your calendar. The Nation will be well served if we can improve the public's ability to participate in the development of energy regulations. Through our own regulatory reform initiatives and publication of a DOE semi-annual regulatory agenda last October 31, we have done what we could to bring the public into the process early and often. Your first calendar gives an important boost to these efforts.

We have submitted eleven energy regulations for inclusion in the calendar. These are items which we have already determined to be "major" under the terms of the Executive Order on "Improving Government Regulations," typically because they may impose annual economic costs of over $100 million. The calendar's readers should be aware that some regulatory actions which DOE's semi-annual agenda described as major (i.e., requiring regulatory analysis) are not included among these submissions -- either because the actions have been discontinued, or because further analysis has shown that these regulations are not in fact major under the terms of the Executive Order.

Also, the regulation implementing the Fuel Utilization Act of 1978 is the only submission which pertains to the National Energy Act legislation signed by the President on November 9, 1978. With the approval of the Regulatory Council Staff, we did not include other NEA regulatory initiatives in this first edition of the calendar. These initiatives are all in a very early stage of development, and we have not yet designated any as major for the purposes of the Executive Order. However, DOE's second semi-annual regulatory agenda,

to be published this May, will include a full listing of NEA initiatives, indicating which are major and which are not. We shall include all major NEA actions in the second edition of the regulatory calendar to be published next August.

Finally, I want to congratulate you and the staff of the Regulatory Council for the good work which has gone into this impressive document. I would not at all be surprised if the regulatory calendar becomes "must" reading for citizens wishing to inform themselves about Government regulations.

Sincerely,

Alvin L. Alm
Assistant Secretary
Policy and Evaluation

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
THE OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20201

THE GENERAL COUNSEL

FEB 12 1979

The Honorable Douglas M. Costle
Chairman, U. S. Regulatory Council
401 M Street SW
Washington, D.C. 20460

Dear Mr. Costle:

Mr. Peter Petkas, Director of the Regulatory Council Staff asked for a letter setting forth the reasons why regulation of nitrites and saccharin were not among the items submitted for the Council's first calendar. In both cases, the Department has not yet determined what, if any, regulatory action will be taken.

In the case of nitrite, FDA is awaiting the results of an independent scientific review of its study of carcinogenicity before making a final decision on the need to issue regulations. This contracted review will not be completed until June, thereby postposing further action until at least midsummer.

Regarding saccharin, the Department is prevented by statute from undertaking regulatory action at this time. The Saccharin Study and Labeling Act of 1977 placed a moritorium on government regulation of saccharin through May 22, 1979. Beyond that date, any Departmental initiative will be tied closely to further congressional action. To include saccharin on the Council's first calendar would be both precipitous and contrary to statute.

If the Department decides to regulate either substance in the future, we will submit notices of this action to the Council for inclusion on future calendars.

Sincerely,

F. Peter Libassi

F. Peter Libassi

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON

January 31, 1979

MEMORANDUM FOR: The Honorable Douglas Costle
Chairman, U.S. Regulatory Council

FROM: Charles Knapp, Special Assistant to the Secretary CBK

SUBJECT: Department of Labor Criteria for Including Regulations on the Regulatory Council's Calendar

The Department of Labor has included regulations on the Calendar if they meet two criteria:

1. The Department has made a decision to proceed toward publication of a regulation in a particular area within the next six months.

2. It is expected that the regulation will be major, as defined in Executive Order 12044, and therefore will require a regulatory analysis.

Thus our entries in the Calendar represent a snapshot taken in late January 1979 of major regulations on which we have made the decision to proceed toward rule-making in the next six months.

We see the Calendar as a vital, changing document which, in the case of this Department, will reflect the best information which we can provide, as it becomes available. Thus it is possible that some regulations which at one point seemed to meet the criteria for major, and therefore seemed to belong on the Calendar, will be found in subsequent study to not be major, and will be removed from the Calendar. Or they will be removed because the Department has decided not to proceed with the regulation. Thus we have not included on the final Calendar some regulations which we had initially thought would be included:

--the CETA regulations, while of great public interest, are program implementation regulations and do not have a major economic impact as defined in the Executive Order.

--the Beryllium standard, initially thought to be major, has, through further study, proved to be considerably less costly than anticipated, and so is not included.

--the Noise standard will see no action in the next six months, during which time staff analysis will determine whether or not we wish to proceed with it.

Other regulations which initially seemed not to meet the criteria, may be found to be more costly than had originally been thought, and will be added to the Calendar.

The Council may want to consider whether or not, as such information is available, it it wishes to publish an addendum to the Calendar.

APPENDIX III—STATEMENTS FROM AGENCIES WITH NO ENTRIES IN THIS EDITION OF THE CALENDAR

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

2120 L STREET, N.W., SUITE 500
WASHINGTON, D.C. 20037
(202) 254-7020

OFFICE OF
THE CHAIRMAN

January 25, 1979

The Honorable Douglas M. Costle
Chairman
United States Regulatory Council
401 M Street, N.W.
Washington, D.C. 20460

Dear Mr. Costle:

This responds to your request for a letter of explanation about why the Administrative Conference of the United States has not submitted entries for inclusion on the Regulatory Council's first calendar.

The Administrative Conference has no regulatory responsibilities. The only regulations it issues pertain to its organizational duties and are therefore not covered by Executive Order 12044, or appropriate for inclusion on the calendar.

Presumably, the Administrative Conference was designated to be a member of the Regulatory Council because of its role within the government to work for improvements in federal administrative procedures and to advise the President, the Congress, and the agencies on such matters. I fully support the Council's important efforts to publish a regulatory calendar as a concrete aid to improving the management of the regulatory process.

I understand that you wish to publish this letter in the appendix to your calendar. For the information of those who may wish to know more about the Administrative Conference, our organization regulations are found at Title 1 of the Code of Federal Regulations, parts 301-304. The formal work product of the Conference is reflected in Recommendations and Statements concerning administrative practice and procedure. These are adopted in Plenary Sessions of the Conference, published in the Federal Register and codified at 1 C.F.R. parts 305 and 310. Further information is available from my office (202/254-7020).

I look forward to the publication of the calendar, and to the ongoing work of the Council.

Sincerely yours,

Robert A. Anthony
Chairman

General
Services
Administration Washington, DC 20405

JAN 26 1979

Honorable Douglas M. Costle
Chairman
The Regulatory Council
401 M Street, S.W.
Washington, DC 20460

Dear Mr. Costle

This is in response to your request of January 24, 1979, to give you a written statement as to the reasons why the General Services Administration is not participating in the Regulatory Council's Calendar of Federal Regulations.

This agency is not engaged in general rulemaking or other regulatory activity of the kind that would qualify for listing in the Regulatory Calendar.

While GSA does prescribe and promulgate procurement and property management regulations affecting other Federal agencies, we are not a regulatory agency in the traditional sense of that term.

I will, however, carefully observe the nature of our activities in these areas. Should we undertake a regulatory initiative that would be appropriate for inclusion in the Council's calendar, you can be sure I will see that it is brought to your attention.

Sincerely,

Jay Solomon
Administrator

NATIONAL CREDIT UNION ADMINISTRATION
WASHINGTON, D.C. 20456

GC/RMF:bl

January 29, 1079

Honorable Douglas M. Costle, Chairman
United States Regulatory Council
401 M Street, S. W.
Washington, D.C. 20460

Dear Mr. Costle:

Thank you for your letter of January 17, 1979, inviting the National Credit Union Administration's participation in the Regulatory Council. Mr. Connell has asked that I respond, inasmuch as he is presently unavailable and we understand that you need word from us today on whether we will submit entries for the Council's first regulatory calendar.

First, we will be happy to participate in the work of the Council. Mr. Connell has indicated that he will serve as NCUA's representative. My staff and I will assist Mr. Connell in this endeavor and I therefore ask that you note Robert Fenner of my staff, telephone, 632-4870, as an alternate NCUA contact.

Unfortunately, we will not be able to submit entries in time for publication in the first Calendar of Federal Regulations. I do not feel this omission will detract from the Council's goals of encouraging efficiency and avoiding inconsistency and duplication, however, for the reasons both that NCUA is the sole supervisor of credit unions at the Federal level and our work is coordinated with that of the other financial regulatory agencies through bodies such as the Interagency Coordinating Committee and the recently created Financial Institutions Examination Council.

Improvement of the regulatory process is a matter of high priority at NCUA and in that regard we have recently published (at 43 Federal Register 58654) an agenda of regulations under development and review. This document contains much of the information that might have been included in calendar entries, and I have enclosed a copy for your reference.

Again, thank you for the opportunity to participate in the Council. We look forward to working with you.

Sincerely,

John L. Ostby

JOHN L. OSTBY
General Counsel

COMMODITY FUTURES TRADING COMMISSION
2033 K Street, N.W., Washington, D.C. 20581
(202) 254-6387

Gary L. Seevers
Acting Chairman
Read P. Dunn, Jr.
Commissioner
Robert L. Martin
Commissioner
David G. Gartner
Commissioner

January 26, 1979

Mr. Douglas M. Costle
Chairman
The Regulatory Council
401 M Street, S.W.
Washington, D.C. 20460

Dear Doug:

This is in response to your memorandum about the Calendar of Federal Regulations.

I am enclosing CFTC's calendar for the remainder of Fiscal Year 1979, which appeared in the Federal Register on January 23, 1979. In it we identify six items which we feel are major regulatory initiatives. I wish to submit these as entries for consideration in the Regulatory Council's calendar project.

Although CFTC is an independent agency, I personally feel that we should participate in the Regulatory Council to the extent we can make a meaningful contribution. As you may know, I worked on regulatory reform when I served on the President's Council of Economic Advisers and feel strongly that such efforts are needed. The Regulatory Council is a new approach and I am pleased to see you as its Chairman.

Best regards,

Gary Seevers

Gary L. Seevers

Enclosure

cc: Mr. Lynn M. Daft
Associate Director
Domestic Policy Staff

EDITOR'S NOTE: The Commodity Futures Trading Commission's semi-annual agenda is available at 44 FR 4752 (January 23, 1979).

THE REGULATORY COUNCIL

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

January 23, 1979

IN REPLY REFER TO:

Mr. Douglas M. Costle
U.S. Regulatory Council
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Costle:

This letter is in response to your memorandum requesting information to be included in the Council's Unified Calendar of Federal Regulations that you would like to publish in February 1979.

This Commission is deeply committed to the goals of the Council. To fulfill its responsiblities effectively and efficiently, as well as to retain the confidence and respect of the public, it is vital that a regulatory agency continually review its rules and regulations to avoid duplication, inconsistency, unintended side effects, and harmful cumulative effects. To that end, this Commission has already undertaken numerous steps to eliminate many of its regulations and to streamline others.

Because of our active commitment to the Council's goals, the Commission, I believe, would want to contribute to the development of the Unified Calendar. However, the entire Commission has not yet had an opportunity to consider whether, or in what respect, it might participate in the Council's activities. In any event, it will not be possible for the Commission to submit the information you request on major regulatory matters in time to be included in your February publication. For many years the Commission has prepared an annual summary of major agenda items pending before this Commission. The report for the year ending December 31, 1978 is now being prepared and will be issued sometime in February. Your request for information for the February calendar did not afford us sufficient advance notice to expedite issuance of this report.

I have, however, directed the Commission staff to review fully the timing and present format of this report, as well as the existing procedures for collecting and updating information included in it. The staff will in particular be considering issuance of this report twice a year; and we intend to make every effort to consider the Council's needs so that we might be able to provide, for inclusion in the August 1979 publication, information responsive to your request.

The Commission will, of course, be continuing to publish a two or three month advance calendar; and I am hopeful that the additional steps I have outlined will enable us to keep the public better informed of significant pending regulatory actions and will contribute to a government-wide effort to make the regulatory process more effective and more accountable to the public.

Sincerely,

Charles D. Ferris
Chairman

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, D.C. 20429

OFFICE OF THE EXECUTIVE SECRETARY

January 29, 1979

Douglas M. Costle, Chairman
United States Regulatory Council
401 M Street, S.W.
Washington, D. C. 20460

Dear Mr. Costle:

The Federal Deposit Insurance Corporation was created to protect depositors in the nation's banks, to help maintain confidence in the banking system, and to promote safe and sound banking practices. The FDIC accomplishes these purposes through a program of Federal deposit insurance and through the regulation and supervision at the Federal level of the more than 9,100 FDIC-insured State-chartered banks that are not members of the Federal Reserve System.

The FDIC has undertaken to reduce the regulatory burden. In this connection a task force, under the general supervision of FDIC Director William M. Isaac, is reviewing all of the FDIC's regulations, including those proposed as well as those in effect. The purpose of this review is to enable the task force to make recommendations to the FDIC's Board of Directors concerning those regulations which should be simplified or eliminated.

The FDIC has been operating for over five months with a vacancy on its Board of Directors and with no elected Chairman. In light of this vacancy, the Board of Directors of the FDIC has decided to delay consideration of any significant regulations not requiring immediate action until the agency has a full Board presided over by an elected Chairman. At the end of 1978, Congress passed several pieces of legislation that mandated regulatory action by the FDIC before March, 1979. These regulations, however, will be published in the Federal Register by the time the Council's first calendar is released.

Sincerely,

Alan R. Miller
Executive Secretary

ARM:bt

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

January 31, 1979

Mr. Douglas M. Costle
Chairman
The Regulatory Council
401 M Street, S. W.
Washington, D. C. 20460

Dear Mr. Costle:

I am writing in reference to your Memorandum of January 24 (received January 29) requesting a statement of the Commission's rule-making responsibilities and an explanation as to why the Commission finds it inappropriate to participate in the Regulatory Calendar at this time.

The Federal Election Commission is responsible for administering and investigating civil violations of the Federal Election Campaign Act of 1971, as amended. 2 U.S.C. §431, et. seq. The Commission also administers and investigates compliance with the public financing provisions of the Presidential Election Campaign Fund Act, 26 U.S.C. §9001, et. seq., and the Presidential Primary Matching Payment Account Act, 26 U.S.C. §9031, et. seq. The Commission's regulations implementing these statutes are codified in Title 11, Code of Federal Regulations.

The Commission has not submitted an entry for the Regulatory Calendar because it is not presently soliciting comments on any proposed rules. We expect to transmit shortly to the Congress a comprehensive revision of our regulations governing public financing of Presidential election campaigns, but have not submitted these for entry in the Calendar since they are in the final stages of drafting and the public comment period closed some time ago.

Mr. Douglas M. Costle
Page Two

I trust you will understand our reasons for not submitting an entry at this time. We intend to follow the Council's activities with great interest and would appreciate being kept informed of your future plans.

Sincerely,

Joan D. Aikens

Joan D. Aikens
Chairman

Federal Home Loan Bank Board

1700 G Street, N.W.
Washington, D.C. 20552

Federal Home Loan Bank System
Federal Home Loan Mortgage Corporation
Federal Savings and Loan Insurance Corporation

ROBERT H. McKINNEY, Chairman

January 30, 1979

Mr. Douglas M. Costle
Chairman
The Regulatory Council
401 M Street, S.W.
Washington, D. C. 20460

Dear Mr. Costle:

This is in response to your memorandum of January 24, 1979, regarding the Calendar of Federal Regulations. As you know, the Bank Board has indicated that we do not have any entries for the Regulatory Council's first calendar. We have reviewed our proposed regulations to determine whether any meet the "major" regulation test or appear to be significant enough to warrant inclusion. Although some proposals could result in changes for regulated institutions and the public, none appear to meet this criteria. Therefore, we have no entries for the first calendar.

Let me hasten to add that this should in no way be taken as an indication of lack of support for the Council or its objectives. The Bank Board is completely in accord with the goals of the President in establishing the Council. Indeed, as you may know, the Bank Board is completing a major revision and simplification of all its existing regulations to further these goals. We will, of course, continue to explore and use better methods to improve our regulatory efforts and look forward to participating in the Council's activities in the future.

Sincerely,

Chairman

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

January 26, 1979

CHAIRMAN
Jerome R. Waldie
COMMISSIONERS
Richard V. Backley
Frank F. Jestrab
A. E. Lawson
Marian Pearlman Nease

Mr. Douglas M. Costle
Chairman
United States Regulatory Council
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Chairman:

The Federal Mine Safety and Health Review Commission is an independent adjudicatory agency created by Section 113 of the Federal Mine Safety and Health Act of 1977, P.L. 95-164 (November 9, 1977). The Commission is required by statute to prescribe rules of procedure for its review of the decisions of administrative law judges in cases arising under the Act. The Commission also promulgates rules governing the conduct of proceedings before its administrative law judges. The Commission's rulemaking authority extends only to the conduct of its own proceedings, the proceedings of its judges, and rules implementing the Government in the Sunshine Act and similar procedural matters prescribed by statute. In all other respects, the Commission acts by adjudication. The Commission has no authority to issue substantive regulations. Thus, the rulemaking activity of the Commission will not, in my view, have significant economic impact on the mining industry.

To the extent that the Regulatory Council is interested in substantive rulemaking, consideration of the activities of the Commission would not fall within the concerns of the Regulatory Council described in your letter of January 24, 1979.

If you believe that further participation of the Commission in the activities of the Regulatory Council would serve a useful purpose, we would be pleased to continue our affiliation. We would also be pleased to be kept informed of the Council's deliberations and reports. We have attached, for your further consideration, a general description of the Commission's procedural rulemaking activity which we supplied to Mr. William Drayton, Jr., by letter of December 27, 1978.

Sincerely,

Jerome R. Waldie

Jerome R. Waldie
Chairman

Enclosure

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D.C. 20551

NANCY H. TEETERS
MEMBER OF THE BOARD

January 29, 1979

Mr. Douglas M. Costle, Chairman
The Regulatory Council
401 M Street, S.W.
Washington, D. C. 20460.

Dear ~~Mr. Costle~~ Doug:

As we informed you earlier this month, the Board of Governors, in support of the President's program to improve government regulation, has adopted a policy statement concerning its regulatory procedures. This policy is intended to improve the quality of the Board's regulations through greater public participation in their development and early involvement by Members of the Board of Governors to ensure that regulations are not unduly burdensome and complex.

To implement the new policy, the Board has just published its first semiannual regulatory agenda, listing regulatory matters likely to be under consideration during the coming six months. We are pleased to enclose a copy of the agenda, and we hope it will be useful in the execution of your program.

Sincerely,

Nancy

Enclosure

EDITOR'S NOTE: The Federal Reserve's semi-annual agenda is available at 44 FR 6771 (February 2, 1979).

OFFICE OF
THE CHAIRMAN

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

December 29, 1978

Honorable Douglas M. Costle
Chairman
United States Regulatory Council
401 M Street, S. W.
Washington, D. C. 20460

Dear Mr. Chairman:

I am writing in response to your request for submissions in connection with the Council's semi-annual regulatory calendar.

As you know, the Commission has fully supported the goals of eliminating unnecessary regulation, improving such regulation as is found to be necessary, and giving the public advance notice of major regulatory initiatives. Indeed, the Commission was the first independent agency to publish voluntarily an agenda of its forthcoming regulations and other significant actions. 43 Fed. Reg. 34353 (August 3, 1978). We also support the Council's desire to explore the possibility of regulatory reform legislation and have supplied Commission staff to assist this Council effort.

As you have recognized, there has only been a short preparation time for the Council's February Calendar. In that time, the Commission has not had an opportunity to formally consider what current materials might appropriately be submitted. Accordingly, the most useful document I can offer at this time for inclusion in the Calendar is a copy of the recently updated Commission regulatory agenda which is scheduled for publication in the Federal Register on January 15, 1979. A copy of this document is enclosed.

As suggested in your memorandum, the Commission will consider the nature of its submission for the second Calendar in August of 1979.

I look forward to continued Commission support of the objectives of the Council.

Sincerely,

Michael Pertschuk
Chairman

EDITOR'S NOTE: The Federal Trade Commission's semi-annual agenda is available at 44 FR 3094 (January 1, 1979).

NATIONAL LABOR RELATIONS BOARD

Washington, D.C. 20570

January 26, 1979

Douglas M. Costle, Chairman
U.S. Regulatory Council
401 M Street, S.W. (A-100)
Room 1200, West Tower
Washington, D.C. 20460

Dear Mr. Costle:

This is in response to your memorandum of January 24, 1979, requesting a statement of the reasons why the National Labor Relations Board is making no entries to the Calendar of Federal Regulations at this time.

The National Labor Relations Act declares it:

> to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

To carry out this policy, the National Labor Relations Board has been given two primary functions: (1) to determine and implement, through secret ballot elections, the free democratic choice by employees as to whether they wish to be represented by a union, and (2) to prevent and remedy unfair labor practices by either employers or unions which, inter alia, adversely affect the rights granted employees by Section 7 of the Act to organize and bargain collectively with their employers through representatives of their own choosing or to refrain from engaging in such activities.

The Board's processes are activated by the filing of an election petition or an unfair labor practice charge by employees, labor organizations or employers; the Board can not investigate matters relating to such questions unless such a petition or unfair labor practice charge has been filed with it.

In processing petitions and unfair labor practice charges, the Board acts as a quasi-adjudicatory agency responding to and deciding the issues brought to it and issuing its decisions, orders and directions of elections as the quasi-adjudicatory decisional process permits and requires.

In connection with the processing of unfair labor practice charges and election petitions, several points should be made. First of all, although Board decisions serve as precedent and, to this extent, provide guidance to employers, unions and employees in industrial relations situations, the Board's orders and directions of elections are immediately applicable only to the employer and union involved in the particular proceeding and constitute "regulations" or "rules" only in the most general sense. Board orders and directions of elections may have an economic impact on the parties involved in the proceeding in the sense that an employer or union adjudged guilty of an unfair labor practice may be required to make employees whole for losses suffered by them as a result of the unfair labor practice. It is no doubt true also that the establishment of a collective bargaining relationship where none existed before will have an affect on an employer's labor costs, but the effect is one which flows from the bargain made between the employer and the union after good faith negotiations.

Here another point should be noted. The National Labor Relations Board has no authority to interject itself into those negotiations or to approve or reject the substantive economic provisions agreed to by the parties during the course of collective bargaining. Thus, although NLRB decisions issued over the years provide the parties with procedural guidelines as to how the parties may meet the good faith bargaining obligation imposed by the Act, as well as with guidance as to whether particular subjects are sufficiently related to "wages, hours, and other terms and conditions of employment" as to require the parties to negotiate concerning them, the NLRB is specifically prohibited by the statute from requiring either an employer or a union ". . . to agree to a proposal or require the making of a concession. . . . "

As noted, the Board is a quasi-adjudicatory agency. It does not normally utilize rulemaking procedures for the purpose of issuing rules and regulations which have measurable economic impact or regulate conduct of employers and unions that would be of interest and use to the Regulatory Council.

If you have any questions on this matter, or if there is any further information you desire, please do not hesitate to contact either me or Executive Secretary William A. Lubbers. My telephone number is 254-9266 and Mr. Lubbers' telephone number is 254-9430.

Sincerely yours,

John H. Fanning

John H. Fanning
Chairman

THE REGULATORY COUNCIL

UNITED STATES OF AMERICA

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

1825 K STREET, NW
WASHINGTON, D C 20006

January 4, 1979

The Honorable Douglas M. Costle
Chairman
United States Regulatory Council
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Costle:

The purpose of this letter is to report the progress the Occupational Safety and Health Review Commission has made in achieving the goals of Executive Order 12044, Improving Government Regulations.

As you know, the Review Commission is an independent adjudicatory agency established pursuant to the Occupational Safety and Health Act of 1970. The agency is separate and distinct from the Occupational Safety and Health Administration of the Department of Labor. The primary function of the Commission is to review contests filed under the Occupational Safety and Health Act. Performing this function are approximately 45 Administrative Law Judges who hold hearings and decide cases. The three Presidentially appointed Commission Members constitute the second level of review within the agency and review designated Judges' decisions prior to possible review by the appropriate Federal Court of Appeals.

Because of this type of independent adjudicatory mandate, OSHRC does not engage in substantive "rulemaking". Those rules which have been published by the Review Commission are largely procedural in nature, such as the Rules of Procedure and regulations required for implementations of applicable statutes such as the Freedom of Information Act.

Upon the signing of the Executive Order, the President noted the importance of independent agencies voluntarily implementing initiatives designed to accomplish the goals of the Order. In this regard, I was pleased to receive a letter of commendation from the President concerning the voluntary initiatives I have undertaken to insure that this agency complies with the spirit of the Executive Order.

First, three pamphlets regarding the operation of the Review Commission have been published and are available to the public at no cost. Copies are attached to this report for your convenience. The first explains in simple terms the operation of the Review Commission within the context of the statutory scheme. The second lists and explains the Commission's Rules of Procedure from the viewpoint of a contesting party in an action before the Review Commission. The brochure includes sample forms for each of the various procedural steps. The third pamphlet is a Spanish translation of the second. Recently, the Review Commission has simplified the process for filing a petition for review by eliminating a requirement that such petitions include references to the transcript.

Two additional projects are currently in progress. The first is a revision of several of the Rules of Procedure. In addition to eliminating certain procedural problems existing in the present rules, it is our hope that the revised version of the rules will be easier to understand. The elimination of procedural complexities will both speed and simplify the adjudication process. The second project is the promulgation of a new procedural mechanism that provides for a separate simplified method of case-handling to be available in certain classes of cases at the option of the parties. The simplified procedure will make it easier for persons without experience in legal or administrative matters to present cases before the Review Commission. The procedure will also allow less complex cases to be handled more informally at less expense, both in time and money, to all concerned. We are most optimistic that the simplified procedure will have the combined effects of making Review Commission adjudications more responsive, more understandable, and more accessible to both employers and employees.

The public response to the proposed changes has been gratifying. On October 30, 1978, an information public hearing was held in Chicago and on February 8th, another public hearing will be held in Washington. I believe it is essential that this agency continue to share with the American people proposed Rules of Procedure changes which affect parties appearing before the Commission.

Finally, the Commission is working to institute a program of one day seminars across the country designed to explain the role of the Commission and to assist the affected public in utilizing the services of the Commission. We expect to hold our first seminar in Philadelphia in early March.

I look forward to our continued supports of improved regulatory management. Please let me know if I can be of further assistance.

Sincerely yours,

Timothy F. Cleary
Chairman

Enclosures

cc: Mark G. Schoenberg

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF
THE CHAIRMAN

FEB 6, 1979

The Honorable Douglas M. Costle
Chairman
United States Regulatory Council
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Costle:

This responds to your memorandum of January 24, 1979, received by our Office of the General Counsel on January 29, 1979, in which you inquire as to the Commission's progress in preparing a regulatory calendar. As I stressed in my letter to you on January 9, 1979, the Commission is appreciative of the opportunity to cooperate with the council as an active observer, but we do not feel that it would be consistent with our Congressionally mandated status as an independent regulatory agency to participate directly in the council's work.

As I also stated in my earlier letter, the Commission has decided to prepare an agenda of important regulatory matters which are likely to come before it for consideration in the next several months. Unfortunately, while significant work has been performed on this project, the agenda has not yet been completed. We do intend, however, to publish the agenda as soon as possible and will, of course, forward a copy to you for the benefit of the Regulatory Council.

I trust that this letter will clarify the status of the Commission's regulatory agenda and confirm our relationship with the Regulatory Council. Please feel free to contact me if you require any additional information.

Sincerely,

Harold M. Williams
Chairman

UNITED STATES
INTERNATIONAL TRADE COMMISSION
WASHINGTON, D.C. 20436

BY HAND

February 1, 1979

The Honorable Douglas M. Costle
Chairman
The Regulatory Council
401 M Street, S.W.
Washington, D.C. 20460

Dear Mr. Costle:

This is in response to your memeorandum of January 24, 1979, in which you requested a letter describing the Commission's investigative proceedings, the nature of the analytic information processed by the Commission and the economic impact of the agency's investigations. The Commission conducts investigations concerning the impact of imports on the product markets of domestic manufacturers under different statutory authorities. The character of the Commission's investigative responsibility depends upon the specific statutory mandate. In some cases, the Commission's investigation consists of a purely informational study and no Government action is required as a result of its findings. In other cases, the executive branch is directed by statute to respond to Commission findings, recommendations, or determinations. The Commission is authorized to issue what are in effect "final orders" in only three statutory provisions. These investigations are discussed below.

The jurisdiction of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), is similar to that of section 5 of the Federal Trade Commission Act (15 U.S.C. 45(a)), although it specifically addresses jurisdiction over U.S. import trade. Section 337 declares unfair methods of competition and unfair acts in the importation of goods into the United States or in their sale to be unlawful. It requires the Commission to conduct adjudicative, on-the-record proceedings, and where a violation of the section is established, authorizes the Commission to issue either a cease and desist order or a product exclusion order. Each Commission order is subject to a Presidential disapproval for policy reasons within a 60-day period of its issuance on a case-by-case basis. For the Commission to comment on economic significance or the alternative actions available to the Commission in any particular case prior to the issuance of a final determination could raise serious issues of prejudgment and bias. Another consideration is

that the value of the imports under investigation in a particular case rarely amounts to $100 million in a particular year.

The Antidumping Act, 1921, as amended (19 U.S.C. 160, et seq.), directs that the Treasury Department determine whether a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value. Only after the Treasury Department has made an affirmative determination is an antidumping investigation referred to the Commission to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of such imports. The Commission's investigation must be concluded within three months of its referral by the Treasury Department.

The scope of the Commission's investigation of imported products is framed by the Treasury Department's affirmative determination. Each of the Commission's determinations is based upon factual information gathered by questionnaires, field trips, and interviews by agency staff, a public hearing of a legislative character, and the written submissions of interested persons within the particular three-month investigation. The Commission has no choices among possible alternative regulatory actions in making its determination. Its determination must be either affirmative or negative.

If the Commission makes an affirmative determination on the basis of the market impact of the subject imports, the Treasury Department will issue a finding of dumping and special duties will be assessed against the subject merchandise by the Customs Service. The Commission is in no position to estimate the amount of duties which would actually be collected or whether the foreign exporters affected by the finding of dumping would cease trading, or adjust their prices for export to the United States and/or in their home market to eliminate, or lessen the amount of, any special duty that would otherwise be assessed.

The Commission's authority under the U.S. countervailing duty statute (19 U.S.C. 1303) is identical in structure to that under the Antidumping Act, 1921, with respect to duty-free merchandise. Whenever the Treasury Department determines that a bounty or grant (i.e., a proscribed subsidy) is being paid or bestowed with respect to any merchandise which is free of duty, the investigation is referred to the Commission to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise.

The Honorable Douglas M. Costle--Page 3

As in the case of the Antidumping Act, the scope of the Commission's three-month investigation of imports is framed by the Treasury Department's affirmative determination. Each Commission determination is based upon the impact of the imports in domestic markets and the Commission has no choice among possible alternative regulatory actions in making its determination. Should the Commission make an affirmative determination, the foreign government can avoid the imposition of countervailing duties on the exports of its nationals by suspending the payment of the bounty or grant at issue.

Very few individual antidumping and countervailing duty investigations involve imports valued at $100 million during a given year. On the other hand, imports valued at this amount may be subject to investigation in a given year if the values of the different imports investigated under these different statutes are aggregated. Although the individual investigations are not appropriate for a regulatory calendar describing agency rulemaking, the public may wish to follow the types of products subject to the administration of these statutes or be aware of the investigations docketed at the Commission at any given time. The Office of the Secretary at the Commission publishes a monthly calendar which describes the coverage of each investigation and indicates the date scheduled for hearings, briefs and Commission determinations.

I hope this information is helpful to you. If we can be of any further assistance, please let us know.

Sincerely,

Michael H. Stein
General Counsel

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