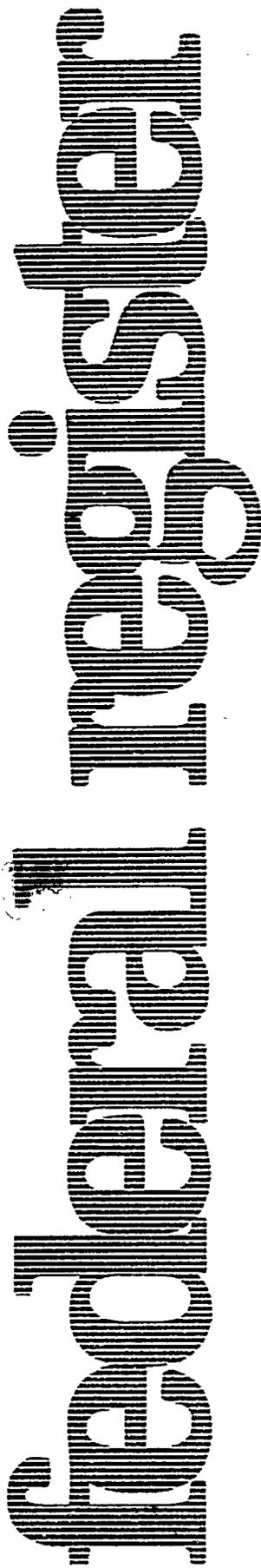

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Highlights

- 38857 **Natural Gas Policy Act** DOE/FERC requests comments on intergrating incremental pricing and curtailment policies that relate to industrial users; comments by 8-20-79

- 39078 **Child Care Food Program** USDA/FNS proposes a revision of regulations to implement the provisions of P.L. 95-627; comments by 8-17-79 (Part II of this issue)

- 39108 **Federal Savings and Loan system** FHLBB rules to reduce and simplify regulations; effective 8-3-79 (Part III of this issue)

- 38945 **National Environmental Policy Act** USDA/APHIS publishes proposed guidelines on implementation of procedures and invites public comment; comments by 7-24-79

- 38910 **Privacy Act** DOD/Navy proposes to amend regulations relating to personal privacy and rights of individuals regarding their personal records; comments by 8-2-79

- 38842 **Housing** HUD/CPD amends its Rehabilitation Loan Program regulations to add authority to waive any of its requirements in individual cases; effective 8-2-79

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Highlights

- 38826 Freedom of Information** President's Commission on the Accident at Three Mile Island releases regulations setting forth procedures by which the public can obtain information and records; effective 7-3-79
- 39041 Replication of Project New Pride: A Serious Offender Youth Treatment Program** Justice/LEAA summarizes comments received, responds to issues, details the changes made, and sets forth the final program guidelines
- 38910 Handicapped Workers** Labor/WH extends comment period on special minimum wages and employment regulations; comments by 7-19-79
- 38863, 38872 Cogeneration and Small Power Production Facilities** DOE/FERC issues staff paper discussing responsibilities for establishing rules regarding rates and exemptions for qualifiers; comments by 8-1-79 (2 documents)
- 38994 Management of Commercially Generated Radioactive Waste** DOE extends public comment period on draft generic Environmental Impact Statement; comments by 10-4-79
- 38854 Omnidirectional Citizens Band Base Station Antennas** CPSC gives notice of intent to develop a proposed consumer product safety standard; comments by 8-2-79
- 38879 Supplemental Security Income for the Aged, Blind, and Disabled** HEW/SSA proposes revision of rules for determining disability and blindness under titles II and XVI of the Social Security Act; comments by 9-4-79
- 38837 Energy** DOE/FERC revises and issues final rule covering determination of a powerplant's design capacity; effective 7-23-79
- 39030 Health Education-Risk Reduction** HEW/PHS makes announcement of request for applications for grants
- 38840 Black Lung Benefits Program** Labor/ESA amends regulations regarding filing of claims for medical benefits; effective 7-3-79
- 38953 Ethics in Government Act of 1978** Commerce/Secy amends interim procedures for public inspection and copying of Financial Disclosure Reports; effective 7-3-79
- 39074 Sunshine Act Meetings**
- Separate Parts of This Issue**
- 39078 Part II, USDA/FNS**
39108 Part III, FHLBB

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1 CFR Part 305

Administrative Procedures; Miscellaneous Amendments

AGENCY: Administrative Conference of the United States.

ACTION: Recommendations.

SUMMARY: The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 571-576, to study the efficiency, adequacy and fairness of the administrative procedure used by administrative agencies in carrying out administrative programs, and to make recommendations for improvement to administrative agencies, collectively or individually, to the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 574(1)).

The Administrative Conference of the United States at its Nineteenth Plenary Session, held June 7-8, 1979, adopted four recommendations. Recommendation 79-1 constitutes the Conference's report to Congress under section 202(d) of the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act of 1975. It consists of a series of analytical comments and suggestions for improvement in the "hybrid" rulemaking procedures adopted by the Federal Trade Commission pursuant to the Magnuson-Moss Act. This recommendation concerns only the stages of investigation, initial and final notices of rulemaking, prehearing comment and oral hearing; no recommendations were considered with regard to post-hearing procedures or the statutory scheme as a whole because insufficient information concerning these aspects is available.

These subjects will be considered by the Conference at a later date.

Recommendation 79-2 calls for certain improvements in (a) procedures for developing the general terms and conditions of agreements between the States and the Department of Health, Education, and Welfare, that govern the Federal administration of supplementary benefits under the Supplemental Security Income program, (b) agreement provisions for measuring and adjusting the liabilities of the States and HEW, and (c) procedures for reserving disputes under SSI.

Recommendation 79-3 advocates the development of standards for the determination of the amount of civil money penalties, suggests informal procedures for agencies to follow in the initial assessment and mitigation of penalties, and recommends that agencies consider the promulgation of regulations to provide respondents with an opportunity for an adjudicatory hearing at the agency level, even where such procedures are now provided by statute. Recommendation 79-4 advises agencies that use cost-benefit or similar analytical techniques in regulation to provide the public with adequate advance notice describing the use of those techniques, either generically or by means of special notice in particular proceedings. The recommendation identifies several points that the agencies should address.

DATES: These recommendations were adopted June 7-9, 1979, and issued June 27, 1979.

FOR FURTHER INFORMATION CONTACT: Richard K. Berg, Executive Secretary, (202-254-7065).

1. The table of contents to Part 305 of Title I, Chapter III, CFR is amended to add the following sections:

PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

* * * * *

Sec.

305.79-1 Hybrid Rulemaking Procedures of the Federal Trade Commission (Recommendation No. 79-1).

305.79-2 Disputes Respecting Federal-State Agreements for Administration of the Supplemental Security Income Program (Recommendation No. 79-2).

305.79-3 Agency Assessment and Mitigation of Civil Money Penalties (Recommendation No. 79-3).

305.79-4 Public Disclosure Concerning the use of Cost-Benefit and Similar Analyses in Regulation (Recommendation No. 79-4).

2. Section 305.79-1 is added to Part 305 to read as follows:

§ 305.79-1 Hybrid Rulemaking Procedures of the Federal Trade Commission (Recommendation No. 79-1).

(a) The Magnuson-Moss Warranty—Federal Trade Commission Improvement Act, P.L. 93-637, which became effective January 5, 1975, provides authority and procedures for the Federal Trade Commission's promulgation of "trade regulation rules." The statute requires the Commission to engage in "hybrid" rulemaking, a style which adds to the notice-and-comment requirements for "informal rulemaking" under section 553 of the Administrative Procedure Act such requirements as oral hearings (of both the legislative and evidentiary types), more extensive provision for public comment, including rebuttal, and judicial review of the rulemaking record under a "substantial evidence" standard. Such hybrid procedures represent a new approach to agency legislative rulemaking, aimed at enhancing the public's participation and testing the facts and assumptions upon which the agency bases its regulatory policy. The effectiveness and efficiency of the concept were of continuing concern to the Congress, and section 202(d) of the Magnuson-Moss Act provided:

The Federal Trade Commission and the Administrative Conference of the United States shall each conduct a study and evaluation of the rulemaking procedures under section 18 of the Federal Trade Commission Act and each shall submit a report of its study (including any legislative recommendations) to the Congress not later than 18 months after the date of enactment of this Act. [Congress subsequently extended the deadline to not later than June 30, 1979, by Pub. L. 95-558.]

(b) Since the Magnuson-Moss Act was adopted, twenty proceedings have been initiated by the Commission. By April 15, 1979, only three had been completed (one by withdrawal). The present recommendations, therefore, represent an interim analysis, based on as much information as has been available early enough to report by Congress's deadline

of June 1979. The observations and conclusions in this report are based on those proceedings begun prior to April 1976. The Conference has reviewed and considered proceedings instituted after that date but has not systematically evaluated the experience in such proceedings. The Conference will continue this project with the aim of developing a supplemental report and recommendations as soon as a sufficient number of rulemaking proceedings have been completed to provide perspective on the process as a whole.

(c) While the Commission has significant responsibilities under a number of statutes, its most important activity has always been enforcement of section 5 of the Federal Trade Commission Act, which, as originally enacted, stated "unfair methods of competition in commerce are hereby declared unlawful." This 1914 law was not construed by the courts to be a consumer protection statute. The Supreme Court, in *Federal Trade Commission v. Raladam Co.*, 283 U.S. 643 (1931), held that the Commission must in each case show some harm to competitors or the competitive system. To make clear its desire that the Commission's protection extend to consumers as well as to competition, Congress, in the Wheeler-Lea Act of 1938, added to the statute a provision that "unfair or deceptive acts or practices in commerce" are also unlawful.

(d) Until the early 1960's the Commission did not attempt to exercise any authority to promulgate legislative rules defining unfair methods of competition or unfair or deceptive acts or practices. It used its authority under Federal Trade Commission Act section 6(g) "to make rules and regulations for the purpose of carrying out the provisions of this Act" only to issue interpretive rules and general statements of policy. Starting in 1963, however, the Commission commenced proceedings aimed at promulgating legislative rules declaring certain specific trade practices unfair or deceptive within the meaning of section 5. Between 1963 and passage of the Magnuson-Moss Act the Commission conducted 35 trade regulation rulemaking proceedings under section 6(g), using the informal notice and comment procedures of the Administrative Procedure Act, 5 U.S.C. 553.

(e) The Commission's authority to promulgate trade regulation rules was not free from doubt, however, and, in *National Petroleum Refiners Association v. Federal Trade*

Commission, 482 F. 2d 672 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 951 (1974) (the Octane case), it was challenged in the context of a rule requiring that octane ratings be posted on gasoline pumps. The United States Court of Appeals for the District of Columbia Circuit upheld the Commission's power to make such legislative rules under section 5.

(f) During the period the FTC's legislative rulemaking authority was in litigation, debate about the existence and desirability of legislative rulemaking authority to implement section 5 of the Federal Trade Commission Act took place in the Congress. The issue was first raised in bills introduced in late 1969 in the Ninety-First Congress. Opponents of expanded authority for the FTC contended that the Commission did not possess, and Congress should not give it, the power to make legislative rules, and that any rulemaking power Congress might nevertheless decide to create should be accompanied by restrictions to guide and control its use. The Commission and its supporters contended that the power already existed, though codification might be useful, and that section 553 of the Administrative Procedure Act provided an adequate procedural framework. After the *Octane* decision, the Congressional debate moved beyond the issue of whether the FTC ought to have legislative rulemaking authority to the question of what limitations should accompany a delegation or confirmation of such authority. The Magnuson-Moss Act represents the Congressional resolution of the different views about FTC rulemaking.

(g) The Act extended the Commission's jurisdiction to matters "affecting commerce" as well as "in commerce," but did not otherwise change the substantive reach or definition of section 5. It added a new section 18 to the Federal Trade Commission Act which confirmed the FTC's authority to issue interpretive rules and general statements of policy, and, further, empowered the Commission to prescribe:

rules which define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce (within the meaning of such section 5(a)(1)). Rules under this subparagraph may include requirements prescribed for the purpose of preventing such acts, or practices.

(h) The statute also provided:

The Commission shall have no authority under this Act, other than its authority under this section, to prescribe any rule with respect to unfair or deceptive acts or

practices in or affecting commerce (within the meaning of section 5(a)(1)). The preceding sentence shall not affect any authority of the Commission to prescribe rules (including interpretive rules), and general statements of policy, with respect to unfair methods of competition in or affecting commerce.

(i) However, Congress imposed a number of procedural limitations on the Commission's trade regulation rulemaking under section 18. The Commission was directed to "proceed in accordance with section 553" of the Administrative Procedure Act, and, in addition, to comply with several special requirements:

(j)(1) Section 553 requires simply that an agency give notice of "either the terms or substance of the proposed rule or a description of the subjects and issues involved." Magnuson-Moss states that the FTC shall "publish a notice of proposed rulemaking stating with particularity the reason for the proposed rule." The substantive effect of this change is unclear, but has been the subject of debate in several rulemaking proceedings.

(2) Section 553 provides that interested persons shall have an opportunity to submit "written data, views, or arguments" unless the agency "for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." Magnuson-Moss requires the FTC to make all submissions "publicly available," and makes no provision for promulgating legislative rules without allowing an opportunity for public comment.

(3) While section 553 requires neither an oral hearing nor any opportunity for cross-examination or rebuttal, Magnuson-Moss requires the Commission to provide an opportunity for an informal hearing at which an interested person "is entitled * * * to present his position orally or by documentary submissions (or both)," and "if the Commission determines that there are disputed issues of material fact it is necessary to resolve" an interested person is entitled "to present such rebuttal submissions and to conduct (or have conducted * * *) such cross-examination of persons as the Commission determines (i) to be appropriate, and (ii) to be required for a full and true disclosure with respect to such issues." The Commission is also empowered to make rules and rulings for its hearings "as may tend to avoid unnecessary costs or delay." It may, for example, impose time limits, conduct cross-examination on behalf of a person, and require group representation of similar interests.

(4) Section 553 requires an agency to incorporate in any final rules "a concise general statement of their basis and purpose." Magnuson-Moss requires "a statement of basis and purpose" which includes statements as to "the prevalence of the acts or practices treated by the rule," "the manner and context in which such acts or practices are unfair or deceptive," and "the economic effect of the rule, taking into account the effect on small business and consumers." Whether the omission from Magnuson-Moss of the words "concise, general" from the phrase "concise, general statement of their basis and purpose" has substantive importance is, again, a matter of debate.

(5) Magnuson-Moss also allows, but does not require, the FTC to provide compensation for costs of participation to any person "who has, or represents, an interest * * * which would not otherwise be adequately represented * * *" if representation of the interest "is necessary for a fair determination," and if the person "is unable effectively to participate" because he cannot afford to pay the costs. Section 553 has no comparable provision.

((k) The Magnuson-Moss Act also specifically provides for pre-enforcement judicial review of trade regulation rules, on both the traditional Administrative Procedure Act grounds and on special grounds set forth in section 18, 15 U.S.C. § 57a(e). Under the Administrative Procedure Act, a rule may be set aside if, as specified by 5 U.S.C. 706(2)(A)-(D), it is found to be "(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations, or short or statutory right; (D) without observance of procedure required by law." In addition, under the Magnuson-Moss Act, the Commission's "action" in a trade regulation rulemaking under section 18 must be supported by "substantial evidence in the rulemaking record," which consists of the rule, its statement of basis and purpose, the transcript of the oral hearing, any written submissions, and any other information which the Commission considers relevant. However, the "contents and adequacy" of the Commission's statement of basis and purpose "shall not be subject to judicial review in any respect." The Court is also empowered to set aside the rule if it finds that denial of cross-examination or rebuttal "has precluded disclosure of disputed material facts which was necessary for a fair determination * * *

of the * * * proceeding taken as a whole."

(l) The requirements added by Magnuson-Moss seem to be based on a different model of rulemaking and the role of outside parties from the one implicit in section 553. In the words of the Conference Report, "[M]ore effective, workable and meaningful rules will be promulgated if persons affected . . . have the opportunity . . . by cross-examination and rebuttal evidence or other submissions, to challenge the factual assumptions on which the Commission is proceeding and to show in what respect such assumptions are erroneous." [1974] *U.S. Code Cong. & Ad. News* 7765.

(m) The basic statutory objectives of allowing interested persons to challenge the basis of a proposed rule in detail, while limiting cross-examination and other hearing rights in the interest of preserving the efficiency of rulemaking, require a somewhat different strategy of implementation from the approach agencies frequently use in notice-and-comment rulemaking under section 553. Rulemaking under that section has often been treated as a loosely-structured process for fact-gathering and public statement of policy preferences—that is, as a form of decisionmaking in which the agency simply identifies a problem, outlines possible solutions in general terms, and then seeks public data, views and arguments as a means of educating itself about the subject matter. By contrast, effective implementation of the fact-testing objective of the Magnuson-Moss Act necessitates, instead of this direct "pipeline" of public views to agency decision-makers, a "funnel" approach in which agency practices and procedures are designed to achieve a progressive narrowing of the theories, factual issues, and policy considerations as the rule moves through the various procedural stages toward final decision. This "funnel" approach implies several

general attributes of the rulemaking procedures: (a) more systematic, thorough investigation and consideration of rulemaking proposals than would be customary in section 553 rulemaking prior to the publication of a proposed rule; (b) more complete agency disclosure of the factual, legal and policy basis for a proposed rule than would be customary under section 553 and the general requirements of the Freedom of Information Act; (c) procedures and standards which make it possible for participants and decision-makers to narrow and focus the key matters in dispute sufficiently early in the process to permit reasonable limitations on the use of trial-type hearing procedures. At this time, it is not clear whether, or to what extent, these objectives can be achieved in the context of a broad delegation of rulemaking authority like that granted the FTC by the combination of sections 5 and 18 of the Federal Trade Commission Act. It does seem clear, however, that failure to observe these principles in agency implementation of hybrid rulemaking can impair the efficiency, acceptability, and quality of decisions.

(n) The Magnuson-Moss Act became effective on January 4, 1975. In April 1975 the Commission promulgated Rules of Practice concerning the initial notice stage of rulemaking proceedings and in August, after notice and comment, promulgated rules for the remaining stages of a rulemaking proceeding. By April 1976, using these Rules of Practice, the Commission had commenced 16 rulemaking proceedings under the Magnuson-Moss Act. By April 1979 the number had grown to 20. Of these, three have been completed—two by publication of final rules and one by withdrawal of the proposal. The rest are still in process. Their status is presented in the following chart:

Status of Trade Regulation Rules Proposed Since Passage of the Magnuson-Moss Act

A. Completed Rulemakings

Rule	Notice of proposed rulemaking	Status as of Apr. 15, 1979 *
1. Ophthalmic goods and services (eyeglasses)	Jan. 16, 1976 (41 FR 2333)	Final rule published on June 2, 1978.
2. Vocational schools	May 15, 1975 (40 FR 21048)	Final rule published on Dec. 28, 1978.
3. Prescription drugs	June 4, 1975 (40 FR 24331)	Proposed rule withdrawn on Nov. 24, 1978.

B. Proposed Rules Before the Commission for Final Action

1. Residential thermal insulation ("R-Value")	Nov. 18, 1977 (42 FR 55676)	Commission met to consider a final rule on Nov. 23, 1978; Jan. 24, 1979.
2. Funeral practices	Aug. 23, 1975 (40 FR 39901)	Commission met to consider a final rule on Mar. 23, 1979.
3. Care labeling amendment	Jan. 26, 1976 (41 FR 3747)	Public comments on reports were due Sept. 18, 1978.
4. Used cars	Jan. 6, 1976 (41 FR 1023)	Public comments on reports were due Feb. 13, 1979.

B. Proposed Rules Before the Commission for Final Action

5. Hearing aids.....	June 24, 1975 (40 FR 26646)	Public comments on reports were due Mar 29, 1979.
6. Holder in due course amendment.....	Nov. 18, 1975 (40 FR 53530)	Public comments on reports were due Jan. 24, 1979.
7. Food advertising.....	May 28, 1975 (40 FR 23086)	Public comments on reports were due Feb. 26, 1979.

C. Proposed Rules at the Post-Hearing Report-Writing Stage

1. Protein supplements.....	Sept. 5, 1975 (40 FR 41144)	Presiding Officer report released July 31, 1978; BCP report not released.
2. Credit practices.....	Apr. 11, 1975 (40 FR 16347)	Presiding Officer report released Oct. 13, 1978; BCP report not released.
3. Over-the-counter drugs.....	Nov. 11, 1975 (40 FR 52631)	Presiding Officer report released Jan. 4, 1979; BCP report not released.
4. Health spas.....	Aug. 18, 1975 (40 FR 34615)	Hearings completed on Dec. 16, 1977.
5. Mobile homes.....	May 29, 1975 (40 FR 23334)	Hearings completed on Jan. 31, 1978.
6. Over-the-counter antacids.....	Apr. 6, 1976 (41 FR 14534)	Hearings completed on Feb. 6, 1979.

D. Proposed Rules in the Pre-hearing and Hearing Stage

1. Cellular plastics.....	July 23, 1975 (40 FR 30842)	Revised notice of rulemaking and request for comment on need for TRR published Aug. 9, 1978.
2. Children's advertising.....	Apr. 27, 1978 (43 FR 17967)	"Legislative" hearing was concluded in March 1979; possible "disputed issues" hearing to be held later.
3. Games of chance amendment.....	Oct. 19, 1978 (43 FR 48654)	Scheduled hearings cancelled on Jan. 2, 1979, due to limited interest.
4. Standards and certification.....	Dec. 7, 1978 (43 FR 57269)	Hearing scheduled to begin May 21, 1979.

¹ The usual principal stages of a Magnuson-Moss rulemaking proceeding are: (1) Initial notice of rulemaking; (2) Final notice, designating disputed issues and setting hearing sites and dates; (3) Pre-hearing comment period (from initial notice to 45 days before hearing); (4) Hearing; (5) Post-hearing rebuttal period; (6) Presiding Officer report; (7) Bureau of Consumer Protection (BCP) staff report; (8) Public comments on the Presiding Officer and BCP reports; (9) Final recommendations by Director of BCP; (10) Oral presentations to Commission by interested persons; (11) Commission meetings to consider rule; (12) Publication of final rule and statement of basis and purpose.

(o) The consultant's report documents that these statutory goals of more systematic development of rules by the agency and more effective participation by the public were not fully realized in many of the rulemakings initiated by the FTC. In part, this was because investigations which originated before 1975—with the objective of either selecting individual violators for cease-and-desist actions or commencing section 553 proceedings—were used as the basis for Magnuson-Moss rulemaking proceedings. As a result, information was gathered, and rulemakings were begun, without specific consideration of the meaning of "substantial evidence" in the context of FTC rulemaking or of the kinds of information necessary for an adequate analysis of the particular factors Magnuson-Moss requires to be included in the statement of basis and purpose. Moreover, at the outset the Commission's Bureau of Consumer Protection lacked both the non-lawyer personnel and the traditions necessary for large-scale policy-oriented investigations, and the resources of all kinds necessary to commence 16 rulemaking proceedings in the first year. The problems were made more difficult by the fact that no other agency had

been called upon to implement hybrid rulemaking under so general a mandate as that contained in section 5, and FTC efforts to find relevant models in the hybrid procedures of other agencies were unsuccessful.

(p) Perhaps the most important factor, however, was that the agency's implementation of hybrid rulemaking did not compel the progressive narrowing described above. The Commission did not take the steps necessary to define the relevant theories, facts and issues at an early stage or to lessen the areas of uncertainty as the proceedings continued. As a consequence, its rulemakings did not seem to result in a progressive sharpening of the Commission's own analyses of the problems. Nor did the proceedings force the participation of other interested persons to be focused, meaningful, or constructive. At the same time, of course, the statute and the FTC's Rules of Practice gave these other interested persons many opportunities to participate. This combination of broad procedural rights and lack of guidance as to the effective use of the rights resulted in extensive, repetitive presentations.

(q) The specific problems were:

(1)(i) *The initial basis for public participation.* If interested persons are to submit informed comment and challenge the factual bases of a proposed rule, they must have access to the Commission's rationales and information supporting the proposal. However, these were often not readily available. The FTC's initial notices of rulemaking often contained conclusory or truncated discussions of the tentative legal theories, policy judgments and factual assumptions underlying the proposals.

(ii) An early and clear articulation of the bases of a proposed rule is particularly necessary in FTC hybrid rulemaking because the broad "unfair or deceptive acts or practices" standard governing the exercise of the Commission's legislative rulemaking power does not in itself give sufficient specific structure to a proceeding. The proposed rules contained a wide variety of subject-matter and remedial provisions, and involved a number of different industries. Many rules were based on novel theories of unfairness or deception rather than on traditional principles. Some rules contained multiple theories of unfairness or deception or covered numerous and varied commercial practices. As a result, considerable confusion existed throughout the proceedings regarding the nature of the Commission's rationales and the elements of the proof necessary to support or refute the Commission's proposals.

(iii) The FTC staff investigative reports recommending that the Commission initiate rulemaking sometimes contained more detailed discussions of the theories and policy choices supporting recommended rules, but these were frequently not made publicly available early enough to be used by those preparing written comments or proposals concerning disputed issues of material fact, nor did the staff reports provide clear connections between legal and policy conclusions and the factual information underlying the proceedings. In fact, many staff investigative reports contained little discussion of the evidentiary basis supporting the staff's proposal. There was often heavy reliance of postulated legal and policy considerations, rather than specific facts. Of course, many of the reports prepared in connection with pending rulemaking proceedings were written prior to passage of the Magnuson-Moss Act.

(2)(i) *Effective access to supporting materials.* Several factors tended to cause an expansion in the volume of

paper in the rulemaking proceedings. In many of the investigations originally designed to develop cease-and-desist actions against particular respondents rather than industry-wide rules, compulsory process had been used to gather massive documentation concerning the practices of certain companies. In other proceedings, a wide variety of material of marginal significance had been collected as the staff educated itself about a particular industry. The Magnuson-Moss Act requirement that the Commission base trade regulation rules on a rulemaking record, together with the disclosure provisions of the Freedom of Information Act, led the FTC staff to place in the rulemaking record all of this material that might possibly be relevant, whether or not the staff had any plans to rely on it.

(ii) This expansion of volume had two important consequences. First, it took time for the staff to collect the material and transmit it to the rulemaking record. Much material was made public too late to be used by participants submitting written comments or proposing disputed issues of fact for consideration at the oral hearings. Second, the records generated were too massive and poorly organized to be used effectively. Two rules (Credit Practices and Mobile Homes) have records of over 200,000 pages. In the 14 other proceedings commenced before April 1976, the records accumulated before April 15, 1979, range from a high of 110,695 pages to a low of 8,377 pages, and average 40,551 pages. (Only three of these proceedings are yet complete, of course.) This growth in volume was not matched by a compensating investment in resources necessary to organize and index the material so as to facilitate public use. The creation of sixteen large rulemaking records in a short period of time overtaxed the FTC's record management capabilities. Problems caused by the volume of material were compounded by a lack of central control over record organization and indexing. Presiding Officers and FTC rulemaking staff attorneys experimented with diverse organizing and indexing schemes, and the resulting lack of standardization further complicated and slowed the processing of documents.

(iii) The net result was that in many situations became virtually impossible for a participant to determine with any confidence which material was relevant to or significant for any particular point raised by a proposed rule. This seriously undermined the concept that the basis of a rule should be tested.

(3)(i) *Availability of the pre-hearing comments.* In theory, the prehearing written comments submitted by interested persons could provide a framework for subsequent stages of a proceeding by sharpening the issues, suggesting alternatives to agency assumptions, and delineating the central matters in dispute. In fact, these comments were rarely referred to at the hearings.

(ii) This was due partly to deficiencies in the record management system. The chaotic situation described above often led to substantial delays in placing written comments, as well as other materials, on the record. When the comments were incorporated into the record, shortcomings in the indexing or availability of records made it difficult or impossible to use them in a timely, efficient manner.

(4)(i) *"Discovery."* In part because of the difficulties of identifying the key legal theories or policy assumptions and of locating crucial supporting material in the rulemaking records, and in part because counsel for some interested persons tended to treat the proceedings as the equivalent of multi-party adjudication, interested persons frequently filed a variety of discovery motions and Freedom of Information Act requests in an effort to obtain statements of the theories and information upon which the Commission intended to rely. The Commission has never clarified whether it regards discovery motions as a legitimate device in rulemaking proceedings, nor established any systematic procedure whereby participants can obtain an elaboration or clarification of the staff's legal and policy theories or compel the production of underlying materials. Requests for "bills of particulars," written interrogatories directed at the FTC staff and attempts to discover the staff's case at prehearing conferences have been uniformly rejected. Therefore, the participant's basic rights of access to FTC material have been defined by the Freedom of Information Act. Moreover, the agency complied with FOIA by placing large, undifferentiated masses of material on the rulemaking record, a practice that does little to define the issues in a proceeding or to establish the relative importance of different pieces of information to the rulemaking proposal. At the same time, processing discovery requests and complying with FOIA has involved a significant drain on staff resources.

(ii) Similarly, the commission has not established any systematic procedure whereby the staff can force an elaboration or clarification of other

participants legal and policy theories, or within the context of the rulemaking proceeding, compel the production of underlying materials. It has, however, confirmed the authority of the staff of the Bureau of Consumer Protection to issue subpoenas independently of the Presiding Officer.

(iii) An additional discovery issue concerns the right of one non-FTC participant to persuade the Presiding Officer to subpoena records of another. As of April 15, 1979, such a subpoena has been issued on only one occasion, but the potential of such third party subpoenas to create delay and disincentives to participation could be significant.

(5)(i) *Designation of disputed issues.* As the rulemaking scheme established by the Magnuson-Moss Act was implemented by the Commission's rules of practice, "disputed issues of material fact which are necessary to resolve" were identified before any hearing, and indeed even before the close of the initial comment period. As a means of limiting cross-examination at the oral hearings, this device proved unworkable. It required identification of highly specific issues at a time when there had been minimal definition of even the major issues in the proceeding. It required identification of factual disputes even before interested persons had finished submitting their initial data, views and arguments in prehearing comments. Finally, it required Presiding Officers to make complicated, important judgments before they had had time to master the subject matter, and in a context in which the interested parties had an incentive to advocate broad, vague designations that would avoid precluding cross-examination on any issue.

(ii) The result was that the designation of issues on which cross examination might be allowed did little to focus the proceeding. If the statutory phrase "disputed issue of material fact . . . necessary to resolve" is to serve as a limitation on cross-examination, or as a means of focusing on crucial fact issues, then identification of fact issues must take place after the major issues in the proceed have been made as clear as possible, and with reference to specific evidence previously entered into the rulemaking record.

(6)(i) *Conduct of cross-examination.* Largely because the designation process failed to produce sets of precisely defined issues, the effort to use designation as a device for limiting cross-examination was abandoned in favor of a "freedom-for-time" policy. Group representatives and FTC staff

could question witnesses on any points they wished, so long as they stayed within established time limits.

(ii) This "freedom-for-time" policy permits cross-examination to concentrate on policy or opinion rather than factual issues, and, because much of the testimony offered in the hearings consisted of repetitious opinion unsupported by specific factual data, such cross-examination has seldom produced useful factual information. It generally has involved a credibility attack on the witness or his testimony.

(7)(i) *Utility of oral hearings.* Oral hearings generally were not used to refine or respond to points made in the prehearing written record; rather, they tended to become an independent stage of the proceedings. This can be attributed to the fact that the prehearing phase did not produce an adequate identification of points at issue, and that Magnuson-Moss leaves debatable the Presiding Officer's authority to exclude the testimony of repetitive witnesses. In addition, the hybrid, partly adversary character of the proceedings, in which group representatives were given some of the rights of parties in trial-type proceedings while presiding officers were delegated broad authority to limit or control the group representatives' participation, produced some uncertainties and difficulties for the presiding officers in controlling the proceedings, and in some instances contributed to an antagonistic atmosphere at the hearings.

(ii) The Administrative Conference study has necessarily focused on the rulemaking proceedings begun in 1975 and 1976. None was commenced in 1977 until the Thermal Insulation Rule was noticed on November 18, 1977. The Conference does not at this time have extensive information on the Thermal Insulation Rule, the Children's Advertising Rule (noticed April 27, 1978), the Games of Chance Amendment (noticed October 19, 1978), or the Standards and Certification Rule (noticed December 7, 1978). In addition, the consultant's reports now available to the Conference cover the rulemaking proceedings only through the stages of investigation, initial and final notices of rulemaking, prehearing comment and oral hearing. Thus the post-hearing procedures have not been considered, and no recommendations concerning these procedures, or concerning the statutory scheme as a whole, can be advanced at this time.

(iii) One point deserves special emphasis. The Commission's approach to rulemaking has not been static. The Commission itself has recognized many

of the problems discussed above, and has been experimenting with a series of measures designed to improve its rulemaking. For example, new procedural approaches are being tried in all four of the most recent rules. Commission awareness of the need for greater input from the Bureau of Economics has resulted in the creation of a new division of that Bureau to work exclusively upon consumer protection matters. Directives have been issued designed to make the initial staff reports more thorough and useful. Steps have been taken to increase the accessibility of rulemaking records by improving organization and indexing, and by making documents available on microfilm. Internal efforts to develop better rulemaking processes have resulted in the FTC's 1978 Operating Manual, which is cited at several places in the consultant's report as reflecting conclusions similar to those of the Conference study.

(iv) Thus, the recommendations set forth below are not intended to imply that the Commission has not recognized the problems or taken steps to alleviate them. They represent, rather, the Conference's current views on practices which will promote effective and efficient rulemaking under Magnuson-Moss, including some already utilized or endorsed by the FTC.

(v) The Conference does not recommend any revisions in the statute at the present time, though such recommendations may be forthcoming after completion of the supplemental report.

Recommendations

1. The Commission should include in the initial notice of proposed rulemaking a description of the theories and materials which it then considers relevant to the rulemaking, together with appropriate references to the rulemaking record, including materials both supporting and opposing any proposed rule. The notice should indicate with reasonable specificity both the issues upon which the Commission seeks comment and information, and the kinds of evidence or information that are likely to be valuable to the Commission's resolution of the issues.

2. At the time the notice of proposed rulemaking is published, the Commission, consistent with its present policy, should place in the rulemaking record, and index, the staff investigative report recommending rulemaking (which should contain the staff's analysis of the issues, a summary of the information considered significant by the staff, and the methods of analysis used by the staff) and all relevant information in the possession of the staff. Information exempt under the Freedom of Information Act may be withheld. Similarly, all relevant material developed by the staff after the notice is

published should be promptly placed in the rulemaking record, and indexed.

3. To the extent feasible, and as early as practicable in the proceeding, the Commission should provide guidance to participants concerning suggested methods for the marshalling and presentation of information.

4. The Commission, to the extent feasible, should promote (but not require) the use of standard methods for the marshalling and presentation of information with respect to issues commonly recurring in trade regulation rulemaking proceedings.

5. In conducting investigations which may lead to trade regulation rulemaking, the Commission should experiment with techniques for eliciting increased information and views from the public, including the use of advance notices of proposed rulemaking with opportunity for public comment and meetings or conferences open to the public on adequate notice. The Commission should assure that its staff solicits the views of affected interest groups during the course of the investigation, including groups that might not otherwise participate.

6. Many issues that arise in the course of formulating rules pursuant to section 18 of the Federal Trade Commission Act require, or can benefit from, the contributions of disciplines other than law. The Commission should continue its efforts to assure appropriate use, at all stages, of experts whose disciplines are relevant to consideration of the proposed rule, including economists, statistical analysts and consumer research specialists.

7. To avoid burdening the rulemaking record, the Commission, consistent with its present policy, should require that the staff maintain, separately from that record, a public file of related documents, collected and generated by it, that the staff, pursuant to procedures established by the Commission, has determined not to be relevant.

8. Proper handling of rulemaking records can greatly assist public participation in proceedings, reduce delay, and enhance the quality of decisions. The Commission should continue and intensify its efforts to improve public and staff access to the rulemaking record through upgrading of record management practices, storage and retrieval technologies, copying and microfilming capability, and record indexing and organization. The Commission should ensure that all materials in the rulemaking record are indexed as they are received, and that adequate facilities are provided for members of the public to inspect, copy, and work with the record.

9. The use of subpoenas should be restricted to the investigation conducted by the Commission staff to develop information relevant to the rulemaking, including information both supporting and opposing the rule. Once a hearing has been noticed, the subpoena power should be used sparingly, and, once a hearing has been commenced, should be used only with the approval of the Presiding Officer upon a showing of need.

10. In lieu of a discovery practice, the Commission should provide by rule that at a hearing or within a reasonable time

thereafter the Presiding Officer, on his own motion or on that of the Commission staff or any other participant, may request the staff or any other participant at that hearing to clarify, elaborate or support any oral or written presentation then or previously made by such participant. The rule should also provide that failure to comply with such a request may result in the drawing of adverse inferences with respect to the presentation, or a reduction in the weight to be given to the presentation.

11. If a person appealing from the Commission's initial denial of a Freedom of Information Act request asserts that the information sought is desired for use in a pending rulemaking proceeding, the agency official handling the appeal should not affirm the denial on the basis of an exemption in that Act without first obtaining the views of the Presiding Officer in the proceeding as to the utility of that information, except where withholding the information is required by law. The Commission should adopt such amendments to its Freedom of Information Act procedures as may be necessary to assure this consultation.

12. As a general practice the Commission, after the close of the first period of submission of written comments, should conduct a legislative-type hearing, following which it should determine whether there appear to be "disputed issues of material fact it is necessary to resolve." If it so determines, such issues should be designated with specificity, and a further hearing in accordance with section 18(c) of the Federal Trade Commission Act, should be held for the purpose of resolving them.

13. An oral hearing can serve any or all of at least four somewhat separate functions: (1) fact gathering; (2) fact testing; (3) assessment of the views of different segments of the public; and (4) clarification of positions and exchange of views on policies, values or desirable lines of inquiry. The fact testing function is performed in the section 18(c) hearing referred to in Paragraph 12, above. The legislative hearings should be designed according to which of the other three functions is believed likely to predominate. For example, the clarification of positions and exchange of views on policies, values or desirable lines of inquiry may best be furthered by such informal devices as roundtable or panel discussions.

14. The statutory phrase "disputed issues of material fact it is necessary to resolve" should be understood to mean only those issues (1) which are capable of being resolved as matters of fact, and (2) whose resolution is essential to the evaluation or formulation of a rule.

15. Cross-examination may not be necessary on a designated disputed issue of material fact. However, if the Commission determines to limit or deny cross-examination on a designated issue, it should state the basis for its decision.

3. Section 305.79-2 is added to Part 305 to read as follows:

§ 305.79-2 Disputes respecting Federal-State agreements for administration of the supplemental security income program (recommendation No. 79-2).

(a) Public assistance in the United States was originally exclusively a function of local governments. States first became involved by their establishment of institutions to accommodate particular categories of persons, e.g., the blind, the insane, the deaf, the aged. Early in this century many States established programs of cash benefit payments for needy mothers and aged persons. A federal role in public assistance did not develop until the Depression: first with a temporary program of grants-in-aid enacted in 1933; and then with a permanent program established in 1935 by the Social Security Act, under which the federal government was authorized to reimburse specified portions of the State and local public assistance payments for three categories of needy persons, the aged, the blind, and dependent children. A fourth category, the disabled, was added in 1951, and in 1965 Medicaid, a similar grant-in-aid program for the medically indigent, was established.

(b) From 1936 to 1974 a series of federal agencies exercised the federal role which, pursuant to the pertinent titles of the Social Security Act, was to enunciate the eligibility conditions to be met by State public assistance programs (including substantive, procedural and administrative features) and to make payments by way of reimbursement to the States of statutorily stipulated fractions of public assistance expenditures under their eligible programs. The responsible federal agency, since 1953 the Department of Health, Education, and Welfare (HEW), exercised considerable influence over State public assistance programs through establishment of State program conditions and review of State program operations for purposes of determining the fact and amount of State reimbursement entitlement.

(c) In 1972, Congress replaced federal grant-in-aid support for State programs of public assistance to the needy elderly, blind, and disabled with a federally administered cash benefit program for the same groups. This program is known as the Supplemental Security Income Program or SSI. The federal-State grant-in-aid program for needy families with dependent children (AFDC) was left untouched by the transformation of SSI. (Proposals for and discussion of "welfare reform" usually refer to making a comparable transformation of AFDC; in 1972 such a proposal, the Family

Assistance Program, was rejected by the Congress as it enacted SSI.)

(d) State public assistance programs for the aged, blind and disabled have not been entirely displaced by SSI, because the level of federal SSI benefits (below what many States were paying under their predecessor programs) and the simplification of its benefit formula (as compared with prior State programs) leave substantial room or need for supplementary State assistance to these groups. As initially enacted, the 1972 SSI legislation encouraged States voluntarily to supplement the Federal SSI amounts, but subsequent amendments require them to do so in amounts based on their prior public assistance expenditures. (The requirements are imposed as a condition for continued receipt of federal grant-in-aid support for state Medicaid programs.)

(e) Federal administration of the SSI program is lodged in the Social Security Administration (SSA), a major operating element of HEW. SSA and a State may enter into an agreement for SSA to administer the State's supplementary benefits, and in such event SSA includes both the basic federal SSI benefit and the State supplement in a single check to the recipient. Strong fiscal inducements structured with the SSI program have led most States with significant supplements to enter such agreements.

(f) To implement its role as administrator of State supplementary benefits, SSA developed a set of proposed model agreements which it distributed for consideration by the States through the American Public Welfare Association (APWA), which had contracted with SSA to serve as liaison with all the States. Through a process of negotiation over those model agreements with a committee established through APWA, SSA and that committee agreed upon the general terms and conditions which formed the basis for SSA's original agreements with the 31 States electing federal administration of State benefits. (Some of those States have since withdrawn from federal administration, and others have joined; currently 27 States have their supplementary benefits administered by SSA.) Similar negotiations over revised model agreements took place in 1974 and 1976. Overall this process was quite successful, yielding general terms and conditions (still called "model agreements") which reflected and responded to State interests and problems, as well as the federal interest. While notice-and-comment rulemaking procedures of § 553 of the

Administrative Procedure Act were utilized by SSA to establish by regulation some of the basic parameters of these federal-State agreements, they were not followed in promulgating the general terms and conditions of those agreements, either initially or in subsequent revisions. Those provisions, as contained in the model agreements, deal with many important issues not covered by the regulations, including some of significant potential interest to supplementary benefit recipients. Combining notice and public comment procedures with the process of discussion with the States, through a representative committee, would assure individual States, beneficiaries and other interested persons and groups a full opportunity to present views upon proposed agreement terms and the agreement-formation process.

(g) Shortly after the first agreements were executed and the SSI program was underway, serious disputes about the parties' respective responsibilities and liabilities arose. The novelty of the relationship coupled with the start-up difficulties of the program created a large initial volume of controversy and uncertainty over how these disputes should be handled. The statute makes no explicit provision for administrative or judicial resolution of such disputes. In the agreements, the "disputes" paragraphs and related provisions leave significant uncertainties and deficiencies, which in turn generate substantial shortcomings in the dispute-resolution process.

(h) The present "disputes" provision affords an opportunity for a hearing before the HEW Departmental Grant Appeals Board, but does not delegate to that Board the HEW Secretary's power of final decision. Under the dispute-settlement procedures of federal contracts, administrative finality ordinarily attaches only to determinations of an independent and reasonably expert decision-making body, such as a board of contract appeals, to which the Departmental Grant Appeals Board is analogous in the present circumstances.

(i) The breadth of coverage of the disputes provision is subject to substantial and injurious uncertainty. While there are indications that the present provision may have been intended to cover most or all disputes regarding performance of the parties, language has been used which in other federal contracts has consistently been more narrowly interpreted.

(j) Additionally, desirable utilization of the disputes procedure has been impaired by awkward operation of the

liability provisions of the agreement, even where disputes under such provisions would clearly be covered by the established procedures. Numerous disputes involving large sums have been stalled, without effective access to the disputes procedure, because of insufficiencies of the basic liability provisions and the measurement systems to which they were keyed. States have extensively used self-help remedies, which might have been avoided if the provisions of the agreement had furnished a surer basis for prompt resolution of these disputes.

Recommendation

1. The process of negotiation and agreement between the Secretary of HEW on the one hand, and individual States desiring federal administration of SSI supplementary benefits on the other, is conducted in substantial part on the basis of the general terms and conditions established by HEW. These general terms and conditions (sometimes called "model agreements") are in turn related to published regulations of HEW. Both the regulations and the general terms and conditions should be developed by a procedure that embraces both (a) discussions with a representative committee of State officials, of the type that led to agreement on successive versions of the general terms and conditions in 1973, 1974, and 1976, and (b) the notice and public comment procedures of 5 U.S.C. 553. The notice of proposed rulemaking (or, in appropriate cases, an advance notice of proposal rulemaking) should precede the discussions with the committee of state representatives. This does not necessarily imply an added cycle of notice and public comment nor any diminution of HEW's flexibility in negotiation.

Since the current general terms and conditions have never been the subject of notice and public comment, and include several areas noted in paragraphs 2 and 3 below in which procedural improvements can be achieved, HEW should initiate a full review of them, utilizing the above procedures.

2. Consideration should be given through such procedures to a new agreement provision for measuring the respective liabilities of the federal government and of the states. In formulating such new provision, specific consideration should be given to (a) inclusion of liability standards and measurement systems that are generally acceptable to the States, (b) explicit establishment of the right of a State to seek any adjustment of liability that its own data (derived through the generally accepted systems) may indicate, with recourse to the contractual disputes procedure in the event SSA declines adjustment on the basis of such State data, and (c) possible procedures for separate treatment of liability for errors resulting from consistent SSA practices or policies that violate statute, regulation or agreement, as distinct from liability for random errors in general.

3. On the assumption that the agreements will continue to contain a provision granting dispute resolution authority to an official of officials in HEW, the provision should be amended (a) to encompass, without doubt or ambiguity, all disputes between the parties concerning performance of their respective obligations arising out of the agreement—including federal claims of State noncompliance, (b) to assure prompt resolution of all disputes submitted pursuant to its terms, and (c) to provide that the last stage of the administrative dispute process is to be before the HEW Departmental Grant Appeals Board, which shall render an independent decision, based on a hearing and the record.

4. Section 305.79-3 is added to Part 305 to read as follows:

§ 305.79-3 Agency assessment and mitigation of civil money penalties (recommendation No. 79-3).

(a) The civil money penalty has become one of the most widely used techniques in the enforcement programs of federal administrative agencies. Most regulatory offenses punishable by civil penalties involve adverse social consequences of private business activity. The motivational impact of these penalties depends in large part on the certainty of imposition and uniformity of amount, although some cases may require individualized tailoring to the circumstance of the offender so as to remove the economic benefit of the illegal conduct. Other civil penalties may also serve a secondary function of compensating society for the harm caused by unlawful conduct.

(b) Recommendation 72-6 urged that the advantages of civil money penalties would be best achieved through an "administrative imposition system" in which the agency would be empowered to adjudicate the violation and impose the penalty after a trial-type hearing, subject to "substantial evidence" judicial review. Such a system, it was stated, would avoid the delays, high costs, and jurisdictional fictions inherent in the traditional and most common system of imposing civil money penalties by a court in a civil action initiated on behalf of the agency by the Department of Justice.

(c) Since adoption of that Recommendation in 1972, the use of civil money penalties in general and of administratively imposed civil money penalties in particular has increased significantly, and the constitutionality and desirability of administratively imposed penalties has been widely recognized.

(d) Experience has shown that agencies play a crucial role and exercise broad discretion in the administration of

civil penalty programs, whether or not the statute in question authorizes an administrative imposition system. Agencies possessing such authority have found it efficient to try to resolve cases before the formal hearing stage, through settlement and negotiation. Those agencies not possessing administrative imposition authority operate under a wide variety of statutes: some make no express reference to an agency role in the penalty process, while others confer on the agency only a power to "assess" or to "mitigate" penalties, thereby expressly or implicitly reserving to the respondent the right to seek a subsequent de novo fact-finding hearing by the court in a collection proceeding. Agencies typically exercise their statutory authority to "mitigate" in resolving contested penalty assessments prior to the initiation of formal enforcement action. In these recommendations the term "mitigation" refers to any informal process of resolving a contested initial penalty assessment.

(e) Whatever the statutory framework, the enforcing agency typically makes the initial assessment, and provides a process for mitigation of the penalty. Thus, both where there exists administrative imposition authority and where such authority does not exist, agencies and respondents customarily utilize these initial assessment and mitigation processes to resolve the great majority of civil money penalty cases without reaching the stage of formal administrative adjudication or court collection proceeding.

(f) These informal processes for the initiation and termination of civil penalty proceedings represent an area of previously unstudied and largely discretionary agency action. Appropriate standards and structures for the exercise of such discretion are needed to improve the consistency, efficiency and openness of agency assessment and mitigation processes.

(g) The recommendations that follow focus on (1) the need for agencies to develop standards for determining penalty amounts, (2) agency procedures for initially assessing penalties, (3) agency mitigation procedures, and (4) the use by agencies of evidentiary hearings to impose civil penalties where such a procedure, though not required by statute, might result in a limited scope of judicial review.

Recommendation

A. Standards for Determination of Penalty Amount

1. Agencies enforcing regulatory statutes, violation of which is punishable by a civil

money penalty, should establish standards for determining appropriate penalty amounts for individual cases. In establishing standards, agencies should specify the factors to be considered in determining the appropriate penalty amount in a particular case. To the extent practicable, agencies should specify the relative weights to be attached to individual factors in the penalty calculation, and incorporate such factors into formulas for determining penalty amounts or into fixed schedules of prima facie penalty amounts for the most common types or categories of violation. A penalty intended to deter or influence economic behavior should, at a minimum, be designed to remove the economic benefit of the illegal activity, taking into account the documented benefit and the likelihood of escaping detection. Penalty standards should, in addition, specify whether and to what extent the agency will consider other factors such as compensation for harm caused by the violation or the impact of the penalty on the violator's financial condition. In order to reduce the cost of the penalty calculation process and increase the predictability of the sanction, simplifying assumptions about the benefit realized from or the harm caused by illegal activity should be utilized.

2. Agencies should periodically evaluate the continuing effectiveness of their penalty standards. Such evaluations should be based upon the results of compliance surveys and internal audits of agency assessment and mitigation decisions as well as data on the nature and frequency of violations routinely generated by the agency's enforcement program.

3. Agencies should make such standards known to the public to the greatest extent feasible through rulemaking or publication of policy statements. Such an approach is especially desirable where adjudications that produce written decisions are rare.

4. Agencies should collect and index those written decisions made in response to mitigation requests or after agency assessment hearings, and make such decisions available to the public except to the extent that their disclosure is prohibited by law. Whenever a respondent cites a previous written decision as a precedent for the agency to follow in the respondent's case, the agency should either do so, distinguish the two cases, or explain its reasons for not following the prior decision.

B. Initial Assessment of Penalties

1. Agencies should give adequate written notice to the respondent of the factual and legal basis for, and amount of, the penalty assessment.

2. Agencies should not mechanically assess variable civil money penalties at the statutory maximum if reliable evidence in their possession indicates the presence of mitigating factors. Nor, if they possess such evidence, should agencies assess at the statutory level fixed penalties which are subject to an express administrative "mitigation" authority.

3. The greater the degree to which an agency decentralizes its penalty assessment authority, the more it should structure the

exercise of that authority by the use of highly specific standards. Agencies should not ordinarily delegate discretionary authority to assess civil money penalties to investigative personnel unless the delay inherent in review by an independent assessment official would materially impair the effectiveness of the enforcement process.

C. Mitigation of Penalties

Respondents in civil money penalty cases have a right to a trial-type hearing at either the administrative or judicial level. It is nevertheless desirable that agencies establish fair and economical procedures whereby respondents may informally contest the initial assessment of civil penalties without the necessity of going forward to trial-type hearings. These procedures should be governed by the following principles:

1. Agencies should provide the respondent with a right to reply in writing to a penalty claim.

2. Agency staff should not refuse a reasonable request to discuss a penalty claim orally. But an informal conference need not be built into the process except in those categories of cases where the use of written communications is likely to prove inadequate because of such factors as the unsophistication of violators or the prevalence of factual disputes.

3. Agencies should consider providing an opportunity for administrative review of a decision denying a request for mitigation.

4. Agency decisions on mitigation requests should be in writing and should be accompanied by a brief indication of the grounds for the decision.

5. In regulatory programs typically involving the imposition of small penalties, agencies may appropriately rely most heavily on readily ascertainable standards of liability, fixed schedules of prima facie penalty amounts for the most common types of categories of violations, and highly objective inspection procedures. Opportunity for mitigation should be narrowly confined and mitigation requests entertained only if in written form.

6. In regulatory programs typically involving the imposition of large penalties, agencies may appropriately provide an opportunity to a respondent to present a request for mitigation, orally or in writing, request an oral conference thereon, receive a written decision, and submit a written petition for review of such decision or for compromise of such claim at a higher agency level.

D. Evidentiary Hearings

As expressed in Recommendation 72-6, it is desirable that agencies be given express authority to employ the procedures of adjudication on the record pursuant to the APA, 5 U.S.C. 554-557, for the imposition of civil money penalties. Where its statute does not provide for such procedure but confers upon the agency authority to "assess" or to "mitigate" a penalty, particularly if the agency is required to conduct a "hearing," the agency should consider establishing such procedures by regulation, especially where by doing so a de novo proceeding upon

judicial review could be avoided. Where such a hearing procedure has in fact been observed by the agency, and the statute does not provide for de novo judicial proceedings, the court should ordinarily utilize a limited scope of review of such agency action imposing civil money penalties.

5. Section 305.79-4 is added to Part 305 to read as follows:

§ 305.79-4 Public disclosure concerning the use of cost-benefit and similar analyses in regulation (recommendation No. 79-4).

(a) Federal agencies must frequently weigh competing health, safety, resource management, environmental, economic, and other societal interests when seeking to achieve a prescribed statutory objective. Wise decision-making presupposes that the potential benefits and costs of the actions under consideration will be identified, will be quantified if feasible, and will be appraised in relation to each other. To give structure to the exercise of this responsibility, agencies sometimes use "cost-benefit" or similar analytic approaches to organize available information to determine the consequences of possible courses of action [in terms of their costs, risks and benefits. Such techniques seek to display the projected net effects of alternative courses of action] and, when properly used, can assist the decision-maker in deciding which of the alternatives is most likely to produce a desired result.

(b) The following recommendation seeks to promote openness in the decision-making process, to ensure that agencies' analytic methods are sound and that their assumptions are known, so as to enhance public confidence in the soundness of conclusions finally reached. The recommendation is not intended to promote or to discourage the use of any single kind of analysis as a framework for agency decision-making, since this choice is normally a matter of agency discretion. The choice of analytic technique may depend on several factors, including the technical complexity of the problem, the magnitude of the impacts, the time frame for agency action, and the extent to which quantification is possible for the specific costs and benefits to be considered. Any analysis, of course, should be viewed as an aid to rational decision-making, and not as an end in itself. The intent of the recommendation will be served by giving the public adequate advance notice of the agency's proposed methodologies, either generically or by means of special notice in a particular proceeding.

Recommendation

1. Agencies, as general policy though not necessarily by binding rule, should adopt the practice of addressing, in their public notices of particular proceedings in which cost-benefit or similar analyses are to be used, the following points:

- a. Any statutory or other legal requirements pertaining to or affecting the agency's conduct of cost-benefit or similar analyses in the proceeding.
- b. The particular analytic technique to be followed by the agency (e.g., cost-benefit analysis, cost-effectiveness analysis, qualitative or non-numerative balancing), with a description of the method, including an identification of any analytic models preliminarily determined to be used.
- c. Any factual assumptions or preliminary findings of the agency to be utilized in the analyses.
- d. The agency's techniques for assessing and revealing uncertainties in its quantitative estimates, and making explicit the range of error associated with particular quantitative estimates.
- e. The agency's methods for evaluating intangible costs and benefits, for discounting future costs and benefits, and for taking account of distributional effects arising under the selected methodology, to the extent such issues are involved in the analyses.
- f. The stages of the proceeding at which the cost-benefit or similar analyses will be conducted and the results considered.
- g. The extent and nature of public participation in the design, conduct, and evaluation of the cost-benefit or similar analyses.
- h. The extent and manner in which the public is to be accorded access to assumptions and information used in the analyses.

A statement of the weight given the cost-benefit or similar analyses, and a description of any revisions of assumptions or preliminary findings, should be included in the final agency determination and made available to the public.

2. Where a pattern of recurring decisional problems exists for which a particular analytic technique is appropriate, the agency should consider adopting a generic regulation or policy statement describing the use of that technique with respect to those problems. Agencies that have varied statutory functions may suitably formulate separate regulations or policy statements for different areas of statutory responsibility. Generic regulations or policy statements so adopted may permit the use of different techniques on an ad hoc basis where the agency determines that to be necessary. Any such regulations or policy statements should address the points listed in paragraph 1.

Dated: June 27, 1979.

Richard K. Berg,
Executive Secretary.

[FR Doc. 79-20436 Filed 7-2-79; 8:45 am]
BILLING CODE 6110-01-M

PRESIDENT'S COMMISSION ON THE ACCIDENT AT THREE MILE ISLAND

1 CFR Part 480

Freedom of Information Act Regulations

AGENCY: President's Commission on the Accident at Three Mile Island.

ACTION: Final rule.

SUMMARY: The Commission proposes in this document its Freedom of Information Act regulations setting forth the procedures by which members of the public can obtain information and records held by the Commission. The Commission is required to issue these regulations by the Freedom of Information Act.

EFFECTIVE DATE: July 3, 1979.

FOR FURTHER INFORMATION CONTACT: Barbara Jorgenson (202) 653-7677.

SUPPLEMENTARY INFORMATION: This is a final rule due to the short life of the Commission.

The Commission hereby amends 1 CFR by adding a new Part 480 to read as follows:

PART 480—FREEDOM OF INFORMATION ACT REGULATIONS

- Sec.
- 480.1 Purpose and scope.
480.2 Public reference facilities.
480.3 Requests for identifiable records and copies.
480.4 Inspection, copying, and exceptions.
480.5 Fees for provisions of records.
Authority: 5 U.S.C. 552(a).

§ 480.1 Purpose and scope.

This Part 480.1 implements the provisions of 5 U.S.C. 552 (popularly known as the "Freedom of Information Act"). The regulations of these parts provide information concerning procedures by which the public may obtain information and records from the President's commission on the Accident at Three Mile Island (the "Commission").

§ 480.2 Public reference facilities.

The President's Commission on the Accident at Three Mile Island, 2100 M Street, N.W., Washington, D.C. 20037, will maintain in a public reading room or public reading area, the materials relating to that office which are required by 5 U.S.C. 552 (a)(2) to be made available for public inspection and copying. This public reference facility will maintain and make available for public inspection and copying (but will not be published, because unnecessary or impracticable) a current index of the

materials available at that facility which are required to be indexed by 5 U.S.C. 552 (a)(2). This index and material may be examined between the hours of 10:00 a.m. and 5:00 p.m., on any date, except Saturdays, Sundays and legal public holidays.

§ 480.3 Requests for identifiable records and copies

(a) As request for a record of the Commission which is not available in a public reference facility as described in § 480.2, shall be made in writing with the envelope and the letter clearly marked "FREEDOM OF INFORMATION REQUEST." All such requests shall be addressed to the *Public Information Director, President's Commission on the Accident at Three Mile Island, 2100 M Street, N.W., Suite 714, Washington, D.C. 20037, Telephone (202) 653-7677.*

(b) Any request for information not marked and addressed as specified in this paragraph will be so marked by Commission personnel as soon as it is properly identified, and forwarded immediately to the appropriate office as specified above. A request improperly addressed will not be deemed to have been received for purposes of the time period set forth in 5 U.S.C. 552 (a)(6)(A)(i) until forwarding to the appropriate office has been effected.

(c) Upon receipt of any request for information or records, the Public Information Director will determine within 10 days (excepting Saturdays, Sundays, and legal public holidays) whether it is appropriate to grant the request and will immediately provide written notification to the person making the request. If the request is denied, the written notification will also include a notice that the denial may be appealed within thirty days by writing to Chief Counsel (Attention: Freedom of Information Appeals Unit), President's Commission on the Accident at Three Mile Island, 2100 M Street, N.W., Suite 714, Washington, D.C. 20037, and the envelope and letter should be clearly marked: "Freedom of Information Appeal."

(d) When a request for records has been denied in whole or in part, the requestor may, within thirty days of its receipt, appeal the denial to the Chief Counsel. Appeals to the Chief Counsel shall be in writing, addressed to the Chief Counsel (Attention: Freedom of Information Appeals Unit), President's Commission on the Accident at Three Mile Island, 2100 M Street, N.W., Suite 714, Washington, D.C., 20037, and both the letter and the envelope shall be clearly marked: "Freedom of

Information Appeal." An appeal not so addressed and marked will be so marked by Commission personnel as soon as it is properly identified and forwarded immediately to the Freedom of Information Appeals Unit. An appeal improperly addressed will not be deemed to have been received for purposes of the time period set forth in 5 U.S.C. 552(a)(6)(A)(ii) until the Appeals Unit receives the request.

(e) The Chief Counsel will act upon the appeal within twenty days (excluding Saturdays, Sundays, and legal public holidays) of its receipt. Determinations of appeals will be set forth in writing and signed by the Chief Counsel or his designee. If, on appeal, the denial is in whole or in part upheld, the written determination will also contain a notification of the provisions for judicial review.

(f) In unusual circumstances, the time limits prescribed in paragraphs (b) and (d) of this section, may be extended for not more than 10 working days (excepting Saturdays, Sundays, or legal public holidays). Extensions may be granted by the Public Information Director in the case of initial requests and by the Chief Counsel in the case of appeals. The extension period may be split between the initial request and the appeal but in no instance may the total period exceed 10 working days. Extensions will be by written notice to the persons making the request and will set forth the reasons for the extension and the date the determination is expected. As used herein, but only to the extent reasonably necessary to the proper processing of the particular request, the term "unusual circumstances" includes but is not limited to:

(1) The need to search for and collect the requested records from establishments that are separate from the office processing the request;

(2) The need to search for, collect, and examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practical speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency which have a substantial subject matter interest therein.

(g) If a request is submitted to the Commission to make available current records which are the primary responsibility of another agency, the Commission will refer the request to the agency concerned for appropriate action. The Commission will advise the

requestor that the request has been forwarded to the responsible agency.

§ 480.4 Inspection, copying, and exceptions.

(a) When a request for information has been approved pursuant to Part 480.3 above, the person making the request may make an appointment to inspect or copy the materials requested during regular business hours by writing or telephoning the Public Information Director at the address or telephone number listed in § 480.3(a). Such materials may be copied manually without charge, and reasonable facilities will be made available for that purpose. Also, copies of individual pages of such materials will be made available at the price per page specified in Part 480.5; however, the right is reserved to limit to a reasonable quantity the copies of such materials which may be made available in this manner.

(b) Except to the extent that the Public Information Director determine that a record which falls within one of the following categories shall be made available, this Part shall not apply to matters that are—

(1)(i) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of the national defense or foreign policy, and (ii) are in fact properly classified pursuant to such Executive Order;

(2) Related solely to the internal personnel rules and practices of the Commission;

(3) Specifically exempted from disclosure by statute;

(4) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the Commission.

(6) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential

information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

§ 480.5 Fees for provisions of records.

Charges for Search and Reproduction

(a) Following are the charges to be made for the search and reproduction of information available under the Freedom of Information Act (5 U.S.C. 552), as amended.

(1) Search for records. \$5.00 per hour when the search is conducted by a clerical employee. \$8.00 per hour when the search is conducted by a professional employee. No charge for searches of less than 1 hour.

(2) Duplication of records. Records will be duplicated at a rate of \$.25 per page for all copying of 4 pages or more. There is no charge for duplicating 3 or less pages.

(3) Other. When no specific fee has been established for a service, or the request for a service does not fall under one of the above categories due to the amount or type thereof, the Public Information Director is authorized to establish an appropriate fee based on "direct costs" as provided in the Freedom of Information Act. Examples of services covered by this provision include searches involving computer time or special travel, transportation, or communications costs.

(b) If records requested under this part are stored elsewhere than the headquarters of the Commission at Washington, D.C., the special costs of returning such records to the headquarters for review will be added to the search costs. Search costs are due and payable even if the record which was requested cannot be located after all reasonable efforts have been made, or if the Commission determines that a record which has been requested, but which is exempt from disclosure under this part, is to be withheld.

(c) Where it is anticipated that the fees chargeable under this section will amount to more than \$25.00, or the maximum amount specified in the request, the requester shall be promptly notified of the amount of the anticipated fee or such portion thereof as can

readily be estimated. In instances where the estimated fees will greatly exceed \$25.00, an advance deposit may be required. The notice or request for an advance deposit shall extend an offer to the requester to consult with Commission personnel in order to reformulate the request in a manner which will reduce the fees, yet still meet the needs of the requester. Dispatch of such a notice or request shall suspend the running of the period for response by the Commission until a reply is received from the requester.

(d) Fees must be paid in full prior to issuance of requested copies. In the event the requestor is in arrears for previous requests for which the Commission was unable to find or provide the requested information (see paragraph (b) of this section), copies of records will not be provided for any subsequent request until the arrears have been paid in full.

(e) Remittances shall be in the form either of a personal check or bank draft drawn on a bank in the United States or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed or delivered to the Public Information Director.

(f) A receipt for fees paid will be given upon request. Refund of fees paid for services actually rendered will not be made.

(g) The Public Information Director, or an officer designated by the Commission may in accordance with the Freedom of Information Act, as amended, waive all or part of any fee provided for in this section when the Public Information Director, or the designated officer deems it to be in either the Commission's interest or in the general public's interest.

Barbara Jorgenson,

Public Information Director.

[FR Doc. 79-20559 Filed 7-2-79; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

Domestic Quarantine Notices; Japanese Beetle; Final Rule to Amend Program Manual

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the Japanese Beetle Program Manual, an administrative procedural manual incorporated by reference in the Japanese Beetle Quarantine and regulations. The manual is amended by, among other things, changing the application rate for the pesticides d-phenothrin and carbaryl for use in controlling the Japanese beetle. It is also amended to include in the manual procedures relating to mechanical exclusion treatments used for preventing the entry of Japanese beetles into the passenger compartments of aircraft. These mechanical exclusion treatments would have the effect of reducing the use of pesticides in the program while maintaining control of the beetle and preventing its spread into Western States. The manual is further amended by correcting typographical errors.

EFFECTIVE DATE: July 3, 1979.

FOR FURTHER INFORMATION CONTACT: H. V. Autry, 301-436-8247.

SUPPLEMENTARY INFORMATION: The Plant Protection and Quarantine Programs of the Animal and Plant Health Inspection Service issues instructional manuals containing treatments and administratively authorized procedures used in implementing plant pest regulatory and control programs. These manuals are referenced in plant quarantine regulations promulgated under Title 7 of the Code of Federal Regulations (CFR). The Japanese Beetle Program Manual is referenced in the Japanese Beetle Quarantine and regulations (7 CFR 301.48-1) and was approved for incorporation by reference by the Director of the Federal Register on June 20, 1978 (43 FR 26411).

On May 15, 1979, a proposal appeared in the Federal Register (44 FR 28382) to amend the provisions of the manual by changing the rate for applying 10 percent d-phenothrin in aircraft from 5 grams to 8 grams per 1,000 cubic feet and the rate for applying carbaryl by mist blower from 2 pounds to 1 pound actual insecticide per acre. Approval was obtained for these rate changes from the Environmental Protection Agency in accordance with the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*).

The proposal presented additional means of certifying the movement of aircraft which would not involve the use of chemicals in passenger compartments. Mechanical exclusion procedures were proposed as additional means to exclude Japanese beetles from the passenger compartments of aircraft. Such means were designed to ensure the

proper sealing off of the passenger area to assure that beetles would not enter the area, thereby necessitating insecticide treatment. Additional safeguards were provided by the proposal to require 100 percent inspection of the galley area and thorough inspections of the area within 10 feet of the entrance door, especially on the floor or window sills.

The only comment received was from the Air Transport Association of America (ATA). The ATA had no objection to the chemical dosage changes but noted that the proposed mechanical exclusion procedures for the cabin area, and cargo and baggage pits were too explicit and would preclude development of other procedures. They suggested that language be added to the proposed section III C.1.d. stating that use of other acceptable mechanical exclusion procedures that may be developed may also be allowed, with prior approval of the USDA. ATA officials also suggested that the manual should state that treatment of cargo and baggage pits is not required if such pits are not opened at a regulated airport.

As recommended by the ATA, the manual will be changed to state cargo or baggage pits will not require treatment if the external doors are not opened at a Japanese beetle regulated airport. This change is being made because if the external doors to the cargo or baggage pits are not opened while the airplane is at a regulated airport, there is little likelihood that such areas of the plane would be accessible to the Japanese beetle. Additionally, the USDA in cooperation with industry and state officials is constantly searching for improvements in treatments and procedures. As improvements are developed they will be added to the manual. It is the purpose of the manual to list treatments that have been approved, and it would be too vague to state other treatments that may be developed may be used.

Therefore, the proposal is adopted as proposed except that in section III.C.1.d. of the manual, the last sentence of the first paragraph, is amended as indicated above.

Accordingly, 7 CFR Part 330 is amended by revising the Japanese Beetle Program Manual, which is incorporated by reference, in the following respects:

1. On page 12 of the manual, under the heading of "Dosage" in section III.C.1.a., the language is amended to read: "Apply at the rate of 8 grams per 1,000 cubic feet."

2. On page 40 of the manual, in the table provided in section IV.C., the

listing of the dosage rate for the ground application by mistblower of carbaryl is amended to read: "1.12 kg per hectare (1 lbs. per acre)."

3. Beginning on page 16a of the manual, a new section III.C.1.d. is added to read as follows:

d. *Mechanical Exclusion of Japanese Beetles.* Mechanical exclusion of Japanese beetles from the passenger compartments of aircraft may be utilized if enclosed walkways or bus-type vehicles are used for the loading and unloading of passengers, and the enclosed walkways or vehicles fit tightly against the aircraft around the door. Cargo and baggage pits cannot be handled in this way since airlines do not currently provide methods for the enclosed loading of these areas.

Consequently, cargo and baggage pits must be treated with pesticides except if the external doors of the pits are not opened at a regulated airport.

Aircraft that have been parked for cleaning or other purposes that require exterior doors to remain open at a regulated airport will not be eligible for mechanical treatment and will require treatment with a pesticide.

At airports that may have to be regulated, PPQ personnel should contact local management personnel of airlines that fly into areas to be protected and discuss the procedures outlined in this section. The airline will then develop the specific approach to be used if the airport is regulated. PPQ employees should assist the airline in developing appropriate procedures if requested.

If mechanical treatments do not effectively prevent the entry of Japanese beetles into passenger compartments of aircraft, as determined by PPQ personnel, treatment with pesticides will be required (see Sec. III.C.1.a, b, and c of this manual).

Procedures for mechanically excluding beetles are as follows:

(1) The walkways or bus doors must fit tightly against the aircraft to prevent entry of beetles into the aircraft.

(2) Cockpit windows must remain closed.

(3) The exterior galley door must remain closed unless the galley area is sealed between the passenger compartment and the galley to prevent beetles which may enter the galley area from entering the passenger compartment. After catered products are loaded aboard the airplane, a 100 percent inspection must be made by airline personnel of the galley area (especially the floor) to determine if beetles are present. If any are found, the beetles must be removed from the aircraft.

(4) After passengers are on board, a thorough inspection must be made within 10 feet of the passenger entrance door, especially on the floor or window sills. If any beetles are found, they must be removed from the aircraft.

(Secs. 8 and 9; 37 Stat. 318, as amended, sec. 106, 71 Stat. 33; 7 U.S.C. 161, 162, 150ee; 37 FR 28464, 28477; 38 FR 17141)

Done at Washington, D.C. this 26th day of June 1979.

Note.—This final rule has been reviewed under the USDA criteria established to implement E.O. 12044, "Improving Government Regulations." A determination has been made that this action should not be classified as "significant" under those criteria. An addendum to the Environmental Impact Statement regarding the Japanese beetle program has been prepared and this addendum meets the requirements of an Impact Analysis Statement in accordance with the requirements of E.O. 12044 and Secretary's Memorandum 1955. Copies of this addendum are available from Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, Room 633, Federal Building, Hyattsville, MD 20782.

James O. Lee, Jr.,

Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

[FR Doc. 79-20410 Filed 7-2-79; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 948

[Area No. 2]

Irish Potatoes Grown in Colorado— Area No. 2; Expenses and Rate of Assessment

AGENCY: Agricultural Marketing Service,
USDA.

ACTION: Final rule.

SUMMARY: This regulation authorizes expenses for the functioning of the Colorado Area No. 2 Potato Committee for the 1979-80 fiscal period. It enables the committee to collect assessments from first handlers on assessable potatoes handled and to use the resulting funds for its expenses.

EFFECTIVE DATE: July 1, 1979.

FOR FURTHER INFORMATION CONTACT:
Peter G. Chapogas (202) 447-5432.

SUPPLEMENTARY INFORMATION: *Findings.* Pursuant to Marketing Order No. 948, as amended (7 CFR Part 948), regulating the handling of potatoes grown in Colorado, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon other information, it is found that the expenses and rate of assessment which

follows will tend to effectuate the declared policy of the act.

It is further found that it is impracticable and contrary to the public interest to provide 60 days for interested persons to file comments or to engage in public rulemaking procedure, and that good cause exists for not postponing the effective date of this section until 30 days after publication in the Federal Register (5 U.S.C. 553) as the order requires that the rate of assessment for a particular fiscal period shall apply to all assessable potatoes from the beginning of such period. Handlers and other interested persons were given an opportunity to submit information and views on the expenses and assessment rate at an open public meeting of the committee held June 21, 1979, in Monte Vista. To effectuate the declared purposes of the act it is necessary to make these provisions effective as specified.

The budget and rate of assessment have not been determined significant under the USDA criteria for implementing Executive Order 12044.

7 CFR Part 948 is amended by adding a new § 948.282 as follows:

§ 948.282 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred during the fiscal period beginning July 1, 1979, by the Area No. 2 Committee for its maintenance and functioning, and for such purposes as the Secretary determines to be appropriate will amount to \$22,500.

(b) The rate of assessment to be paid by each handler in accordance with this part shall be \$0.00393 per hundredweight or equivalent quantity of assessable potatoes handled by him as the first handler during the fiscal period except seed potatoes and potatoes for canning, freezing and "other processing" as defined in the act shall be exempt.

(c) Unexpended income in excess of expenses for the fiscal period may be carried over as a reserve to the extent authorized in § 948.78.

(d) Terms used in this section have the same meaning as when used in the marketing agreement and this part.

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

Dated: June 28, 1979.

D. S. Kuryloski,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-20451 Filed 7-2-79; 8:35 am]

BILLING CODE 3410-02-M

7 CFR Part 947

Irish Potatoes Grown in Modoc and Siskiyou Counties in California and in All Counties in Oregon Except Malheur County; Expenses and Rate of Assessment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation authorizes expenses for the functioning of the Oregon-California Potato Committee for the 1979-80 fiscal period. It enables the committee to collect assessments from first handlers on assessable potatoes handled and to use the resulting funds for its expenses.

EFFECTIVE DATE: July 1, 1979.

FOR FURTHER INFORMATION CONTACT: Peter G. Chapogas, (202) 447-5432.

SUPPLEMENTARY INFORMATION: Findings. Pursuant to Marketing Order No. 947, as amended (7 CFR Part 947), regulating the handling of potatoes grown in Modoc and Siskiyou Counties, California, and in all counties in Oregon except Malheur County, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon other information, it is found that the expenses and rate of assessment which follows will tend to effectuate the declared policy of the act.

It is further found that it is impracticable and contrary to the public interest to provide 60 days for interested persons to file comments or to engage in public rulemaking procedure, and that good cause exists for not postponing the effective date of this section until 30 days after publication in the Federal Register (5 U.S.C. 553) as the order requires that the rate of assessment for a particular fiscal period shall apply to all assessable potatoes from the beginning of such period. Handlers and other interested persons were given an opportunity to submit information and views on the expenses and assessment rate at an open public meeting of the committee held June 14, 1979, in Lincoln City, Oregon. To effectuate the declared purposes of the act it is necessary to make these provisions effective as specified.

The budget and rate of assessment have not been determined significant under the USDA criteria for implementing Executive Order 12044.

7 CFR Part 947 is amended by adding a new § 947.232 as follows:

§ 947.232 Expenses, rate of assessment, late payment charges and carryover of unexpended funds.

(a) The reasonable expenses that are likely to be incurred during the fiscal period July 1, 1979, through June 30, 1980, by the Oregon-California Potato Committee for its maintenance and functioning, and for such purposes as the Secretary determines to be appropriate, will amount to \$30,900.

(b) The rate of assessment to be paid by each handler in accordance with this part shall be \$0.002 per hundredweight or equivalent quantity of assessable potatoes handled by him as the first handler during the fiscal period except seed potatoes and potatoes for canning, freezing and "other processing" as defined in the act shall be exempt.

(c) In accordance with the provisions of § 947.41(a), late payment charges per month of \$1.00 or one percent, whichever is greater, shall be charged on the unpaid balance for each past-due account. An account becomes past-due 60 days after the billing date.

(d) Unexpended income in excess of expenses for the fiscal period ending June 30, 1980, may be carried over as a reserve to the extent authorized in § 947.41(b).

(e) Terms used in this section have the same meaning as when used in said marketing agreement and this part.

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

Dated: June 28, 1979.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-20453 Filed 7-2-79; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 967

Celery Grown in Florida; Expenses and Rate of Assessment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation authorizes expenses for the functioning of the Florida Celery Committee. It enables the committee to collect assessments from first handlers on assessable celery and to use the resulting funds for its expenses.

EFFECTIVE DATE: August 1, 1979.

FOR FURTHER INFORMATION CONTACT: Peter G. Chapogas (202) 447-5432.

SUPPLEMENTARY INFORMATION: Findings. Pursuant to Marketing Order No. 967, as amended (7 CFR Part 967), regulating the handling of celery grown in Florida,

effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon other information, it is found that the expenses and rate of assessment which follows will tend to effectuate the declared policy of the act.

It is further found that it is impracticable and contrary to the public interest to provide 60 days for interested persons to file comments or to engage in public rulemaking procedure, and that good cause exists for not postponing the effective date of this section until 30 days after publication in the Federal Register (5 U.S.C. 553) as the order requires that the rate of assessment for a particular fiscal year shall apply to all assessable celery from the beginning of such year. Handlers and other interested persons were given an opportunity to submit information and views on the expenses and assessment rate at an open public meeting of the committee held June 13, 1979, in Orlando. It is necessary to effectuate the declared purposes of the act to make these provisions effective as specified.

The budget and rate of assessment have not been determined significant under the USDA criteria for implementing Executive Order 12044. 7 CFR Part 967 is amended by adding a new § 967.215 as follows:

§ 967.215 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred during the fiscal year beginning August 1, 1979, by the Florida Celery Committee for its maintenance and functioning and for such other purposes as the Secretary determines to be appropriate will amount to not more than \$175,000.

(b) The rate of assessment to be paid by each handler in accordance with this part shall be two and one-half cents (\$.025) per crate, or equivalent quantity, of assessable celery handled by him as the first handler during the fiscal year.

(c) Unexpended income in excess of expenses for the fiscal year may be carried over as a reserve to the extent authorized in § 967.62.

(d) Terms used in this section shall have the same meaning as when used in the marketing agreement and this part.

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

Dated: June 28, 1979 to become effective August 1, 1979.

D. S. Kuryloski,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-20452 Filed 7-2-79; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1942

[FmHA Instruction 1942-A]

Community Facility Loans; Amendments

AGENCY: Farmers Home Administration, USDA.

ACTION: Final Rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding Community Facility loans. The intended effect of this action is to make certain editorial changes. These changes are needed to correct inadvertent omissions from the previous issuance.

EFFECTIVE DATE: July 3, 1979.

FOR FURTHER INFORMATION CONTACT: Louis K. Bangma (telephone (202) 447-7667).

SUPPLEMENTARY INFORMATION: §§ 1942.17(g)(2)(iii)(A)(4) and 1942.17(h)(3)(ii) of Subpart A of Part 1942, Chapter XVIII, Title 7, Code of Federal Regulations are amended. These amendments will correct inadvertent omissions from this Subpart when it was originally issued.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. These amendments, however, are not published for comment since the changes are editorial in nature. Therefore, publication for proposed rule making is unnecessary. This determination was made by Kenneth Latcholia (telephone: 447-3213).

Accordingly, §§ 1942.17(g)(2)(iii)(A)(4) and 1942.17(h)(3)(ii) of Subpart A of Part 1942 are amended as follows:

1. § 1942.17(g)(2)(iii)(A)(4) is amended to read as follows:

§ 1942.17 Appendix A—Community facilities.

* * * * *

(g) Security. * * *

* * * * *

(2) Other-than-public bodies. * * *

* * * * *

(iii) Essential community facilities. * * *

(A) * * *

* * * * *

(4) Liens on real and chattel property when legally permissible and an assignment of income from an organization proposing a facility whose users receive reliable income from

programs such as social security, supplemental security income (SSI), retirement plans, long-term insurance annuities, medicare or medicaid. Examples are homes for the handicapped or institutions whose clientele receive State or local government assistance.

* * * * *

2. 1942.17(h)(3)(ii) is amended to read as follows:

§ 1942.17 Appendix A—Community facilities.

* * * * *

(h) Economic feasibility requirements. * * *

* * * * *

(3) Utility type facilities for new developing communities or areas. * * *

* * * * *

(ii) Developers providing a bond or escrowed security deposit as a guarantee sufficient to meet expenses attributable to the area in question until a sufficient number of the building sites are occupied and connected to the facility to provide enough revenues to meet operating, maintenance, debt service, and reserve requirements. Such guarantees from developers will meet the requirements set forth in paragraph (h)(2)(i)(B) of this section; or

* * * * *

Authorities: 7 U.S.C. 1989; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70.

A copy of the Impact Analysis is available from the Office of the Chief, Directives Management Branch, Farmers Home Administration, USDA, Room 6346, Washington, D.C. 20250.

This document has been reviewed in accordance with FmHA Instruction 1901-G, "Environmental Impact Statements." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, P.L. 91-190, an Environmental Impact Statement is not required.

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

Dated: June 14, 1979.

Gordon Cavanaugh,

Administrator, Farmers Home Administration.

[FR Doc. 79-20454 Filed 7-2-79; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

Requirement for Employer Identification Number and Change in Value Requirement for Filing of Shipper's Export Declaration

AGENCY: Bureau of the Census, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Foreign Trade Statistics Regulations (FTSR) to raise the upper limit of the exemption from Shipper's Export Declaration filing requirements based on value from \$250 to \$500. This rule also amends the FTSR to provide that exporters show their employer identification (EI) or Social Security (SS) number on Shipper's Export Declaration.

DATE: August 1, 1979.

FOR FURTHER INFORMATION CONTACT: Emanuel A. Lipscomb, Chief, Foreign Trade Division (301) 763-5342.

SUPPLEMENTARY INFORMATION: On February 7, 1979, a Notice of Proposed Rule Making was published (44 FR 7738) to amend the Foreign Trade Statistics regulations to provide that the exporter's employer identification number be reported on the Shipper's Export Declaration. It was also proposed to amend the FTSR to raise the upper limit of the present exemption from Shipper's Export Declaration filing requirements based on value from \$250 to \$500. The purpose of the "value" amendment is to lessen the burden of export documentation on the public by eliminating Shipper's Export Declaration requirements for more than one million shipments per year, thus also reducing the number of Shipper's Export Declarations to be handled by Customs and processed by Census for statistical purposes.

The requirement for an employer identification number on the Shipper's Export Declaration will serve a number of needs; e.g., it will enable the Bureau of the Census more easily to pinpoint and contact exporters with systematic reporting problems, thereby improving the source data, and thus the reliability of the Census published statistics, and will enable Census to better define the universe of exporters, both as to the number and size of firms exporting, for necessary studies. This information will also be of assistance in studies of origin of exports by States or other geographic areas, though admittedly with some limitations, and will facilitate the

Bureau of Labor Statistics' task of developing and maintaining export price indexes. Since exporters will be using identification numbers already assigned, the slight additional reporting burden is more than offset by the anticipated increased reliability and usefulness of the export statistics.

Interested persons were given 30 days (through March 9, 1979) to express such written data, views or arguments as they desired.

Discussion of Major Comments

A total of 17 written responses were received. Of these, none expressed any opposition to the proposal to raise the value limit of the exemption from Shipper's Export Declaration filing requirements to \$500. In fact, one comment was to the effect that this value be raised to \$2,000. Since the low value estimates are excluded from commodity totals compiled by the Bureau of the Census, the upper limit of \$500 was agreed upon by the Bureau of the Census and the Office of Federal Statistical Policy and Standards as being the maximum value to which this limit could be raised at this time without seriously jeopardizing the usefulness of commodity information.

Nine responses were received containing objections to, or requesting clarification of, the proposal to require that the exporter's EI or SS number be shown on the Shipper's Export Declaration.

One response contained the suggestion that carriers *not* be held responsible in any way for policing the EI number, either its presence or accuracy. There is no intention on the part of the Bureau of the Census that carriers be assigned this responsibility. No change in the final rule making was necessitated by this comment.

One computerized exporter indicated that a 9-digit EI number followed by a 2-digit suffix and additional digits required to implement the program, plus the 4-digit number already required of computerized export reporters, was of considerable concern because there was only limited space in certain data fields available to the computer.

Exporters who submit machine-readable data directly to the Bureau of the Census as provided for under FTSR Section 30.39 will be able to make separate arrangements with the Bureau of the Census to provide additional identifying information as required.

Some comments were received to the effect that the EI number of the exporter would be of no use in establishing origin, where merchandise is collected from various producing areas and sold

to merchants who export from many varied locations or where there are corporations with more than one export company and each export company, even, may ship from several locations. Exports of cotton were cited as a specific example of this kind of consolidation of commodities originating in various areas and being exported by merchants in totally different areas.

The primary purpose of introducing the requirement for the EI number is to allow more effective pinpointing of exporters with systematic reporting problems and to be able to develop and implement a more efficient program for improving the statistical reporting by exporters. In addition, the EI number will serve to provide information needed to define the universe of exporters by number, magnitude of exports, etc., which will be of great help to the government's export promotion program and also to the Bureau of Labor Statistics' efforts to better and expand their export price indexes program. While it is recognized that use of the EI number for determining the origin of exports has limitations, particularly for some non-manufactured exports, it should be pointed out that it will prove of special value as a benchmark with reference to the periodic Surveys of the Origin of Exports of Manufacturing Establishments and the Domestic and International Transportation Survey of U.S. Foreign Trade.

The remainder of the comments, primarily from freight forwarders, expressed concern over the additional work, and hence, costs of the proposed program, indicating that the additional burden was not "minimal" as stated in the Notice of Proposed Rule Making. These companies expressed the opinion that the reliability and usefulness of the export statistics would not be increased, and that the additional burden, including costs, was not justified.

The Bureau of the Census recognizes this problem. However, in accordance with § 30.4 of the Foreign Trade Statistics Regulations, it is the duty of exporters who authorize the preparation of their Shipper's Export Declarations by agents to provide the agents with all the information (including the EI or SS number) required to execute the Shipper's Export Declaration in accordance with the official requirements of the form. Exporters should be reminded of this requirement, thus lessening the necessity for freight forwarders and others who prepare Shipper's Export Declarations for exporters, to have to maintain and update extensive files of EI or SS numbers. No change in the wording of

the amendment is being made as a result of these comments.

Accordingly, after careful consideration of all the comments received, the changes to the Foreign Trade Statistics Regulations announced in the Notice of Proposed Rule Making published in the Federal Register of February 7, 1979 (44 FR 7738) are being adopted as originally issued. The Foreign Trade Statistics Regulations (15 CFR Part 30) are therefore amended as set forth below:

1. Section 30.7(d) is amended to read as follows:

§ 30.7 Information required on shipper's export declarations.

(d) *Exporter.* In general, the exporter named on the Shipper's Export Declaration shall be the principal or seller in the export transaction. For exports moving under validated license, the exporter named on the Shipper's Export Declaration shall be the licensee named on the validated export license. Exporters (or their agents) shall insert, immediately following the name of the exporter, the exporter's Internal Revenue Service Employer Identification Number (EIN), or if no Internal Revenue Service EIN has been assigned, the exporter's Social Security Number. If neither an Internal Revenue Service EIN nor a Social Security Number has been assigned, "No EIN or SS Number" should be inserted immediately following the name of the exporter in item 3. Exporters with export operations in more than one location utilizing the same EIN should identify the particular location by a two character suffix code, immediately following the EIN or Social Security Number. For exporters who are already using a suffix identification in connection with Customs import requirements, the same suffix shall be used as the EIN suffix on the Shipper's Export Declaration. Otherwise, any two character suffix may be used, such as "MI" to designate a location in Michigan, "CA" for California, etc. The address of the exporter (number, street, place, state) shall also be shown. (On Form 7513, if an authorized agent is representing the exporter, the name of the exporter as defined herein should be shown on the line labeled "For account of" where "Principal or seller" is indicated below the line on the form.)

2. Section 30.54(a)(2) is amended to read as follows:

§ 30.54 Special exemptions for mail shipments.

(2) the shipment is valued \$500 or under.

3. Section 30.55(h) is amended by changing "\$250" wherever it appears in this section to "\$500," so that as amended, § 30.55(h) now reads as follows:

§ 30.55 Miscellaneous exemptions.

(h) Shipments (except shipments requiring a validated export license) between the United States and Puerto Rico, to the Virgin Islands of the United States, and to all countries except countries included in country groups Q, S, W, Y, and Z, as defined in the Export Administration Regulations of the Office of Export Administration (15 CFR Parts 368-399),⁶ where the value of the commodities classified under a single Schedule B number and shipped on the same exporting carrier from one exporter to one importer is \$500 or under: *Provided, however,* That this exemption shall be conditioned upon the filing of such reports as the Bureau of the Census shall periodically require to compile statistics on \$500-and-under shipments.

(Title 13, United States Code, section 302; and 5 U.S.C. 301; Reorganization Plan No. 5 of 1950, Department of Commerce Order No. 35-2A, August 4, 1975, 40 FR 42765.)

Robert L. Hagan,
Acting Director, Bureau of the Census.

April 18, 1979.

[FR Doc. 79-20590 Filed 7-2-79; 8:45 am]

BILLING CODE 3510-07-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket 9116]

Rhinechem Corp., et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, among other things, requires a New York City manufacturer and seller of organic pigments to terminate all agreements providing for the acquisition of the Chemetron Corporation's organic pigments

business; return all confidential documents exchanged during the negotiations; and provide the Commission with evidence of its compliance with these requirements. Additionally, Rhinechem is required, through December 31, 1981, to furnish the Commission with 90-days advance notice should it seek either to acquire Chemetron's organic pigment business or sell it own to Chemetron or Chemetron's corporate parent, Allegheny Ludlum Industries, Inc.

DATES: Complaint issued Aug. 23, 1978. Decision issued June 6, 1979.*

FOR FURTHER INFORMATION CONTACT: Paul W. Turley, Director, 3R, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., Suite 1437, Chicago, Ill. 60603. (312) 353-4423.

SUPPLEMENTARY INFORMATION: On Friday, March 30, 1979, there was published in the Federal Register, 44 FR 18990, a proposed consent agreement with analysis in the Matter of Rhinechem Corporation, a wholly owned subsidiary of Bayer A.G., a corporation, and Allegheny Ludlum Industries, Inc., a corporation, and Chemetron Corporation, a wholly owned subsidiary of Allegheny Ludlum Industries, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR 13, are as follows: Subpart—Acquiring Corporate Stock or Assets: § 13.5 Acquiring corporate corporate stock or assets; 13.5-20 Federal Trade Commission Act.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Carol M. Thomas,

Secretary.

[FR Doc. 79-20519 Filed 7-2-79; 8:45 am]

BILLING CODE 6750-01-M

*Copies of the Complaint, Initial Decision and Decision and Order are filed with the original document.

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

18 CFR Part 154

[Docket No. RM79-22; Order No. 23-B]

Order Adopting Final Regulations
Establishing Protest Procedures
Regarding Blanket Affidavit Filings and
Interim and Retroactive Collection
FilingsAGENCY: Federal Energy Regulatory
Commission.

ACTION: Final Regulations.

SUMMARY: The Commission is issuing final regulations establishing protest procedures regarding blanket affidavit filings under § 154.94(h) and interim and retroactive collection filings under § 154.94(i).

EFFECTIVE DATE: August 15, 1979.

FOR FURTHER INFORMATION CONTACT: Phil Yates, Office of the General Counsel, Federal Energy Regulatory Commission, Room 4308-D, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 275-4845.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 13, 1979, Order No. 23 was issued in Docket No. RM79-22.¹ That order set forth the Commission's administrative view regarding the impact that the Natural Gas Policy Act of 1978 (NGPA)² would have on the operation of "area rate clauses."³

In Order No. 23, the Commission stated:

the Commission's regulations, * * * do not preclude the operation of price escalation provisions in a contract, the terms of which specifically permit escalation to Congressionally or legislatively authorized prices or which specifically reference Natural Gas Policy Act prices. Also, the Commission will, in the absence of specific contractual language to the contrary, generally interpose no objection to the parties to an interstate contract ascribing an interpretation to an area rate clause in its contract as would authorize escalation to, and collection of, the Natural Gas Policy Act price ceilings.

In the event that interstate pipeline purchasers contest the use or reliance by sellers on area rate clauses in their contracts, the Commission will provide an opportunity to protest. Once a protest to contractual authorization is submitted, the Commission will then consider the matter and attempt to state its view. Other parties in interest,

including state commissions, local distribution companies and other aggrieved parties will be permitted to participate in any such proceeding. Also, such parties may protest the utilization of area rate clauses even in the face of agreement among the parties to the contract as to the interpretation which should be ascribed to such clauses. In this event, however, the Commission advises that considerable weight will be given to the interpretation ascribed to the contract by its parties. (footnote omitted)⁴

The position announced in Order No. 23 was a practical one. The Commission concluded that certain area rate clauses may be triggered by the NGPA and that others may not. However, it was simply impossible for the Commission to examine each interstate natural gas contract in the proceeding in which Order No. 23 was issued. This order establishes the procedure by which the Commission will determine contractual authorization to collect NGPA rates in first sales subject to the Natural Gas Act (NGA).⁵

Many applications for rehearing of Order No. 23 were received which challenged the contract law principles underlying Order No. 23. Specifically, many indicated that the Commission could do no more than look to the "four corners" of the contract to ascertain the contract's meaning.

Of course, in any dispute involving the interpretation of a contract, the "four corners" of the contract must be the initial point of departure. However, modern contract law principles allow reference "not only to the 'four corners' of the contract, but also to the circumstances surrounding the execution of the contract."⁶

Under the procedures set out below, the Commission will first look to the document itself in reviewing contracts involving natural gas subject to the jurisdiction of the Commission under the NGA. If, however, other factors need be considered to interpret the contract, these procedures will afford an opportunity for the presentation of evidence respecting such factors.

⁴ Order No. 23, at pages 48-49.

⁵ *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1955) and *Federal Power Commission v. Sierra Pacific Power Company*, 350 U.S. 348 (1955), stand for the proposition that rate increase filings are ineffective under the NGA unless supported by contractual authority.

Of course, contracts may be amended. Order No. 23-A, issued on June 12, 1979, explicitly recognizes the right of the parties to a natural gas purchase contract to amend that contract to allow it to escalate to the highest permissible price under the NGPA. See 18 C.F.R. 270.205(c), as amended.

⁶ Order on Rehearing of Order 23, at pages 3 and 4.

Orders 15,⁷ 15A,⁸ and 25⁹ established special Natural Gas Act section 4 rate-change filing procedures for purposes of collecting the higher rates permissible under the NGPA. Under these orders, the requirements of NGA section 4 were deemed to be satisfied by either a blanket affidavit or interim or retroactive collection filing.¹⁰ Protests could be made with respect to any of these filings. By this order, the Commission establishes "a general protest procedure in which parties in interest can petition the Commission for a specific determination as to whether a particular contract clause constitutes the requisite authority to charge and collect Natural Gas Policy Act rates."¹¹

II. Discussion of Comments

On May 2, 1979, the Commission issued a Notice of Inquiry in this docket, requesting comments on the appropriate procedure to be utilized in evaluating protests to contractual authority. Specifically, comments were requested on whether a pipeline's Purchased Gas Adjustment (PGA) hearing would be an appropriate forum to deal with such protests, and whether natural gas contracts could be grouped generically for decisional purposes.

Seventeen comments were received to our Notice of Inquiry. The vast majority of them strenuously objected to the use of the PGA proceeding as the forum to resolve contractual disputes. They were more evenly split on the question of generic grouping of contracts; potential third-party protestors favored generic grouping, producers and pipelines were generally opposed.¹²

The Commission considered the alternative of examining the question of contractual authorization in the context of pipeline PGA proceedings. While the Commission is of the view that the question will lend itself to resolution on

⁷ Docket No. RM79-4, issued November 17, 1978; 43 FR 55756 (November 29, 1978).

⁸ Docket No. RM79-4, issued December 28, 1978; 44 FR 1100 (January 4, 1979).

⁹ Docket No. RM79-31, issued March 27, 1979; 44 FR 19387 (April 13, 1979).

¹⁰ The filings were specifically stated *not* to abrogate any contractual right to receive gas at a lower price than the NGPA ceiling rate. See 18 CFR 154.94 (h)(7) and (i)(2).

¹¹ Order No. 23, at page 52. This procedure is only applicable to rate-increase filings involving natural gas which is subject to the jurisdiction of the Commission under the Natural Gas Act.

¹² The Commission indicated in the Order on Rehearing of Order No. 23, in footnote 4, that the procedural issues raised by the applications for rehearing of Order No. 23 would be considered in determining the appropriate procedure to be implemented. Most of the applications for rehearing simply objected to the protest procedure set forth in Order No. 23. The specific proposals made in the applications for rehearing were repeated in the responses to the Notice of Inquiry.

¹ 44 FR 16895 (March 20, 1979).

² P.L. 95-621, 92 Stat. 3350.

³ "Area rate clauses" are indefinite price escalator clauses of the character permitted under paragraph (b-1) of 18 CFR 154.93.

a pipeline-by-pipeline basis, the PGA proceeding is not the proper forum. The specialized nature of contractual authorization questions and the length of time necessary to dispose of them would, as most comments point out, complicate proceedings. Therefore, the Commission will sever these questions from the PGA proceedings and require that evidence as to contractual authorization which would have been submitted in the PGA proceeding be separately presented in the protest proceedings established under this order.

The Commission cannot make a general rule involving the appropriateness of grouping contracts for purposes of decision. The procedure adopted herein requires that decision to be made on an *ad hoc* basis by the Chief Administrative Law Judge.

Some comments indicated that the protest procedure under our present regulations was adequate. Others made specific proposals concerning the appropriate procedure to handle protests to assertions of contractual authority. The Commission has concluded that the present procedure is inadequate, largely because it does not afford potential protestors adequate opportunity to focus on specific contracts, file specific protests, and have the parties' assertions evaluated.

Several commentators would have the Commission require producers to make new filings for each contract, in which the producer would state the foundation for his belief that contractual authority to collect the NGPA maximum lawful price exists. Each comment suggested slightly different ways to process protests to these filings.

As more fully discussed below, the Commission will require pipelines, not producers, to file this additional information. However, certain aspects of the procedures suggested by the comments have been adopted.

Three comments asserted that a limited number of hearings be held. They suggested a large proceeding dealing with a representative sampling of natural gas contracts, or a few proceedings to set precedents. One Public Service Commission went so far as to say it had "no interest in relitigating for each rate schedule questions which, as a result of test cases, are settled insofar as the Commission is concerned."

The Commission cannot accept these suggestions. Despite the administrative burden, the Commission feels that it must provide an opportunity for an interested party to challenge any contract which that party feels does not

constitute contractual authority to charge the NGPA rate.

One comment suggested a "bifurcated" procedure, one for "typical" area rate clauses where no hearing would be provided, and another procedure for all others which would provide for hearings. The Commission has adopted this procedure, although the distinction between those protests which can or cannot be resolved with a hearing is not based on whether or not the contract is "typical." It is questionable if any escalation provisions could accurately be characterized as "typical." Therefore, the initial distinction will be made based on whether the language of a particular contract is inconsistent with the claim of the parties to the contract that there is authority to collect the higher NGPA rate.

If the language of the contract is inconsistent with that interpretation, a hearing will be ordered. If there is no inconsistency, the protest will be summarily dismissed, unless specific evidence is filed which may explain or modify the text of the contract.¹³ To the extent possible, contracts with similar language will be dealt with generically.

One comment suggested that the hearing officer be allowed to decide specific procedural questions involving a protest before him. This suggestion has been adopted. The Commission has delegated to the Chief Administrative Law Judge the responsibility to set protests for hearing, sever and consolidate proceedings, and certify questions to the Commission. Further, the Administrative Law Judge to whom a particular protest is assigned may be authorized by the Chief Administrative Law Judge to issue similar procedural orders regarding that protest. Such a device was necessary to allow an expeditious treatment of what is anticipated to be a large volume of protests.

Several parties suggested that the burden of proof in any protest proceeding should be on the producer rather than the protestor. We specifically address this issue below.

III. The Procedure

The Commission has concluded that evidence claimed to authorize increased rates due the passage of the NGPA should be made available for use in the protest proceedings respecting NGA rate increase filings under 18 CFR 154.94 (h) or (i). However, we have determined that jurisdictional pipeline companies

¹³ The Commission contemplates a procedure similar to its practice of requiring prefiled testimony in pipeline and electric rate cases.

should submit such evidence rather than producers. This decision is predicated upon the Commission's view that interstate pipelines are in a much better position to supply the needed evidence than are producers. First, we presume that the pipelines in the regular course of business will review relevant contractual provisions prior to making a decision whether to protest the blanket affidavit or interim or retroactive collection filings. Second, there are far fewer interstate pipelines than producers; thus there will be fewer filings. Because of the large number of producers, it would be difficult to assure that all of the needed evidence would be submitted in a timely fashion. Third, because some producers conduct extremely small operations, imposing an additional filing burden on them would create more of a hardship than upon interstate pipelines. Fourth, it is anticipated that interstate pipeline contracts will fall into a limited number of generic categories, thus allowing protests to be made on a generic basis in some cases. Finally, interstate pipelines are in a much better position than producers to provide interested parties with copies of such evidentiary filings, much in the same manner as they presently are required to serve their customers with their PGA filings.

Each pipeline which purchases natural gas for resale must file with the Commission the following evidence: (1) The rate schedule number, (or, if there is none, the date of the contract) for each of its contracts for which the seller has made a rate increase filing under 18 CFR 154.94 (h) or (i); (2) the name of the seller for each such contract; (3) the section or sections of the NGPA which are applicable to the first sales under each contract; (4) the text of the contractual provisions as well as any other evidence¹⁴ which the pipeline believes constitutes or may constitute the contractual authority to escalate the price to the NGPA ceiling. Further, the pipeline shall list those contracts for which the pipeline and seller disagree on the question of contractual authority to collect a higher rate under the NGPA.

These evidentiary submissions are required to be filed before August 15, 1979, with the Commission as well as with those State commissions and pipeline customers that specifically request the pipeline to provide them

¹⁴ This evidence may take many forms. For example, the course of conduct of the parties subsequent to the execution of the contract may evince a modification of its original terms. See *Sam Rayburn Dam Electric Cooperative v. FPC*, 515 F. 2d 994, 1007 (D.C. Cir., 1975), cert. den. 426 U.S. 907 (1976).

with a copy.¹⁵ The submissions should enable these parties to identify the contracts which affect their interests and to determine whether the language of a particular contract is consistent with the parties' assertion that the contract authorizes escalation to the NGPA maximum lawful price.

Protests may be filed before August 15, 1979, by pipelines and before October 15, 1979, by third parties (i.e., persons not a party to the contract).¹⁶ All protest will be noticed in the Federal Register and will be forwarded to the Chief Administrative Law Judge for assignment to an Administrative Law Judge for review. The Commission is vesting in the Chief Administrative Law Judge authority to set proceedings for hearing and to issue such procedural orders as may be necessary to expeditiously consider the large volume of protests which may arise under Order No. 23.¹⁷ The Commission anticipates that the Chief Administrative Law Judge will group protests and deal with them on a pipeline-by-pipeline basis unless he finds another procedure is more efficient. Under this procedure protests to contracts containing substantially identical area rate clauses can be handled generically by an Administrative Law Judge, if deemed appropriate.

Protests will be preliminarily reviewed by an Administrative Law Judge to determine if a hearing is necessary. Hearings will be initiated pursuant to 18 CFR 154.94(i)(4) whenever the Chief Administrative Law Judge (or, if a procedural order of the Chief Administrative Law Judge so provides, the Administrative Law Judge to whom the protest is assigned) determines a hearing is necessary.

Each protest, whether by a third party or by the first sale purchaser, shall

¹⁵To the extent that the filing deadline or information required by a submission imposes a hardship on any pipeline, adjustment relief is available under § 1.41 of the Commission's regulations.

¹⁶Within the constraints imposed by the Commission's limited resources, the Commission expects that Staff will endeavor to examine the pipeline reports and challenge the interpretation ascribed to a particular contract by its parties if that interpretation appears to be inconsistent with the text of the contract or with other information known to Staff. If it appears to Staff that the requisite contractual authority does not exist to support an NGA rate change filing, it may contest the filing and request a hearing before an Administrative Law Judge in the same manner as a third party protestor.

¹⁷The Commission's Rules of Practice will apply to such procedural orders except to the extent the orders make inapplicable a specific provision of the Rules of Practice. However, § 1.28 of the Rules of Practice, relating to certification of questions to the Commission, is applicable to any procedural order of the Chief Administrative Law Judge under this provision.

include the text to the contractual provisions which the protestor believes is inconsistent with a conclusion that the gas purchase contract authorizes the collection of the higher rate for which a filing has been made. Additionally, the protest may include any other evidence relied upon by the protestor to support his position of lack of contractual authority.¹⁸

The rule provides that the Chief Administrative Law Judge (or, if a procedural order of the Chief Administrative Law Judge so provides, the Administrative Law Judge to whom the protest is assigned) may summarily dispose of a protest. The rule does not specify the grounds on which summary disposition can be made; summary disposition must be left initially to the judgment of the Administrative Law Judge, and ultimately to the judgment of the Commission, upon review of the Administrative Law Judge's initial decision. However, the Commission will provide the following guidelines for summary dispositions of third party protests where the parties to the contract agree that contractual authorization exists. Section 270.205(a)(2) provides that contractual provisions similar to the area rate clause permitted by § 154.93(b-1) "generally" will be considered contractual authorization to collect an NGPA rate to the extent the parties intended to authorize collection of NGPA rates under the contract. Where the parties state that their intent was to authorize collection of the rates, "considerable weight" will be given to their interpretation.¹⁹ However, the Commission cannot allow the parties' interpretation to be dispositive where that interpretation does not appear to be reasonable in light of the language of the contract and the conduct of the parties. Therefore, the Commission will permit third parties to utilize the protest procedure to present evidence of lack of contractual authorization. However, in such circumstances, the burden of going forward with evidence of lack of contractual authorization is appropriately placed on the third party protestor. Unless the third party protestor can show that the language of the contract is inconsistent with the parties' interpretation, or can include in his protest (or in a supplemental filing) evidence sufficient to show lack of contractual authorization, there is no basis for finding that the parties'

¹⁸Those protests which have already been filed with the Commission should be amended to incorporate these requirements.

¹⁹Order No. 23, at page 49.

conclusion is unreasonable, and the protest should be summarily dismissed.

If the protest is not summarily dismissed, it will be set for hearing. Any interested party, including the first seller, may intervene in a hearing. At the hearing, the burden of persuasion will be on the parties to the contract to establish their position by a preponderance of the evidence.

For all blanket affidavit and interim or retroactive collection filings made after June 15, 1979, an additional evidentiary submission must be filed with the Commission and interested parties by the pipeline within 60 days of receiving notice of such filings. Pipeline protests likewise must be submitted within 60 days of the filings. Third party protests must be submitted within 120 days of the date of the blanket affidavit or interim or retroactive collection filing. These protests to later filings will be handled similarly to the protests to the pre-June 15, 1979, filings.

If a pipeline contests its seller's contractual right to charge and collect a higher rate due to the passage of the NGPA, that pipeline may pay the higher rate subject to refund, or it may refuse to pay the higher rate until the dispute has been resolved. If a third party protestor challenges that contractual authority, in the face of agreement of the parties, the payment by the pipeline is subject to refund. In these cases, as in any case involving natural gas which is subject to the jurisdiction of the Commission under the NGA, if a rate increase filing is not supported by contractual authority, the rate increase filing is a nullity, and any rate charged under that filing is subject to refund.²⁰

IV. Public Procedures and Effective Date

The Commission is making these rules effective as final rules on August 15, 1979. A general right to protest was set forth in Order No. 23, issued March 13, 1979. A Notice of Inquiry requesting suggestions regarding that procedure was promulgated on May 2, 1979. Both the Applications for Rehearing of Order No. 23, and the comments received in response to the Notice of Inquiry, made suggestions as to the appropriate procedure to be implemented. The rules and amendments contained herein were developed in consideration of those suggestions and comments. Accordingly, the Commission finds that further notice and public procedures on these rules is unnecessary and impracticable, and that good cause exists to dispense with additional notice and opportunity for comment.

²⁰*Shell Oil Company v. FPC*, 334 F.2d. 1002 (3rd Cir. 1964).

(Natural Gas Act, as amended, 15 U.S.C. 717, *et seq.*; Department of Energy Organization Act, 42 U.S.C. 7107 *et seq.*; E.O. 12009; Natural Gas Policy Act of 1978, Pub. L. 95-621.)

In consideration of the foregoing, Part 154 of Subchapter E, Chapter I, Title 18, Code of Federal Regulations, is amended as set forth below:

By the Commission.
Kenneth F. Plumb,
Secretary.

1. Section 154.94 is amended by revising paragraph (h)(8) and paragraph (i)(3) to read as follows:

§ 154.94 Changes in rate schedules.

* * * * *
(h) *Blanket filing.*
* * * * *

(8) *Protests.* Any protest to a blanket affidavit shall be submitted

(i) In the case of a protest by the purchaser in the first sale, within 60 days from the filing of the blanket affidavit or August 15, 1979, whichever is later; or

(ii) In any other case, within 120 days from the date of the filing of such blanket affidavit, or October 15, 1979, whichever is later.

(i) *Interim and retroactive collections.*
* * * * *

(3) *Protests.* (i) Any protest to an interim or retroactive collection filing shall be submitted

(A) In the case of a protest by the purchaser in the first sale, within 60 days from the date of such filing or August 15, 1979, whichever is later; or

(B) In any other case, within 120 days from the date of such filing, or October 15, 1979, whichever is later.

(ii) If protest is made with respect to a filing under paragraph (i)(1) of this section, on the grounds of lack of contractual authorization, then notwithstanding § 273.302(f) of this chapter, any refund obligation under § 273.302 of this chapter, shall continue until contractual authorization is established or until refund is made in accordance with the direction of the Commission.

2. Section 154.94 is further amended by adding at the end thereof the following new paragraph:

(j) *Evidentiary submission by pipeline, protest procedure.* (1) *Evidentiary submission.* Each interstate pipeline which purchases natural gas in a first sale and sells such gas for resale shall file an evidentiary submission which shall include:

(i) the rate schedule number assigned by the Commission (or, if none has been assigned, the date of the contract) for each contract for each first sale of

natural gas for which the seller has made a rate increase filing under paragraph (h) or (i) of this section;

(ii) the name of the seller for each contract listed in subparagraph (1)(i) of this paragraph;

(iii) the section or sections of the NGPA which are applicable to each first sale of natural gas under each contract listed in paragraph (i)(1)(i) of this section;

(iv)(A) A statement specifying whether or not, in such pipeline's opinion, the seller has contractual authority to collect the filed-for NGPA rate, and (B) the text of any contract provisions, and any other evidence, which the pipeline believes constitutes, or may constitute, contractual authority for the seller to charge and the pipeline to pay a maximum lawful price under the NGPA; and

(v) The rate schedule number (or if none has been assigned the date of the contract) for each natural gas contract listed in subparagraph (1)(i) of this paragraph with respect to which the pipeline has filed protest under paragraph (h)(8) or (i)(3) of this section on grounds of lack of contractual authorization.

(2) *Filing.* The evidentiary submission required by subparagraph (1) of this paragraph shall be filed with the Commission and, on request, with each State commission and each interstate pipeline, local distribution company or other person served by such pipeline. Such submission shall be filed not later than August 15, 1979, or 60 days after the date on which the pipeline has received notice of the filing with the Commission pursuant to § 273.202(d)(iii) of this chapter or paragraph (h)(6) of this section, whichever is later.

(3) *Contents of protests.* Each protest filed under paragraph (h)(8) or (i)(3) shall set forth the text of the contractual provisions which the protestor believes is inconsistent with the conclusion that the contract authorizes the seller to collect the filed-for NGPA rate, and may include any other evidence which the protestor believes is relevant to the issue of the existence of contractual authorization to collect the NGPA rate.

(4) *Protest Procedure.* (i) Each protest filed under paragraph (h)(8) or (i)(3) of this section shall be noticed in the Federal Register and transmitted to the Chief Administrative Law Judge for assignment to an Administrative Law Judge. A protest will be set for hearing unless summary disposition is made of the protest.

(ii) If a protest is set for hearing, any interested party, including the first seller, may intervene.

(5) *Authority of Chief Administrative Law Judge.* (i) In the case of a protest proceeding relating to a protest filed under paragraph (h)(8) or (i)(3) of this section, the Chief Administrative Law Judge is authorized to issue such procedural orders, including orders setting matters for hearing, severing and consolidating proceedings and certifying questions to the Commission, as he determines necessary or appropriate for the expeditious consideration of such protests. The Chief Administrative Law Judge may, by such order, authorize the Administrative Law Judge to whom a protest is assigned to issue similar procedural orders relating to that protest.

(ii) Part I of the Commission's regulations (relating to rules of practice) shall apply to such protest proceedings except to the extent otherwise provided by a procedural order issued under subparagraph (5)(i) of this paragraph. Section 1.28 of this chapter shall apply to any procedural order issued under subparagraph (5)(i) of this paragraph.

(6) *Definitions.* For purposes of this paragraph the terms "first sale" and "interstate pipeline" have the same meaning as they do under section 2 of the NGPA.

[FR Doc. 79-20414 Filed 7-2-79; 8:45 am]
BILLING CODE 6450-01-M

18 CFR Part 287

[Docket No. RM79-10; Order No. 37]

Determination of Powerplant Design Capacity

Issued: June 28, 1979.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) hereby gives notice that it is revising and issuing as a final rule the regulations covering determination of a powerplant's design capacity. The amendment is adopted in response to comments submitted on the interim rule, issued February 9, 1979.

EFFECTIVE DATE: July 23, 1979.

FOR FURTHER INFORMATION CONTACT:

Teresa Ponder, Office of the General Counsel, Federal Energy Regulatory Commission, Room 8100, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 275-0422, or B. E. Biggerstaff, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, D.C. 20426, (202) 275-4721.

I. Background

Section 103(a)(18)(D) of the Powerplant and Industrial Fuel Use Act of 1978 (Act), Pub. L. No. 95-620, required the Federal Energy Regulatory Commission (Commission) to prescribe by February 9, 1979, rules according to which a powerplant's design capacity could be determined. On December 29, 1978, the Commission issued a proposal and requested comments by January 30, 1979. An interim rule was issued February 9 (44 FR 10367, February 20, 1979). However, since the proposal was not noticed in the Federal Register until January 22, 1979, (44 FR 4500) the Commission extended the comment period to March 19, 1979. This rule is now issued as a final rule.

II. Summary of Comments

In response to the proposal and the interim rule, 39 comments were submitted representing the views of 33 parties. (Several parties submitted comments at more than one stage of the proceeding.)

Scope of Application of Design Capacity

Several commenters expressed concern because "design capacity," as determined under the Commission's rules, has been incorporated into the regulations of the Economic Regulatory Administration of the Department of Energy (ERA) as equivalent to "design capability." It is alleged that, as a result, the determination of design capacity has an effect on calculations concerning reliability of service. Many of the commenters expressed great concern that, because such use of the design capacity determination, design capacity should be determined according to the unit's actual (and net) capabilities rather than its designed capacity.

The Commission is prescribing the rules for determining design capacity solely for the purpose of implementing paragraph (18) of section 103(a) of the Act. Paragraph (18) defines a powerplant's identification as either a peakload, intermediate load, or base load powerplant, depending on the plant's equivalent full-load hours of operation during the year. This is the quotient of the plant's annual kilowatt-hours of generation divided by its design capacity, in kilowatts. If the figure does not exceed 1500 hours the plant is a peakload powerplant; if the figure exceeds 1500 hours but not 3500 hours, the plant is an intermediate load powerplant; and if the figure exceeds 3500 hours, the plant is a base load powerplant. The Commission has no authority to define or determine the

capability of a powerplant and has not contemplated such use of design capacity in promulgating this rule.

Acceptability of Using the Nameplate Rating

In this rule, the determination of design capacity has been keyed to nameplate ratings. The majority of the comments protest the use of nameplate ratings. Most commenters filing before ERA issued its rules complained that the nameplate rating was much lower than actual capacity. Most filing after ERA issued its rules complained that the nameplate rating was much higher than actual capacity. The comments that focused on ERA's use of the design capacity determination did not tend to present arguments that specifically addressed the acceptability of using nameplate ratings for the purposes of paragraph (18) of section 103(a). Those comments that did address the acceptability of using nameplate ratings for the purposes of paragraph (18) of section 103(a) tended to support the use of the nameplate rating, even though other amendments to the interim rule were suggested.

Nameplate rating designates the performance that the manufacturer was willing to guarantee at the time of sale. It reflects not only the design of the unit but the conditions under which the seller and purchaser expected the unit to operate. In other words, the nameplate rating reflects the manufacturer's opinion of the maximum output the unit could produce over the time periods and under the conditions specified by the buyer. While the nameplate rating does not reflect the unit's net dependable capability, it does represent a realistic estimate of the design capacity of the unit.

The Commission feels that the appropriate standard for design capacity is the gross design capacity of the unit, rather than its net dependable capability. As the Commission reads paragraph (18) section 103(a) of the Act, Congress keyed the identification of peakload, intermediate load, and base load powerplants to the unit's equivalent annual kilowatt-hours of operation at its design capacity. Design capacity is a function of the characteristics built into the machine. Actual capability is a function of the machine's design capacity, changes in weather and electrical characteristics of the system, and physical condition of the equipment. The equipment is constantly deteriorating as the result of normal use as well as malfunctions, and being repaired or replaced from time to time. Actual capability changes from

year to year, reflecting changing operating conditions rather than changing design capacity. For purposes of determining whether a powerplant is to be identified as a peakload, intermediate load, or base load powerplant, the Commission does not feel that keying design capacity to actual operating conditions is appropriate. Instead it will continue to rely on nameplate ratings.

Modification of the Nameplate Rating

Several comments suggested, and the Commission agrees, that a powerplant's determined design capacity should be changed if the powerplant is substantially modified. In the interim rule, the Commission requested comments on the procedures which should be adopted for determining a new design capacity. Upon consideration of the fact that the Commission has no authority with respect to the determination of design capacity except to provide the rules for determination, and the fact that nameplate ratings are changed whenever a unit is substantially modified, the Commission has decided that a unit's determined design capacity should be changed whenever its nameplate rating is changed. Because the regulations provide that design capacity be based on nameplate rating no special provisions for modification of design capacity need be added to the regulations to reflect this fact.

Steam-Electric Generating Units

Several comments indicated that electric generating units are rated according to kilovolt-amperes (kva) rather than kilowatts. A kva rating will always be accompanied by a power factor rating.¹ The kilowatt rating of the unit is the product of the unit's kva and power factor rating. If a unit's nameplate rating is not given in kilowatts, the kilowatt rating may be determined by multiplying the nameplate kva rating by the nameplate power factor.

Several comments suggested that the design capacity of electric generating units should be measured either in kva's, or, in kva's presuming unity power factor (which would establish a kilowatt value exactly equal to the kva generated). The Act's identification of a powerplant as peakload, intermediate load and base load is based on the unit's design capacity for generating kilowatts.

¹The apparent power (kva) produced by a generator equals the square root of the sum of the square of the real power (kw) and the reactive power (kvar). Diagrammatically, kilowatts equals kva times power factor, where power factor is defined as the cosine of the angle between voltage and current at the generator terminals.

Assuming a unity power factor would produce an unrealistic kilowatt rating. Therefore, the power factor designated on the unit's nameplate shall be used to determine the unit's design capacity in kilowatts.

Combustion Turbine

A few commenters suggested that a combustion turbine should be rated according to its base load rather than its peakload rating. Very few, if any, combustion turbines are operated as base load powerplants since the operating costs of such units are generally much higher than for steam turbine units. The peakload rating shall continue to be the combustion turbine's design capacity.

Several commenters also suggested that a combustion turbine's nameplate rating be adjusted for actual site conditions. Nameplate ratings for combustion turbines are not as tailored to the purchaser's actual operating conditions as other nameplate ratings. Since the turbine's nameplate rating does not represent as accurately as other nameplate ratings the expected performance of the unit, the Commission has been convinced that the rating should be adjusted for the unit's site elevation. However, we choose to continue the presumption of an ambient temperature of 59 degrees Fahrenheit since the International Standards Organization, the National Electric Manufacturer's Association, and the American National Standards Institute have all adopted 59 degrees Fahrenheit as the standard rating temperature.

Combined Cycle Units

Three commenters protested the method of determining design capacity for combined cycle units. Under the interim rule and this rule, the design capacity of a combined cycle unit is determined by summing the base load nameplate rating of the combustion turbine and the maximum generator nameplate rating of the steam turbine. The commenters felt that the design capacity of a combined cycle unit should be limited by other actual operating condition factors, one of which is the boiler capacity for the steam turbine. Again, these commenters were more concerned that design capacity reflect actual net capacity than the purposes of paragraph (18) of section 103(a) of the Act. Therefore the Commission is not persuaded by their arguments that the nameplate rating is inappropriate.

Incorporation of Information Given in FPC Form 12

Several comments pointed out that confusion is created by referring to FPC Form 12 in the rule to determine design capacity. Since design capacity is determined by the appropriate nameplate rating, and references to FPC Form 12 (where such values are reported to the Commission) are unnecessary and could cause problems, the references to the reports in FPC Form 12 have been eliminated. Nevertheless, the information presently reported in FPC Form 12 indicates several nameplate ratings, hence, the design capacity of many powerplants.

III. Summary of the Rule

The design capacity of a steam-electric generating unit is its maximum generator nameplate rating measured in kilowatts. The design capacity of a combustion turbine is its nameplate rating measured in kilowatts, adjusted for peaking service at an ambient temperature of 59 degrees Fahrenheit (15 degrees Celsius) and at the unit's site elevation. The design capacity measured in kilowatts of a combined cycle unit is the sum of its combustion turbine base load rating adjusted for site elevation and the maximum generator nameplate rating of the steam turbine portion of the unit. The design capacity of an internal combustion engine is the generator's nameplate rating measured in kilowatts.

(Department of Energy Organization Act, 42 U.S.C. 7107 *et seq.*; Powerplant and Industrial Fuel Use Act of 1978, Pub. L. No. 95-620.)

In consideration of the foregoing, the Commission amends Chapter I of Title 18, Code of Federal Regulations, as set forth below, effective July 23, 1979.

By the Commission.

Kenneth F. Plumb,
Secretary.

Section 287.101 is revised to read as follows:

§ 287.101 Determination of powerplant design capacity.

For the purpose of section 103 of the Powerplant and Industrial Fuel Use Act of 1978, a powerplant's design capacity shall be determined as follows:

(a) *Steam-electric generating unit.* The design capacity of a steam-electric generating unit shall be the maximum generator nameplate rating measured in kilowatts or, if the nameplate does not have a rating measured in kilowatts, the product of the generator's kilovolt-amperes nameplate rating and power factor nameplate rating.

(b) *Combustion turbine.* The design capacity of a combustion turbine shall be its nameplate rating measured in kilowatts, adjusted for peaking service at an ambient temperature of 59 degrees Fahrenheit (15 degrees Celsius) and at the unit's site elevation.

(c) *Combined cycle unit.* The design capacity of a combined cycle shall be the sum of its combustion turbine nameplate rating measured in kilowatts, based on baseload operation adjusted for site elevation, and the maximum generator nameplate rating measured in kilowatts of the steam turbine portion of the unit.

(d) *Internal combustion engine.* The design capacity of an internal combustion engine shall be the generator's nameplate rating measured in kilowatts.

[FR Doc. 79-20340 Filed 7-2-79; 8:45 am]
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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 159

[T.D. 79-180]

Liquidation of Duties; Non-Rubber Footwear, Certain Castor Oil Products, Scissors and Shears, and Cotton Yarn From Brazil; Declaration of Net Amount of Bounty or Grant

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

ACTION: Net Amount of Bounty or Grant Declared.

SUMMARY: This notice is to advise the public of the new rates of countervailing duty applicable to imports of non-rubber footwear, certain castor oil products, scissors and shears, and cotton yarn from Brazil. These rates will be applicable to such merchandise exported from Brazil on or after June 30, 1979.

EFFECTIVE DATE: June 30, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Charles F. Goldsmith, Economist, Office of Tariff Affairs, U.S. Department of the Treasury, 15th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20220, telephone (202) 566-2323.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 17, 1979 (44 FR 28790-2) it was announced that due to actions taken by the Government of Brazil to eliminate export payments which have been determined by Treasury to constitute bounties or

grants, reductions of the countervailing duty rates applicable to imports of non-rubber footwear, certain castor oil products, scissors and shears, and cotton yarn, would be made quarterly to reflect the staged reduction of these benefits. The present action is taken to reduce the countervailing duty rates applicable to imports of the above merchandise which are exported from Brazil on or after June 30, 1979.

On the basis of the actions taken by the Government of Brazil on June 30, 1979, to reduce the payments made to exporters of the subject merchandise, it has been ascertained and determined that the net amount of bounties or grants paid or bestowed, directly or indirectly by the Government of Brazil on the exportation of the subject merchandise, in terms of the f.o.b. or ex-works price to the United States of the applicable merchandise, is as follows:

(1) Non-rubber footwear

(A) 10.1 percent for shoes manufactured by firms whose export sales account for 40 percent or less of the value of their total sales; and

(B) 3.9 percent for shoes manufactured by firms whose export sales account for more than 40 percent of the value of their total sales.

(2) Certain castor oil products, 9.1 percent.

(3) Scissors and shears, 13.2 percent.

(4) Cotton yarn, 16.2 percent.

Accordingly, until further notice, upon the entry for consumption or withdrawal from warehouse for consumption of such dutiable non-rubber footwear, certain castor oil products, scissors and shears, and cotton yarn, respectively, imported directly or indirectly from Brazil, and exported from that country on or after June 30, 1979, which benefit from such 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.

Any merchandise subject to the terms of this declaration shall be deemed to have benefited from a bounty or grant if such bounty or grant has been or will be paid or credited, directly or indirectly, upon the manufacture, production, or exportation of such non-rubber footwear, certain castor oil products, scissors and shears, and cotton yarn, respectively, from Brazil.

The table in § 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by inserting after the last entry for "non-rubber footwear," "certain castor oil products," "scissors and shears," and "cotton yarn," respectively, under the country heading "Brazil", the

number of this Treasury Decision in the column so headed and the words "New rate" in the column headed "Action."

(R.S. 251, section 303, as amended, 624; 46 Stat. 687, 759, 88 Stat. 2049; 19 U.S.C. 66, 1303, as amended, 1624).

Robert H. Mundheim,
General Counsel of the Treasury.

June 26, 1979.

[FR Doc. 79-20517 Filed 7-2-79; 8:45 am]

BILLING CODE 4810-22-M

DEPARTMENT OF LABOR

Employment Standards Administration

20 CFR Part 725

Claims for Benefits Under Part C of Title IV of the Federal Mine Safety and Health Act, As Amended

AGENCY: Black Lung Benefits Program, Employment Standards Administration, Department of Labor.

ACTION: Amendment to regulations.

SUMMARY: By Federal Register Document No. 78-30632 dated October 24, 1978, and published on October 27, 1978, at 43 FR 50171, §§ 725.308(b) and 725.701A(a) of Title 20 of the Code of Federal Regulations were revised to state that claims for medical benefits filed pursuant to section 11 of the Black Lung Benefits Reform Act of 1977 (Pub. L. 95-239) must be filed by June 30, 1979, unless the period is extended for good cause shown. This document amends those sections of the regulations to provide that such claims must be filed on or before December 31, 1979.

EFFECTIVE DATE: This amendment is effective on July 3, 1979.

FOR FURTHER INFORMATION CONTACT: Robert B. Dorsey, Chief, Branch of Claims Determination, Division of Coal Mine Workers' Compensation, U.S. Department of Labor, Room C-3526, 200 Constitution Avenue, N.W., Washington, DC 20210, Telephone: 202-523-6727.

SUPPLEMENTARY INFORMATION: The Department of Health, Education, and Welfare notified all part B miner-beneficiaries of their right to file claims for part C medical benefits on May 3 and 4, 1978. The time for filing claims was previously extended to June 30, 1979, because the Department of Labor had been advised that many part B miner-beneficiaries failed to file claims under section 11 of the Black Lung Benefits Reform Act of 1977 because they believe that an adverse decision on their claim for medical benefits may result in a termination of the right to continuing compensation benefits under

part B of title IV of the Act. The Social Security Administration, by letter dated March 3, 1979, notified 97,000 part B miner-beneficiaries that their continued entitlement to such benefits cannot and will not be affected in any way by a decision on the claim for part C medical benefits.

To ensure that no otherwise eligible miner is deprived of the right to seek medical benefits, I find that it is in the public interest to amend the provisions of §§ 725.308(b) and 725.701A(a) to provide that claims for medical benefits under Section 11 of the Reform Act may be filed up to and including December 31, 1979. I further find that since the current six month period will expire on or about June 30, 1979, that notice and public procedure on this amendment to the rules are contrary to the public interest.

Accordingly, 20 CFR Part 725 is amended as follows:

1. Paragraph (b) of § 725.308 is revised to read as follows:

§ 725.308 Time limits for filing claims.

* * * * *

(b) A miner who is receiving benefits under part B of title IV of the Act and who is notified by HEW of the right to seek medical benefits, may file a claim for medical benefits under part C of title IV of the Act and this part. The Secretary of Health, Education, and Welfare is required to notify each miner receiving benefits under part B of this right. Notwithstanding the provisions of paragraph (a) of this section, a miner notified of his or her rights under this paragraph may file a claim under this part on or before December 31, 1979. Any claim filed after that date shall be untimely unless the time for filing has been enlarged for good cause shown.

* * * * *

2. Paragraph (a) of § 725.701A is revised to read as follows:

§ 725.701A Claims for medical benefits only under section 11 of the Reform Act.

(a) Section 11 of the Reform Act directs the Secretary of Health, Education, and Welfare to notify each miner receiving benefits under part B of title IV of the Act that he or she may file a claim for medical treatment benefits described in this subpart. Section 725.308(b) of this subpart provides that a claim for medical treatment benefits shall be filed on or before December 31, 1979, unless the period is enlarged for good cause shown. This section sets forth the rules governing the processing, adjudication, and payment of claims filed under section 11.

* * * * *

(30 U.S.C. 901 *et seq.*)Signed this 20th day of June 1979 at
Washington, DC.

Ray Marshall,

Secretary of Labor.

[FR Doc. 79-20359 Filed 7-2-79; 8:45 am]

BILLING CODE 4510-27-M

**ENVIRONMENTAL PROTECTION
AGENCY****21 CFR Part 193**

[FAP 6H5100/R50; FRL 1261-5]

**Tolerances for Insecticide Propargite
in Food Administered by the
Environmental Protection Agency**AGENCY: Office of Pesticide Programs,
Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide propargite at 10 parts per million (ppm) on tea. The regulation was requested by Uniroyal Chemical. This regulation establishes a maximum permissible level for residues of propargite on tea.

EFFECTIVE DATE: Effective on July 3, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Franklin D. R. Gee, Product Manager (PM) 17, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. 20460 (202/426-9417).

SUPPLEMENTARY INFORMATION: On April 17, 1979, the EPA published in the Federal Register (44 FR 22752) a notice of proposed rulemaking to amend 21 CFR 193.370 by establishing a regulation permitting residues of the insecticide propargite (2-(*p-tert*-butylphenoxy)cyclohexyl 2-propynyl sulfite) in or on tea (dried or manufactured) resulting from application of the insecticide to growing tea with a tolerance limitation of 10 ppm. This notice was published in connection with a petition (FAP 6H5100) submitted by Uniroyal Chemical, Div. of Uniroyal, Inc., Amity Rd., Bethany, CT 06525. No comments or requests for referral to an advisory committee were received in response to this notice of proposed rulemaking.

The data submitted in the petition and other relevant material have been evaluated, and it is concluded that the pesticide can be safely used in the prescribed manner when such use is in accordance with the label and labeling

registered pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

Any person adversely affected by this regulation may, on or before August 2, 1979, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M-3708 (A-110), 401 M St. SW., Washington, D.C. 20460. Such objections should be submitted in triplicate and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". This regulation has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Effective on July 3, 1979, 21 CFR 193.370 is amended as set forth below.

(Sec. 409(c)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(1)))

Dated: June 21, 1978.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

Part 193, Subpart A, § 193.370 is revised by editorially reformatting the section into an alphabetized columnar listing and alphabetically inserting tea at 10 ppm as follows:

§ 193.370 Propargite.

Tolerances are established for residues of the insecticide propargite (2-(*p-tert*-butylphenoxy)cyclohexyl 2-propynyl sulfite) in or on the following processed foods when present therein as a result of the application of this insecticide to growing crops:

Food:	<i>Parts per million</i>
Figs, dried _____	9
Hops, dried _____	30
Raisins _____	25
Tea, dried _____	10

[FR Doc. 79-20350 Filed 7-2-79; 8:45 am]

BILLING CODE 6560-01-M

21 CFR Parts 193 and 561

[FRL 1261-3; FAP 6H5176/T49]

**3,5-Dimethyl-(methylthio)phenyl
methylcarbamate**AGENCY: Office of Pesticide Programs,
Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This rule renews food and feed additive regulations related to the experimental use of the bird repellent 3,5-dimethyl-4-(methylthio)phenyl methylcarbamate in or on raisins, raisin waste, and grape pomace. The renewal was requested by Mobay Chemical Corp. This rule will permit the marketing of raisins, raisin waste, and grape pomace while further data is collected on the subject pesticide.

EFFECTIVE DATE: Effective on July 3, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. William Miller, Product Manager (PM) 16, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, SW., Washington, DC 20460 (202/426-9458).

SUPPLEMENTARY INFORMATION: On July 10, 1978, the EPA announced (43 FR 29557) that in response to a petition (FAP 6H5176) submitted by Mobay Chemical Corp., Chemagro Chemical Div., PO Box 4813, Kansas City, MO 64120, 21 CFR 193.145 and 561.175 were established to permit combined residues of the pesticide 3,5-dimethyl-4-(methylthio)phenyl methylcarbamate and its cholinesterase-inhibiting metabolites in or on raisins with a tolerance limitation of 25 parts per million (ppm) and in grape pomace (wet and dry) and raisin waste with tolerance limitations of 75 ppm resulting from application of the subject pesticide to growing grapes in a proposed experimental program in accordance with an experimental use permit that was being issued concurrently under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136). This experimental program expired June 30, 1979.

Mobay Chemical Corp. has requested a one-year renewal of these temporary tolerances both to permit continued testing to obtain additional data and to permit the marketing of food commodities affected by the application of the bird repellent to the growing raw agricultural commodity grapes.

The scientific data reported and other relevant material have been evaluated, and it has been determined that the pesticide may be safely used in

accordance with the provisions of the experimental use permit which is being issued concurrently under FIFRA. It has further been determined that since residues of the pesticide may result in raisins, raisin waste, and grape pomace from the agricultural use provided for in the experimental use permit, the food and feed additive regulations should be renewed along with the tolerance limitations. (A related document concerning the renewal of temporary tolerances for residues of the subject pesticide in or on grapes; the meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep; eggs; and milk appears elsewhere in today's Federal Register.) Accordingly, food and feed additive regulations are established as set forth below.

Any person adversely affected by this regulation may, on or before August 2, 1979, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M-3708 (A-110), 401 M St., SW, Washington, DC 20460. Such objections should be submitted in triplicate and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". This regulation has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Effective on July 3, 1979, 21 CFR 193.145 and 561.175 are amended as set forth below.

(Sec. 409(c)(1), Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(1)).

Dated: June 23, 1979.

Edwin L. Johnson,
Deputy Assistant Administrator for Pesticide Programs.

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 193—TOLERANCES FOR PESTICIDES IN FOOD ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

§ 193.145 [Amended]

paragraph (a), the date is changed from "June 30, 1979" to "June 30, 1980."

SUBCHAPTER E—ANIMAL FEEDS, DRUGS, AND RELATED PRODUCTS

PART 561—TOLERANCES FOR PESTICIDES IN ANIMAL FEEDS ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

§ 561.175 [Amended]

2. In 21 CFR 561.175, at the end of paragraph (a), the date is changed from "June 30, 1979" to "June 30, 1980."

[FR Doc. 79-20564 Filed 7-2-79; 8:45 am]
BILLING CODE 6560-01-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 42

Visas: Documentation of Immigrants Under the Immigration and Nationality Act, as Amended; Application for Immigrant Visas

Correction

In FR Doc. 79-15264 appearing on page 28659 in the issue for May 16, 1979, in the middle column, the § 42.114 heading should be corrected to read, "§ 42.114 Personal appearance".

BILLING CODE 1505-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 510

[Docket No. R-79-679]

Section 312 Rehabilitation Loan Program; Final Rule

AGENCY: Housing and Urban Development/Office of the Assistant Secretary for Community Planning and Development.

ACTION: Final Rule.

SUMMARY: The Secretary is amending the Section 312 Rehabilitation Loan Program regulations to add authority to waive any of its requirements in individual cases.

EFFECTIVE DATE: August 2, 1979.

FOR FURTHER INFORMATION CONTACT: Craig S. Nickerson, Director, Rehabilitation Management Division, Department of Housing and Urban Development, 451 7th Street, S.W., Room 7162, Washington, D.C. 20410 (202) 755-5970.

SUPPLEMENTARY INFORMATION: There are no comprehensive published regulations for the Section 312 Rehabilitation Loan Program authorized under Section 312 of the Housing Act of 1964, as amended. On April 11, 1979, the Department published an interim rule implementing certain 1978 legislative amendments to Section 312 (44 FR 21750). However, authority to waive the requirements of these regulations in particular cases was inadvertently omitted from the interim rule. Accordingly, the Secretary is providing for the waiver of any requirement of this Part not required by law upon a finding that application of this requirement would adversely affect the achievement of the purposes of Section 312 of the Housing Act of 1964, as amended. Authority to issue waivers pursuant to this Section is intended to be exercised only by Central Office and will be formally reserved to Central Office by appropriate amendment of the Section 312 program delegations of authority.

The Department is not providing for public comment in advance of the effective date of this final rule since the amendment is primarily procedural in nature. In addition, this rule is urgently needed to permit exceptions to be made to certain provisions of the interim rule published earlier; where such provisions may conflict with local rent laws and thereby make Section 312 multifamily loans unavailable in certain jurisdictions, or where the application of other provisions in particular cases may work unnecessary hardships. In view of the immediate need to make such exceptions in order to permit loans already in processing to be approved without undue delay, the Department finds that notice and public procedure with respect to the instant rule is impracticable, and contrary to the public interest.

A finding of inapplicability with respect to environmental impact has been prepared in accordance with Procedures for Protection and Enhancement of Environmental Quality. A copy of this finding is available for inspection and copying in the Office of

the Rules Docket Clerk at the above address.

Accordingly, 24 CFR Part 510 is hereby amended by adding thereto a new § 510.104 immediately following § 510.103. New § 510.104 reads as follows:

**PART 510—SECTION 312
REHABILITATION LOAN PROGRAM**

§ 510.104 Waiver.

The Secretary may in individual cases, waive any requirement of this part not required by law if the Secretary finds that application of such requirement would adversely affect the achievement of the purposes of Section 312 of the Housing Act of 1964, as amended.

(Section 312 of the Housing Act of 1964, as amended, P.L. 88-560, 42 U.S.C. 145b; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535d))

Issued at Washington, D.C., June 22, 1979.

Walter G. Farr, Jr.,

Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 79-20428 Filed 7-2-79; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations; Definition of Authorized Trade Territory, Member of the Authorized Trade Territory; Correction

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Correction.

SUMMARY: This correction document adds the citation of authorities which was inadvertently omitted from FR Doc. 78-31386 (43 FR 51762 (1978)).

EFFECTIVE DATE: November 7, 1978.

FOR FURTHER INFORMATION CONTACT: Stanley L. Sommerfield, Acting Director, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220 (202) 376-0395.

SUPPLEMENTARY INFORMATION: In FR Doc. 78-31386 appearing at page 51762 in the Federal Register of November 7, 1978, the following citation of authorities was omitted:

(Sec. 5, 40 Stat. 415, as amended; 50 U.S.C. App. 5, sec. 620(a), 75 Stat. 445; 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR, 1959-1963 Comp., E.O. 9193, 7 FR 5205, 3 CFR, Comp. Supp., p. 1174, E.O. 9989, 13 FR 4891, 3 CFR, 1943-1948 Comp., p. 748)

Dated: June 27, 1979.

Stanley L. Sommerfield,
Acting Director.

Approved:
Richard J. Davis,
Assistant Secretary.

[FR Doc. 79-20582 Filed 7-2-79; 8:45 am]

BILLING CODE 4810-25-M

31 CFR Part 515

Cuban Assets Control Regulations; Remittances to Close Relatives who are Nationals of Cuba; Correction

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Correction.

SUMMARY: This correction document adds the citation of authorities which was inadvertently omitted from FR Doc. 78-392 (43 FR 1336 (1978)).

EFFECTIVE DATE: January 9, 1978.

FOR FURTHER INFORMATION CONTACT: Stanley L. Sommerfield, Acting Director, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, (202) 376-0395.

SUPPLEMENTARY INFORMATION: In FR Doc. 78-392 appearing at page 1336 in the Federal Register of January 9, 1978, the following citation of authorities was omitted.

(Sec. 5, 40 Stat. 415, as amended; 50 U.S.C. App. 5, sec. 620(a), 75 Stat. 445; 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR, 1959-1963 Comp., E.O. 9193, 7 FR 5205, 3 CFR, Comp. Supp., p. 1174, E.O. 9989, 13 FR 4891, 3 CFR, 1943-1948 Comp., p. 748)

Dated: June 27, 1979.

Stanley L. Sommerfield,
Acting Director.

Approved:
Richard J. Davis,
Assistant Secretary.

[FR Doc. 79-20581 Filed 7-2-79; 8:45 am]

BILLING CODE 4810-25-M

**ENVIRONMENTAL PROTECTION
AGENCY**

40 CFR Part 52

[FRL 1262-7]

**Approval and Promulgation of
Implementation Plans; Maine Revision;
Correction**

AGENCY: Environmental Protection Agency.

ACTION: Correction Notice.

SUMMARY: EPA published a final rulemaking notice in FR Doc. 79-8380

appearing on March 23, 1979 (44 FR 17674) for a revision to the Maine State Implementation Plan. In the section to be amended on page 17675 the number of the paragraph of § 52.1020 is incorrect. The paragraph number should read "(c)(9)" instead of "(c)(8)" and "(9)" substituted for "(8)" under paragraph (c).

FOR FURTHER INFORMATION CONTACT: Ruth Leabman, Air Branch, EPA, Region I, Room 1903, JFK Federal Building, Boston, Massachusetts 02203, (617) 223-5609.

Dated: June 25, 1979.

William R. Adams, Jr.,
Regional Administrator, Region I.

[FR Doc. 79-20645 Filed 7-2-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 180

[FRL 1261-2; PP 8E2114/R214]

**Tolerances and Exemptions From
Tolerances for Pesticide Chemicals in
or on Raw Agricultural Commodities;
Malathion**

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the insecticide malathion on almond shells at 50 parts per million (ppm). The regulation was requested by Interregional Research Project No. 4. This rule establishes maximum permissible levels for residues of malathion on almond shells.

EFFECTIVE DATE: Effective on July 3, 1979.

FOR FURTHER INFORMATION CONTACT: Mrs. Patricia Critchlow, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street SW., Washington, D.C. 20460 (202/426-0223).

SUPPLEMENTARY INFORMATION: On April 23, 1979, the EPA published a notice of proposed rulemaking in the Federal Register (44 FR 23886) in response to a pesticide petition (PP 8E2114) submitted to the Agency by the Interregional Research Project No. 4 (IR-4), New Jersey State Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of California. This petition proposed that 40 CFR 180.111 be amended by the establishment of a tolerance for residues of the insecticide malathion (0,0-dimethyl dithiophosphate of diethyl mercaptosuccinate) in or on the raw agricultural commodity almond shells at 50 ppm. No comments or requests for

referral to an advisory committee were received in response to this notice of proposed rulemaking.

It has been concluded, therefore, that the proposed amendment to 40 CFR 180.111 should be adopted without change, and it has been determined that this regulation will protect the public health.

Any person adversely affected by this regulation may, on or before August 2, 1979, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M-3708 (A-110), 401 M St. SW., Washington, D.C. 20460. Such objections should be submitted in triplicate and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". This regulation has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Effective on July 3, 1979, Part 180, Subpart C, section 180.111 is amended by adding a tolerance for residues of malathion on almond shells at 50 ppm as set forth below.

(Section 408(e) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 346a(e)].)

Dated: June 21, 1979.

Edwin L. Johnson,
Deputy Assistant Administrator for Pesticide Programs.

Part 180, Subpart C, § 180.111 is amended by alphabetically inserting almond shells at 50 ppm in the table to read as follows:

§ 180.111 Malathion; tolerances for residues.

* * * * *	Parts per million
Commodity:	
* * * * *	
Almonds, shells	50
* * * * *	

[FR Doc. 79-20363 Filed 7-2-79; 8:45 am]
BILLING CODE 6560-01-M

40 CFR Part 180

[FRL 1261-6; PP 8E2094 and 9E2135/R213]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Methomyl

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for residues of the insecticide methomyl on avocados and Chinese cabbage at 2 parts per million (ppm) and 5 ppm, respectively. The regulation was requested by the Interregional Research Project No. 4. This rule establishes maximum permissible levels for residues of methomyl on avocados and Chinese cabbage.

EFFECTIVE DATE: Effective on July 3, 1979.

FOR FURTHER INFORMATION CONTACT: Mrs. Patricia Critchlow, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, SW, Washington, D.C. 20460 (202/426-0223).

SUPPLEMENTARY INFORMATION: On April 23, 1979, the EPA published a notice of proposed rulemaking in the Federal Register (44 FR 23887) in response to two pesticide petitions (PP 8E2094 & 9E2135) submitted to the Agency by the Interregional Research Project No. 4 (IR-4), New Jersey State Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, N.J. 08903, on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of California (PP 8E2094) and Arizona (PP 9E2135). These petitions proposed that 40 CFR 180.253 be amended by the establishment of tolerances for residues of the insecticide methomyl [S-methyl N-[(methylcarbamoyl)oxy]thioacetimidate] in or on the raw agricultural commodities avocados at 2 ppm (PP 8E2094) and Chinese cabbage at 5 ppm (PP 9E2135). No comments or requests for referral to an advisory committee were received in response to this notice of proposed rulemaking.

It has been concluded, therefore, that the proposed amendment to 40 CFR 180.253 should be adopted without change, and it has been determined that this regulation will protect the public health.

Any person adversely affected by this regulation may, on or before August 2, 1979, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M-3708 (A-110), 401 M St., SW., Washington, D.C. 20460. Such

objections should be submitted in triplicate and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". This regulation has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Effective on July 3, 1979, Part 180, Subpart C, section 180.253 is amended by adding tolerances for residues of methomyl on avocados at 2 ppm and Chinese cabbage at 5 ppm as set forth below.

[Section 408(e) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 346a(e)].]

Dated: June 21, 1979.

Edwin L. Johnson,
Deputy Assistant Administrator for Pesticide Programs.

Part 180, Subpart C, section 180.253 is amended by alphabetically inserting avocados at 2 ppm and Chinese cabbage at 5 ppm in the table and by revising the item "Vegetables, leafy * * *" as follows:

§ 180.253 Methomyl; tolerances for residues.	
* * * * *	
Commodity	Parts per million
* * * * *	
Avocados	2
* * * * *	
Chinese cabbage	5
* * * * *	
Vegetables, leafy (exc. beets (tops), broccoli, Brussels sprouts, cabbage, cauliflower, celery, Chinese cabbage, collards, dandelions, endive (escarole), kale, lettuce, mustard greens, parsley, spinach, Swiss chard, turnip greens (tops), and watercress)	0.2 (N)
* * * * *	

[FR Doc. 79-20363 Filed 7-2-79; 8:45 am]
BILLING CODE 6560-01-M

40 CFR Part 180

[FRL 1261-7; PP 7E1967/R212]

Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Methyl 3-[(dimethoxyphosphinyl)oxy]butenoate

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).
ACTION: Final Rule.

SUMMARY: This rule establishes tolerances for residues of the insecticide methyl 3-[(dimethoxyphosphinyl)oxy]butenoate on birdsfoot trefoil forage and hay at 1 part per million (ppm). The regulation was requested by the Interregional Project No. 4. This rule establishes maximum permissible levels for residues of the subject insecticide on birdsfoot trefoil.

EFFECTIVE DATE: Effective on July 3, 1979.

FOR FURTHER INFORMATION CONTACT: Mrs. Patricia Critchlow, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, SW, Washington, DC 20460 (202/426-0223).

SUPPLEMENTARY INFORMATION: On April 18, 1979, the EPA published a notice of proposed rulemaking in the Federal Register (44 FR 23094) in response to a pesticide petition (PP 7E1967) submitted to the Agency by the Interregional Research Project No. 4 (IR-4), New Jersey State Agricultural Experiment Station, PO Box 231, Rutgers University, New Brunswick, NJ 08903, on behalf of the IR-4 Technical Committee and the Agricultural Experiment Stations of New York and Vermont. This petition proposed that 40 CFR 180.157 be amended by the establishment of tolerances for residues of the insecticide methyl 3-[(dimethoxyphosphinyl)oxy]butenoate, alpha and beta isomers, in or on the raw agricultural commodities birdsfoot trefoil forage and hay at 1 part per million (ppm). No comments or requests for referral to an advisory committee were received in response to this notice of proposed rulemaking.

It has been concluded, therefore, that the proposed amendment to 40 CFR 180.157 should be adopted without change, and it has been determined that this regulation will protect the public health.

Any person adversely affected by this regulation may, on or before August 2, 1979, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M-3708 (A-110), 401 M St.,

SW, Washington, DC 20460. Such objections should be submitted in triplicate and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". This regulation has been reviewed, and it has been determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Effective on July 3, 1979, Part 180, Subpart C, section 180.157 is amended by adding tolerances for residues of the subject insecticide on birdsfoot trefoil forage and hay at 1 ppm as set forth below.

[Section 408(e) of the Federal Food, Drug and Cosmetic Act [21 U.S.C. 346a(e)].]

Dated: June 21, 1979.

Edwin L. Johnson,
Deputy Assistant Administrator for Pesticide Programs.

Part 180, Subpart C, section 180.157 is revised by reformatting the section into an alphabetized columnar listing and alphabetically inserting birdsfoot trefoil forage and hay at 1 ppm, as follows:

§ 180.157 Methyl 3-[(dimethoxyphosphinyl)oxy]butenoate, alpha and beta isomers; tolerances for residues.

Tolerances are established for residues of the insecticide methyl 3-[(dimethoxyphosphinyl)oxy]butenoate, alpha and beta isomers, in or on the following raw agricultural commodities:

Commodity	Parts per million
Alfalfa	1
Apples	0.5
Artichokes	1
Beans	0.25
Beets, garden (incl. tops)	1
Birdsfoot trefoil, forage	1
Birdsfoot trefoil, hay	1
Broccoli	1
Brussel sprouts	1
Cabbage	1
Carrots	0.25
Cauliflower	1
Celery	1
Cherries	1
Clover	1
Collards	1
Corn, field, forage	1
Corn, grain, field	0.25
Corn, pop, forage	1
Corn, pop, grain	0.25
Corn, sweet (K+C+HR)	0.25

Corn, sweet, forage	1
Cucumbers	0.25
Eggplant	0.25
Gaspeanut	0.25
Grapes	0.5
Kale	1
Lemons	0.25
Lettuce	0.5
Melons (incl. cantaloups, honeydew melon, and muskmelon, determined on the edible portion with rind removed)	0.5
Mustard greens	1
Okra	0.25
Onions (green)	0.25
Oranges	0.25
Parsley	1
Peaches	1
Pears	0.5
Peas	0.25
Peavines	1
Peppers	0.25
Plums	1
Potatoes	0.25
Raspberries	1
Sorghum, forage	1
Sorghum, grain	1
Spinach	1
Squash, summer	0.25
Strawberries	1
Tomatoes	0.25
Turnips	0.25
Turnips, tops	1
Walnuts (determined on the nut meats with shell removed)	0.25
Watermelon	0.5

[FR Doc. 79-20560 Filed 7-2-79; 8:45 am]
BILLING CODE 6560-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[FCC 79-394]

Reregulation of Radio TV Broadcasting

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: As a result of its continuing study of the reregulation of broadcasting and the oversight of the AM, FM and TV broadcast rules, the Commission herein adopts a revision of the rule pertaining to "Public notice of license obligations," which has been amended and rewritten for clarification purposes.

EFFECTIVE DATE: July 10, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Steve Crane, Philip Cross, John Reiser. (202) 632-9660.

SUPPLEMENTARY INFORMATION: In the matter of Reregulation Radio and TV Broadcasting, Order.

Adopted: June 21, 1979.

Released: June 29, 1979.

By the Commission: Commissioner Lee absent.

1. In this Reregulation Order, a complete revision and rewrite is done, for purposes of clarification, on

§ 73.1202, "Public notice of licensee obligations."

2. § 73.1202 requires that commercial AM, FM and TV broadcast licensees present announcements stating their obligation to serve the public interest as a public trustee, and outlines the appropriate manner for the public to express their satisfaction or complaints with station operation. The rule was adopted in October 1973 in the *Final Report and Order* which formulated new requirements for the renewal of broadcast station licenses (43 FCC 2d 1).

3. The purpose of the announcements is to ensure continuing dialogue between the licensee and its community, with the hoped-for result of resolving complaints and problems through dialogue and discussion at the local level.

4. Subsequent to the adoption of the rule, revisions and amendments have been made a number of times as a result of changes in FCC policies and procedures. These changes resulted, in pertinent part, in commercial radio as well as TV licensees being required to place an annual retrospective "problems-programs" list in their local public inspection files, and revealing this action via the text of their "public notice of licensee obligations" announcements. Revisions also initiated the requirement to make a statement in the announcement giving the date of license expiration in addition to the date of the last renewal grant. These paragraphs in the rule, as well as the sample announcements, thus became exactly the same for radio and TV, rather than having different requirements for the AM/FM and TV stations as adopted in the original rule. In this *Order*, the rule is modified when describing the informational requirements for the announcements by stating the requirement applies the same to radio and TV. In addition, the sample announcement is given as applying to the AM/FM and TV services alike.

5. There is an inadvertent omission in the rule, brought about by a printing error, which deleted the last half of the same announcement. It is restored to the rule herein.

6. Notes compiled by the Reregulation Staff, as a result of broadcaster correspondence and phone calls, indicate certain parts of the rule cause confusion. Clarifications in the rule text have been made as warranted.

7. A reformatting of the rule's separate paragraphs, assuring a more comprehensive flow of the rule's directives, is also completed herein.

8. The rewritten rule, embracing these revisions, is attached as the Appendix to this *Order*.

9. These revisions in no way impose additional burdens or remove provisions relied upon by licensees or the public.

10. For further information on this *Order*, contact either Steve Crane, John Reiser or Philip Cross, Broadcast Bureau (202) 632-9660.

11. We conclude that, for the reasons set forth above, adoption of this *Order* will serve the public interest, and inasmuch as these amendments impose no additional burdens or raise no issue upon which comments would serve any useful purpose, prior notice of rulemaking, effective date provisions and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provision of 5 U.S.C. (b)(3)(B).

12. Therefore, *It is ordered*, That pursuant to Section (4)(i) and 303(r) of the Communications Act of 1934, as amended, the FCC's Rules and Regulations are amended as set forth in the attached Appendix, effective July 10, 1979.

(Secs. 4, 303, 48 stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

Federal Communications Commission.
William J. Tricarico,
Secretary.

Appendix

1. Section 73.1202 is substantially rewritten and, effective with this *Order*, will read as follows:

§ 73.1202 Public notice of licensee obligations.

(a) Each licensee of a commercial AM, FM, or TV broadcast station shall make an announcement informing the public of the licensee's obligations to the people and of the appropriate method for individuals to express their opinions of the station's operation. Such announcements shall be aired on the first and sixteenth day of each calendar month throughout the license period except during the period beginning on the first day of the sixth full calendar month prior to license expiration, and ending on the last day of the next to last full calendar month prior to expiration, during which time the renewal application notices in § 73.3580 shall be broadcast. Such announcements shall be aired during the following time periods:

(1) *For TV stations*, the announcement broadcast on the first day of each calendar month shall be scheduled between 6 p.m. and 11 p.m. (5 p.m. and 10 p.m. Central and Mountain time). The announcement scheduled on the

sixteenth day of each calendar month shall be broadcast during the following four-hour time periods in rotating order: 6 a.m. to 10 a.m., 10 a.m. to 2 p.m., and 2 p.m. to 6 p.m., beginning with the 6 a.m. to 10 a.m. period.

(2) *For radio stations*, the announcement broadcast on the first day of each calendar month shall be scheduled either between 7 a.m. and 9 a.m. or between 4 p.m. and 6 p.m. The announcement broadcast on the sixteenth day of each calendar month shall be scheduled during the following time periods in rotating order: 9 a.m. to 1 p.m., 1 p.m. to 4 p.m., and 6 p.m. to 10 p.m., beginning with the 9 a.m. to 1 p.m. period. For stations which do not operate between 7 a.m. and 9 a.m. or between 4 p.m. and 6 p.m., the announcement broadcast on the first day of each calendar month shall be scheduled during the first two hours of broadcast operation and the announcement broadcast on the sixteenth day of each month shall be scheduled during all the other three-hour time periods during the broadcast day in rotating order.

(b) If an emergency arises which prevents the broadcasting of the announcement at the scheduled time, the announcement shall be broadcast on the day following the ending of such emergency at the identical time period in the rotating order specified above.

(c) The announcement for both radio and TV stations shall contain the following information (stations broadcasting in a foreign language should broadcast the announcement in that language):

(1) The station's call letters.

(2) A statement that on (give date of last renewal grant) the station was granted a license by the Federal Communications Commission to serve the public interest as a public trustee until (give date of license expiration).

(3) A statement that on (give the anniversary date of the deadline for filing of the renewal application) the station places in its local public inspection file a list of what the licensee considers to have been some of the significant problems and needs of the service area during the preceding twelve months and some of the programs the station broadcast to help meet those problems and needs.

(4) A statement that the station invites any specific suggestions or comments the public may have regarding station operation and the licensee's programming efforts.

(5) The name and address to which comments should be mailed.

(6) A statement that, unless otherwise requested, all letters received will be available for public inspection during regular business hours.

(7) *Sample announcement.*

On (date of last renewal grant), (station's call letters) was granted a license by the Federal Communications Commission to serve the public interest as a public trustee until (date of license expiration). Each (anniversary date of deadline for filing renewal application) we place in our local public inspection file a list of what we consider to have been some of the significant problems and needs of our service area during the preceding twelve months and some of our programming to help meet those problems and needs. We invite you to send specific suggestions or comments concerning our station operation and programming efforts to (name and mailing address). Unless otherwise requested, all letters received will be available for public inspection during regular business hours.

(8) For TV stations, the licensee's name and address for sending comments shall be given visually as well as orally by the announcer.

(d) During the period beginning the first day of the last full calendar month prior to expiration of the license and until the date of the license renewal, stations shall broadcast the appropriate announcement described herein, except that, in lieu of paragraph (c)(2) above, licensees shall broadcast a statement that the station is licensed by the Federal Communications Commission to serve the public interest as a public trustee and shall *not* mention the date of the last renewal grant or the expiration date of the license period.

(1) Following the date of renewal and commencing on the first or sixteenth day of the month (whichever comes first), the regular announcement shall be resumed and shall be broadcast in accordance with the schedule in paragraph (a) above.

(e) All written comments and suggestions received from the public regarding operation of the station shall be maintained in the local public inspection file, unless the letter writer has requested that the letter not be made public or when the licensee feels that it should be excluded from public inspection because of the nature of its content, such as a defamatory or obscene letter.

(1) Letters shall be retained in the local public inspection file for three years from the date on which they are received by the licensee.

(2) Letters received by TV licensees only shall be placed in one of the following separated subject categories: programming or non-programming. If comments in a letter relate to both

categories, the licensee shall file it under the category to which the writer has given the greater attention.

[FR Doc. 79-20560 Filed 7-2-79; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 68

[RM-3379]

Interpretation of the "Register-Only" Date for Certain Telephone Equipment System Components

AGENCY: Federal Communications Commission.

ACTION: Rule interpretation.

SUMMARY: Section 68.2(c) of the FCC's rules is interpreted as encompassing components used with registrable telephones, data and ancillary equipment. Thus, components connected to such equipment are eligible for "grandfathering" transitional procedures under the FCC's telephone equipment registration program until January 1, 1980. A petition was filed by two equipment suppliers requesting this relief as, in their view, insufficient transitional time would otherwise be available to accommodate their components to the telephone equipment registration program.

DATES: Non-Applicable.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Michael S. Slomin, Policy and Rules Division, Common Carrier Bureau, (202) 632-9342.

Opinion and Order

Adopted: June 25, 1979.

Released: June 26, 1979.

In the matter of Interpretation of the "Register-only" Date for Certain Telephone Equipment System Components in § 68.2 of the Commission's rules and regulations, RM-3379.

1. In a petition filed May 30, 1979, two suppliers of telephone component products (Tone-Commander Systems, Inc. and Suttle Apparatus Corporation, hereafter "petitioners") have requested that § 68.2 of the Commission's rules be changed to assure that "grandfathered" system components may continue to be installed up to January 1, 1980 without registration, and not be classified with those categories of interface-connected equipments whose "grandfathering" privileges are scheduled to expire on July 1, 1979 (e.g., telephones, data and ancillary devices). Public notice was given of this filing on June 4, 1979, and in

response thereto American Telephone and Telegraph Company filed comments which did not oppose a grant of the relief requested by petitioners.

2. As is noted in AT&T's comments, petitioners and others have been aware of their registration obligations for components since release of the Commission's initial order in Docket No. 21182 in April, 1978, 67 F.C.C.2d 1343 (1978). In general, while components which are connected to other pieces of telephone equipment (and not the telephone network itself) are not of themselves registrable as such, the combination of a component plus other equipment is required to be evaluated under the registration program. The Commission's 1978 order was clarified on this point in a reconsideration order released on February 5, 1979, 70 F.C.C.2d 1801 (1979). Petitioners are claiming that in view of such recent clarification, insufficient "grandfathering" time has been available for them to accommodate their component products to the requirements of the registration program.

3. The relevant rule sections involved here are §§ 68.2(b) and 68.2(c) which set forth two different end dates for "grandfathering" privileges. Section 68.2(b), which is applicable to "all terminal equipment other than PBX and key telephone systems" publishes an end date of July 1, 1979, the date which petitioners conclude is applicable to their components. Section 68.2(c), which is applicable to "grandfathered systems including, but not limited to, PBX and key telephone systems" establishes a later end date of January 1, 1980. Petitioners view § 68.2(b) as controlling and accordingly are requesting an expeditious rule change in that section. While components used with single and two-line telephones could be considered "ancillary" devices within the meaning of § 68.2(b), as apparently is assumed by petitioners, the Commission's Docket No. 21182 decisions establish a contrary result.

4. Under the Docket No. 21182 decisions, components such as are supplied by petitioners are not of themselves registrable unless they may be connected directly to the telephone network using an interface specified in § 68.104 of the rules. *See*, 70 F.C.C.2d at 1838-42. Rather, combinations of such components and other equipment which may be connected through such interfaces are registrable. The Commission has concluded that such combinations are "systems", 70 F.C.C.2d at 1842. In view of this, the Bureau believes that component-plus-equipment combinations are also "systems" within

the meaning of § 68.2(c), and accordingly concludes that a rule change is unnecessary for a grant of the relief requested by petitioners.

5. In view of the foregoing, pursuant to authority delegated in § 0.291 of the Commission's rules and regulations, 47 CFR 0.291, it is hereby ordered and declared, that component and add-on devices which are employed in conjunction with one and two line telephone instruments, and with data and ancillary devices, are hereby classified as system components when used with such equipment, and accordingly are subject to the provisions of § 68.2(c)(2) of the Commission's rules. The end date for "grandfathered" component-plus-equipment combinations is therefore January 1, 1980. The provisions of § 68.2(b) which relate to registrable telephones, data and ancillary devices, remain unaffected by this action.

Larry F. Darby,

Chief, Common Carrier Bureau.

[FR Doc. 79-20505 Filed 7-2-79; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 79-16; RM-3146]

FM Broadcast Station in Monroe City, Mo.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and Order.

SUMMARY: Action taken herein assigns a Class A FM channel to Monroe City, Missouri, as that community's first FM channel assignment, in response to a petition filed by Kenneth L. and Myra L. Bass, Rodney L. and Lynette Peterson, and Harold and Henrietta Sprick. A station on this channel could provide a first local aural broadcast service to Monroe City.

EFFECTIVE DATE: August 6, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

REPORT AND ORDER—Proceeding Terminated

Adopted: June 22, 1979.

Released: June 28, 1979.

In the matter of amendment of § 73.202(b), *Table of Assignments, FM Broadcast Stations.* (Monroe City,

Missouri), BC Docket No. 79-16, RM-3146.

1. The Commission here considers a proposal for the assignment of FM Channel 269A to Monroe City, Missouri, as that community's first FM assignment. This proceeding was initiated by a *Notice of Proposed Rule Making*, adopted February 12, 1979, 44 FR 10519, based on a petition filed by Kenneth L. and Myra L. Bass, Rodney L. and Lynette Peterson, and Harold and Henrietta Sprick ("petitioners"). Comments were filed by petitioners in which they reaffirmed their intention to apply for the channel, if assigned.

2. Monroe City is located in the northeast corner of Monroe County (pop. 9,542) adjacent to Marion County and is situated approximately 32 kilometers (20 miles) west of Hannibal, Missouri. The city limits of Monroe City extend across the Monroe County line into Marion County. According to the 1970 U.S. Census, the total Monroe City population in Monroe and Marion Counties is 2,456.¹ There is no local aural broadcast service in Monroe City or Monroe County.

3. Petitioners state that Monroe City is the largest community in the county and serves as the market and trading center for the agricultural region surrounding it. They note that, according to the 1975 U.S. Census Revised, Monroe County's population has increased to 9,900, and attribute this to the beginning of construction of the Clarence Cannon Dam and reservoir. They claim that due to Monroe City's location in relation to the dam and reservoir, an increase in population and business volume can be expected to accelerate the community's growth rate.

4. Since it has been shown that there is a need and demand for an FM assignment in Monroe City, Missouri, and that the proposed station would provide a first local aural broadcast service to Monroe City and Monroe County, we conclude that the public interest would be served by making this assignment.

5. Accordingly, it is ordered, That effective August 6, 1979, the FM Table of Assignments, § 73.202(b) of the Commission's rules, is amended with regard to the community listed below: City: Monroe City, Mo.; Channel No.: 269A.

6. Authority for the action taken herein is found in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

¹ Population figures are taken from the 1970 U.S. Census.

7. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

8. It is further ordered, that this proceeding is terminated.

(Secs. 4, 303, 307, 48 Stat., as amended, 1060, 1082, 1083; (47 U.S.C. 154, 303, 307))
Federal Communications Commission.

Richard J. Shilben,
Chief, Broadcast Bureau.

[FR Doc. 79-20501 Filed 7-2-79; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 81 and 83

"Marine Utility Station"; Clarification of Use and Definition

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Editorial amendment of the Commission's rules defining marine utility stations. This will clarify the intended use of the marine utility station.

EFFECTIVE DATE: July 9, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Penny Wells, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

Order

Adopted: June 22, 1979.

Released: June 28, 1979.

In the matter of editorial amendment of §§ 81.3(n) and 83.3(j) of the Commission's rules defining "marine utility station."

1. By this Order, it is intended to clarify the definition of "marine utility station" as set forth in §§ 81.3(n) and 83.3(j) of the Commission's rules.

2. In a previous effort to simplify our rules, our Report and Order in Docket Nos. 20838 and 20880, released July 25, 1977, deleted the definitions of marine utility ship station and marine utility

coast station and redefined the single term "marine utility station." Among other changes, the amended definition referred to the station as a "portable radiotelephone unit," whereas the prior definition called for a "readily portable" unit. The maximum permissible transmitter power for a marine utility station is 10 watts. No change in practice was intended by the change in wording of the rule, so the staff has continued to interpret the marine utility station definition as requiring handheld radiotelephone units.

3. In at least two instances, applicants have requested marine utility station licenses for 25 watt units which they wish to attenuate to 10 watts, thereby satisfying the station's technical requirements while employing a radiotelephone unit much larger than we originally intended. In these cases, we have found the adjective "portable" ambiguous and inadequate for our purposes. By this rulemaking, we hope to reaffirm our intention that licensed marine utility station units be small, lightweight and readily hand-portable.

4. Authority for this amendment appears in Sections 4(i) and 303(a) of the Communications Act of 1934, as amended, and in § 0.231(d) of the Commission's rules and regulations. Since the amendment is editorial in nature, intended merely to clarify the definition and not to substantially alter it, the prior notice and effective date provisions of the Administrative Procedure Act, 5 U.S.C. 553, do not apply.

5. For information regarding this matter, contact Penny Wells, telephone (202) 632-7175.

6. In view of the above, it is ordered, That the rule amendment set forth in the attached Appendix below shall be adopted effective _____.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082 (47 U.S.C. 154, 303))

Federal Communications Commission.

R. D. Lichtwardt,
Executive Director.

Appendix

Parts 81 and 83 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA-PUBLIC FIXED STATIONS

In § 81.3, paragraph (n) is amended to read as follows:

§ 81.3 Maritime mobile service.

* * * * *

(n) *Marine utility station.* A station in the maritime mobile service consisting of one or more handheld radiotelephone units licensed under a single authorization. Each unit shall be capable of being operated while hand-carried by an individual. The station shall operate under the rules applicable to ship stations when the unit is aboard a vessel, and under the rules applicable to limited coast stations when the unit is on land.

* * * * *

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

In § 83.3, paragraph (j) is amended to read as follows:

§ 83.3 Maritime mobile service.

* * * * *

(j) *Marine utility station.* A station in the maritime mobile service consisting of one or more handheld radiotelephone units licensed under a single authorization. Each unit shall be capable of being operated while hand-carried by an individual. The station shall operate under the rules applicable to ship stations when the unit is aboard a vessel, and under the rules applicable to limited coast stations when the unit is on land.

* * * * *

[FR Doc. 79-20304 Filed 7-2-79; 8:45 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Service Order No. 1384]

Car Service; Chicago & Indiana Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Service Order No. 1384.

SUMMARY: Service Order No. 1384 authorized the Chicago & Indiana Railroad Company to operate between Hammond, Indiana, and the Indiana-Ohio state line east of Decatur, Indiana; and between Decatur, Indiana, and Portland, Indiana.

EFFECTIVE DATE: 11:59 p.m., June 27, 1979, until further order of this Commission.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Carter (202) 275-7840.

SUPPLEMENTARY INFORMATION: In the matter of the Chicago & Indiana Railroad Company authorized to operate

over tracks leased from the State of Indiana: Decided June 26, 1979.

The Public Service Commission of Indiana has terminated the agreement for Rail Service Continuation Assistance with Erie Western Railway Co.

The Chicago & Indiana Railroad Company (CINR) is willing to operate over the line between Hammond, Indiana, and the Indiana-Ohio state line, about 8.2 miles east of Decatur, Indiana; and between Decatur, Indiana, and Portland, Indiana. The State of Indiana has designated CINR to operate over this track. A portion of this track was formerly operated by the Erie Western Railway Co.

An application seeking authority to operate as the designated operator of this line will be filed by CINR. If service over this line is not restored, numerous shippers on this line will not have needed rail service.

It is the opinion of the Commission that an emergency exists requiring the immediate resumption of operations over this line in the interest of the public; 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,

§ 1033.1384 Service Order No. 1384.

(a) *The Chicago & Indiana Railroad Company authorized to operate over tracks leased from the State of Indiana.* The Chicago & Indiana Railroad Company (CINR) is authorized to operate over tracks leased from the State of Indiana between Hammond, Indiana, and the Indiana-Ohio state line, about 8.2 miles east of Decatur, Indiana, a distance of approximately 160.2 miles; and between Decatur, Indiana, and Portland, Indiana, a distance of approximately 26.9 miles.

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

(c) Nothing herein shall be considered as a prejudgment of the application of The Chicago & Indiana Railroad Company seeking authority to operate over these tracks.

(d) *Effective date.* This order shall become effective at 11:59 p.m., June 27, 1979.

(e) *Expiration.* The provisions of this order shall remain in effect until modified or vacated 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. 79-20423 Filed 7-2-79; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1033

[Service Order No. 1275-A]

Car Service; Erie Western Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Service Order No. 1275-A.

SUMMARY: The Erie Western Railway Company is no longer an operating account, the State of Indiana has terminated the operating agreement. Service Order No. 1275-A vacates Service Order No. 1275.

EFFECTIVE DATE: 11:59 p.m., June 27, 1979.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Carter, (202) 275-7840.

SUPPLEMENTARY INFORMATION: In the matter of the Erie Western Railway Company authorized to operate over tracks abandoned by Consolidated Rail Corporation: Decided June 27, 1979.

Upon further consideration of Service Order No. 1275 (42 FR 48882; 43 FR 2395, 31014; and 44 FR 3716), and good cause appearing therefore:

It is ordered,

§ 1033.1275 Service Order 1275.

The Erie Western Railway Company authorized to operate over tracks abandoned by Consolidated Rail Corporation. Service Order No. 1275 is vacated effective 11:59 p.m., June 27, 1979.

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

A copy of 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. 79-20421 Filed 7-2-79; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1033

[Service Order No. 1383]

Priority in Movement of Fuel and Other Essential Commodities

AGENCY: Interstate Commerce Commission.

ACTION: Service Order No. 1383.

SUMMARY: Service Order No. 1383 provides that any railroad which is unable to transport all of the freight traffic which it would normally move by any particular train or engine may give priority in movement, over all other traffic of all essential commodities consigned for domestic use including but not limited to the list in the order.

EFFECTIVE DATE: 11:59 p.m., June 25, 1979, until further order of this Commission.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Carter (202) 275-7840.

SUPPLEMENTARY INFORMATION: Decided June 25, 1979.

Due to the shortage of fuel for the operation of trains, many railroads are curtailing train operations. Supplies of food for humans and farm animals are being depleted. Shipments of fuel and other essential commodities must continue to move promptly. Many railroads are unable to move currently all traffic available. The establishment of priorities for the movement of certain commodities is essential to the national welfare.

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 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,

§ 1033.1383 Priority in movement of fuel and other essential commodities.

(a) Any railroad which is unable to transport all of the freight traffic which it would normally move by any particular train or engine may give priority in movement, over all other traffic of all essential commodities consigned for domestic use including but not limited to the following:

Liquid fuels, including liquefied petroleum gas, diesel fuel, fuel oil, gasoline, etc.

Coal.

Animal and poultry feed.

Food for human consumption.

Grain, soybeans and other agricultural products for processing into foods for either human or animal consumption.

Water and sewage processing supplies and equipment essential to the continuity of operation of water and sewage installations.

Electric power, gas and petroleum, petroleum products, distribution and communication systems supplies, materials and equipment required for the continued operation of such systems.

Military freight on bills of lading issued by transportation officers of the military services.

Material moving on bills of lading specifically certified as essential by the Department of Defense or the Department of Energy.

Empty tank cars which last contained liquid fuel or which the car owner certifies will next be used to transport such commodity.

Empty mechanical refrigerator cars.

United States mail in accordance with emergency orders of the United States Postal Service.

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

(c) *Effective date.* This order shall become effective at 11:59 p.m., June 25, 1979.

(d) *Expiration.* The provisions of this order shall remain in effect until modified or vacated 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. 79-20422 Filed 7-2-79; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1125

Valuation of Land When Railroad's Interest in the Subsidized Property Terminates Upon Abandonment; Interpretation of Standards

AGENCY: Rail Services Planning Office, Interstate Commerce Commission.

ACTION: Publication of Interpretation Number 5. The Maryland Department of Transportation (MD DOT) requested an interpretation of § 1125.6(b) (recodified as § 1125.9(a)(2)) of the Regional Subsidy Standards regarding the valuation of land when the railroad's interest in the subsidized property terminates upon abandonment. The Rail Services Planning Office concludes that the return on the value of the land for subsidy purposes depends upon the extent of the railroad's interest in the property.

FOR FURTHER INFORMATION CONTACT: James Wells, Chief, Cost and Subsidies Branch, Rail Services Planning Office, (202) 275-7283.

Interpretation No. 5, June 25, 1979

On April 27, 1979, the Maryland Department of Transportation (MD DOT) requested that the Rail Services Planning Office (Office) issue an interpretation as to whether § 1125.6(b) of the regulations takes into account the status of title to land in the valuation of subsidized rail properties. Apparently, MD DOT and the Penn Central Corporation (PCC) cannot agree upon what constitutes a reasonable return on the value of the properties over which subsidized services are operated. The major issue is whether the value of land should be included in calculating return on value when the railroad's title to the land terminates upon abandonment.

Section 1125.6(b) was recodified as § 1125.9(a)(2), effective January 1, 1978. All references in this interpretation will refer to the recodified section number.

MD DOT asserts that over 50 percent of PCC's subsidized lines in Maryland suffer from title impairments whereby PCC's easements over the land terminate upon abandonment. MD DOT's position is that the regulations require that the value of the land be determined at the net liquidation value

for other than rail transportation purposes. As a result, MD DOT maintains that, since PCC's easements to the land terminate upon abandonment, PCC cannot realize the benefit of selling the land for non-rail purposes. Accordingly, MD DOT asserts the land is of zero "non-rail" value to PCC and no return on the value of the land is due to PCC under the subsidy regulations.

On May 11, 1979, PCC filed a reply to MD DOT's request and stated its belief that MD DOT is trying to adjust the right-of-way valuation as well as the value of the rail and other track materials. The latter value is not under consideration here; the only issue that will be discussed in this interpretation is the return on the value of the land. The other areas of disagreement may be handled through the arbitration provisions of the regulations, § 1125.9(a)(3)-(a)(6).

In a second letter, dated June 11, 1979, PCC disputed MD DOT's position that more than 50 percent of PCC's subsidized lines in Maryland suffer from title impairments. PCC further asserted that to value the "title-impaired" properties at zero assumes that upon liquidation these properties could not be sold by Penn Central. PCC states that this is not true, and that it can and does sell such properties at full fair market value.

In response to PCC's request for advice, the Federal Railroad Administration (FRA) took the position that a State may take into account the quality of title in negotiating a lease of rail property to be paid with operating assistance funds. FRA stated that since net liquidation value measures the current market value of the railroad's property for other than rail transportation purposes, a reasonable return on the value of the property (and therefore the lease payment) depends upon the current market value of the railroad's interest in the property.

When the Office amended the regulations on July 1, 1974, § 1125.5, valuations of rail properties, subsection (b) was amended by adding the words "for other than rail transportation purposes" (39 FR 24300) to further clarify the term "current market value". In the report that accompanied the July 1, 1974 amendments, the reason for adding these words was stated by the Office (39 FR 24296) as follows: "The words 'subject to applicable zoning and land use regulations' have been inserted to modify the words 'highest and best use' to assure that the use will be a realistic and attainable one. The words 'other than rail transportation' have also been

inserted to modify those words since a notice of intent to discontinue service (because of losses on the branch) necessarily indicates that its highest and best use would not be for that purpose." It can clearly be seen from the reasoning that the properties are not assumed to have a value for rail service, but would have some calculated value for an alternate purposes to the owner. It is on this alternative sale value that the return element is to be calculated.

If the railroad could not realize funds in any amount from the sale or other disposition of the land, then the land has no value to the railroad for alternate uses. Section 1125.9(a)(2) of the standards was not established to provide compensation for properties which cannot be sold if rail service ceases.

The purpose of § 1125.9(a)(2) is to assure that the subsidizer provides to the owner of a property fair compensation for preventing the owner (because of mandatory continued use as a rail line) from realizing the value of the property through sale or other disposition of the property.

The Office cannot address specifically the issues of quality of title, easements, and reversionary clauses. However, these items may affect the value of the subsidized properties. The original and continuing intent of the standards is to compensate the owner of the property by providing for a return on the value of the property. This value is that which could be realized by the owner upon sale or other disposition of the property for non-rail purposes. To the extent quality of title impacts this value to the owner, it is an issue.

The Office interprets § 1125.9(a)(2) of these regulations to mean that the value assigned to railroad property must reflect the extent of the owner's interest and the saleable value to the owner. If the railroad's title to land would be extinguished upon actual abandonment and the land could not be sold by the railroad, then its value would appear to be zero for subsidy purposes. Resolution of the extent of ownership is not within the jurisdiction of the Office. The parties must agree on the extent of ownership before the value can be determined.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-20424 Filed 7-2-79; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 26

Public Entry and Use; Lacassine and Catahoula Wildlife Refuges, Louisiana

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulations.

SUMMARY: The Director has determined that the opening to public entry and use of Lacassine and Catahoula National Wildlife Refuges is compatible with the objectives for which these areas were established and will provide additional recreational opportunity to the public. These special regulations describe the conditions under which public entry and use will be permitted on Lacassine and Catahoula National Wildlife Refuges.

DATES: Effective July 3, 1979.

FOR FURTHER INFORMATION CONTACT:

Russell D. Earnest, Area Manager, 200 E. Pascagoula St., Suite 300, Jackson, Mississippi 39201. Telephone: 601-969-4900.

Bobby W. Brown, Refuge Manager, Lacassine National Wildlife Refuge, Route 1, Box 186, Lake Arthur, Louisiana 70549. Telephone: 318-774-2750.

Stephen K. Joyner, Refuge Manager, Catahoula National Wildlife Refuge, P.O. Drawer LL, Jenà, Louisiana 71342. Telephone: 318-992-5261.

SUPPLEMENTARY INFORMATION: The primary authors of this document are Bobby W. Brown and Stephen K. Joyner.

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires (1) that any recreational use permitted will not interfere with the primary purpose for which the area was established; and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation. The recreational use authorized by these regulations will not interfere with the primary purposes for which these refuges were established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published on November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

§ 26.34 Special regulations concerning public access, use, and recreation for individual national wildlife refuges.

Lacassine National Wildlife Refuge

Public access, use, and recreation are permitted on the Lacassine National Wildlife Refuge, Louisiana on all areas not designated by signs as being closed. Copies of refuge maps are available at the refuge headquarters and from the office of the Area Manager.

Public entry, use, and recreation shall be in accordance with all applicable State and Federal regulations and subject to the following special conditions:

1. Refuge is open to the general public for sightseeing, wildlife and wildlands observation, and photography.
2. Public entry, use, and recreation are permitted from one hour before sunrise until one hour after sunset March 1 through October 15.
3. No airboats may be used on the refuge without *specific* authorization by the refuge manager.

Catahoula National Wildlife Refuge

Public access, use, and recreation on the Catahoula National Wildlife Refuge, Louisiana, are permitted and shall be in accordance with all applicable State and Federal regulations and subject to the following special conditions:

1. Refuge is open to the general public for wildlife and wildlands observation, photography, and study year-round during the daylight hours.
2. No boating is allowed from October 16 through February 29.
3. Corridors open for the transportation of unloaded and encased firearms during State waterfowl seasons are: for vehicle traffic the parish maintained road on the south side of French Fork of Little River in Sections 8 and 9, Township 6N, Range 4E; and for foot traffic only the unfenced land on French Fork Ridge north of Little River in Sections 3, 4, and 9, Township 6N, Range 4E and the Service road along Old River in Section 14, Township 7N, Range 4E.

These special regulations supplement the regulations which govern public entry and use and transportation of firearms on national wildlife refuges generally which are set forth in Title 50, Code of Federal Regulations. The public is invited to offer suggestions and comments at any time.

Dated: June 21, 1979.

Russell D. Earnest,
Area Manager.

Proposed Rules

Federal Register

Vol. 44, No. 129

Tuesday, July 3, 1979

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Ch. II]

Omnidirectional Citizens Band Base Station Antennas; Development of a Consumer Product Safety Standard by the Commission

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of Commission intent to develop a proposed consumer product safety standard.

SUMMARY: The Commission announces that it intends to develop a proposed consumer product safety standard for omnidirectional Citizens Band base station antennas that would reduce the risk of injury to consumers caused by electric shock occurring when the antenna comes into contact with electrical power lines while the antenna is being put up or taken down. The Commission has determined that it is more expeditious for the Commission to develop this standard itself than for interested parties outside the Commission to develop the standard. The Commission seeks public comment on its determination to develop the standard itself. The Commission also asks persons interested in participating in the standard development proceeding to notify the Commission of this interest.

DATES: Interested persons may submit written comments concerning the Commission's decision to develop a safety standard itself rather than to seek offers to develop a standard until August 2, 1979.

ADDRESSES: Comments should be submitted to the Secretary, Consumer Product Safety Commission, 3rd Floor, 1111 18th Street, NW, Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Carl Blechschmidt, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207, phone (301)492-6557.

SUPPLEMENTARY INFORMATION:

A. Background

The Commission estimates that approximately 220 persons in 1975, 275 persons in 1976, and 220 persons in 1977 were electrocuted in incidents involving communications antennas. The vast majority of these deaths occurred when the antennas contacted electric power lines while being put up or taken down. Typically, these incidents occur when the antenna contacts the power line while the antenna is being transported to the erection site or when it falls into a power line because it gets out of the control of the persons who are putting it up or taking it down. The Commission estimates that over 70 percent of the antennas involved in these accidents are Citizens Band (CB) base station antennas.

As a result of the information that it received concerning these deaths, and in response to a petition filed with the Commission by Lawrence H. Chapman, on June 29, 1976, the Commission issued a rule (16 CFR Part 1402) requiring manufacturers and importers of (1) outdoor Citizens Band (CB) base station antennas, (2) outdoor television antennas, and (3) antenna supporting structures to provide purchasers with (a) instructions on how to avoid the hazard of contacting electric power lines with the antenna or supporting structure while putting it up or taking it down, (b) labels on the antennas and supporting structures warning of this hazard and referring the reader to the instructions, and (c) statements on the packaging or parts container, and at the beginning of the instructions, warning of this hazard and referring the reader to the instructions. This rule was intended to help prevent injuries and death from electric shock caused by contact with electric power lines when persons put up and take down antennas or antenna supporting structures. The Commission reasoned that if consumers knew of the danger and how to avoid it, they would be able to take the necessary steps to protect themselves. A detailed discussion of the rule and the reasons for issuing it is in the Federal Register document that issued the rule (43 FR 28392; June 29, 1978).

The Commission believes that the labeling rule of Part 1402 will reduce the deaths that occur due to the contact of television and CB base station antennas

with electric power lines. However, the Commission also believes that a standard which would insure that the antenna would not transmit a harmful amount of electricity to the installer if the antenna did contact a power line would address the risk of electrocution more effectively and thereby cause a greater reduction in deaths.

The Commission contracted with Systems Consultants, Inc. for a study of the technical feasibility of a safety standard that would address the risk of electrocution associated with CB antennas. The study, entitled "Feasibility Study for a Citizens' Band Base Station Antenna Standard," concluded that insulating the antenna was the most promising approach for providing protection. Copies of the study and the other materials that the Commission has concerning the feasibility of a safety standard for antennas may be obtained from the Office of the Secretary.

After considering the information that is available to it, the Commission has preliminarily determined that a consumer product safety standard is necessary to eliminate or reduce an unreasonable risk of injury that is associated with CB base station antennas. However, the Commission recognizes that directional antennas and omnidirectional antennas present different questions of technical feasibility and cost. The directional type of CB base station antenna is generally heavier and more complex than the omnidirectional type of antenna due to the larger number of elements that are required to produce its directional characteristics. Because of this, the Commission believes that a standard applicable only to omnidirectional CB base station antennas can be developed more quickly than a standard that would be applicable to both directional and omnidirectional CB base station antennas. In addition, most of the electrocution accidents associated with CB antennas involve the more common omnidirectional type of antenna. For these reasons, the scope of the standard development proceeding is limited to omnidirectional antennas. The Commission anticipates that the technical information that is obtained during the development of a standard for omnidirectional antennas will also be applicable to a standard for

directional antennas. The Commission will continue to evaluate the feasibility of a standard for directional antennas, and if it appears that such a standard is feasible, it will address the desirability of a mandatory standard for directional antennas after a standard for omnidirectional antennas has been developed.

B. How the Proposed Standard Will Be Developed

Under the Consumer Product Safety Act, a proposed consumer product safety standard may generally be developed in the following ways:

1. The Commission may solicit offers from persons or organizations outside the Commission to develop a recommended standard. Persons submitting such offers are referred to as "offerors," and the development of recommended standards in this manner is called the "offeror process."
2. The Commission may invite persons or organizations outside the Commission to submit to the Commission an existing standard which could be proposed as a consumer product safety standard.
3. The Commission may publish an existing standard as a proposed consumer product safety standard.
4. The Commission may develop the proposed standard itself if the Commission determines that it is "more expeditious" than development by the offeror process.

In the case of the electrocution hazard associated with CB base station antennas, the Commission is not aware of any standard issued, adopted, or proposed by any Federal department or agency or by any other qualified agency, organization, or institution that would adequately reduce the risk and could be published as a proposed standard by the Commission.

The Electronic Industries Association (EIA) has an ad hoc committee working toward the development of a standard for omnidirectional CB base station antennas. However, after communicating with EIA, the Commission cannot at this time conclude that this development effort will result in a standard that would be suitable for prompt proposal as a mandatory standard. Therefore, the Commission has decided to proceed with the development of a mandatory standard. (However, the Commission's staff will monitor EIA's development effort, and the Commission intends to consider any standard developed by EIA to determine if the standard could be proposed by the Commission as a mandatory standard.)

In determining whether a standard should be developed by the Commission itself rather than through the offeror process, the Commission is required to consider the following factors.

1. The nature of the risk of injury associated with the product.
2. The expertise of the Commission with respect to the risk of injury.
3. The expertise of the Commission in developing consumer product safety standards.
4. The resources available to the Commission and the priorities established by the Commission.

How each of these factors applies to the development of a mandatory safety standard for omnidirectional CB base station antennas is discussed separately below:

1. *The nature of the risk of injury associated with the product.* As discussed above, the risk of injury to be addressed by the standard is that of electrocution while the antenna is being put up or taken down. This risk of injury was studied by the Commission's staff during the development of the labeling rule for CB base station and television antennas discussed above. The Commission's staff is fully familiar with the details of the incidents that have been reported to the Commission, and the Commission believes that the staff is at least as qualified as any offeror to analyze and identify the nature of the risk of injury associated with this product.

2. *The expertise of the Commission with respect to the risk of injury.* Also as noted above, the Commission staff has developed a labeling rule designed to reduce the risk of injury associated with this product. The staff has also evaluated a contractor's report concerning the feasibility of a safety standard to reduce this risk of injury. In addition, the staff has been monitoring the progress of Electronic Industries Association committee that is working on the development of a voluntary standard to address this risk. As a result of these previous activities, the Commission's staff is fully aware of all aspects of the risk of injury and of the techniques which are likely to be successful in reducing the risk. Many of the groups that could be considered potential offerors would have to duplicate much of what the Commission's staff has already done before they could proceed with the development of a standard. Accordingly, the Commission believes that the fact that the Commission already has a high degree of expertise with respect to the risk of injury and the feasibility of a standard would tend to make it more

expeditious for the standard to be developed by the Commission rather than by an offeror.

3. *The expertise of the Commission in developing consumer product safety standards.* The Commission has issued four safety standards that were developed under the offeror process. The Commission has also initiated three other proceedings under section 7 of the act to develop consumer product safety standards.

In addition to the development of the standard itself, before a standard can be promulgated by the Commission, the Commission must make the extensive findings required by section 9 of the act relating to the need for, and impact of, the standard and must prepare a detailed technical rationale showing why the requirements of the standard are reasonably necessary to reduce or eliminate an unreasonable risk of injury associated with the products.

In the past, the Commission staff has found it necessary to expend large amounts of time, money, and staff effort to develop data relevant to section 9 findings and to modify, rewrite, or develop additional technical rationale for recommended standards that have been developed by offerors. It appears that many of the deficiencies that the staff has perceived in these recommended standards may have resulted because the offerors involved did not have extensive experience with the development of mandatory safety standards. However, as a result of working with a number of mandatory safety standards that have been developed under the CPSA as well as under the other statutes administered by the Commission, the Commission's staff has developed considerable expertise that can be applied to the development of consumer product safety standards.

A preliminary estimate of the length of time, and the amount of staff and monetary resources, that would be required respectively for offeror and Commission development of a proposed standard was prepared by the staff and is given below.

	Offeror	In-house
Time for standard development (mo.)	19	21
Time to promulgation (mo.)	32	33
Staff months req'd	120.7	178.1
Contract funds (\$)	527K	384K

These staff estimates, however, are based on the assumption that it will not be necessary to do extensive rewriting or technical work on any standard developed by an offeror. Under this "best case" assumption, there is only

one month's difference in the time necessary to promulgate a standard developed by the offeror process as opposed to development by the Commission.

However, the possibility that the offeror's submission will be suitable for proposal without extensive additional

work is not supported by the history of the standards that have been previously developed by offerors. The listing below shows that it has been necessary to spend long periods after submission of an offeror's recommended standard before a standard suitable for proposal, and its supporting material, is developed.

Product	Date started	Date offeror submitted recommended standard	Date standard proposed by CPSC
Swimming pool slides	Oct. 24, 1974	May 30, 1975	Sept. 15, 1975.
Architectural glazing	May 28, 1974	Jan. 24, 1975	Feb. 11, 1976.
Matchbooks	Sept. 4, 1974	Jan. 31, 1975	Apr. 1, 1976.
Power lawn mowers	July 22, 1974	July 17, 1975	May 16, 1977.
Miniature Christmas tree lights	March 31, 1977	Nov. 16, 1977	May 3, 1978.

As shown above, the time required for the Commission to evaluate, revise, and supplement the offeror's submission and propose a standard has varied from 3½ months to almost 2 years. Three of the five proceedings listed above took more than one year from the submission of the offeror's recommended standard to the time of proposal. Therefore, if there were a need for the Commission staff to do additional work on any standard recommended by an offeror for omnidirectional CB base station antennas, many additional months could be added to the length of time estimated above for offeror development.

As explained above, there is a severe risk of electrocution while CB base station antennas are being erected or taken down. A performance standard that would test for adequate insulation of these antennas would be a relatively complicated one to develop. Because of the severe risk associated with the product, the Commission believes that it is essential that a standard be developed in the shortest possible time and with the maximum likelihood that the standard that is developed will be suitable for promulgation as a consumer product safety standard. In view of the expertise of the staff in the development of such standards, the Commission concludes that the best way to insure that these goals are achieved is for the Commission to develop the standard itself rather than by using the offeror process.

4. *The resources available to the Commission and the priorities established by the Commission.* As noted above, the Commission staff has roughly estimated that an offeror process to develop this standard would

entail 120.7 staff months of effort and \$527,000 in contract funds, while development by the Commission would involve 178.1 staff months and \$348,000 in contract funds. The number of deaths that have been caused by this risk of injury is such that the effort to develop a safety standard for CB base station antennas is very high in the Commission's priorities. The Commission believes that it is entirely appropriate for the staff to expend more work on such a high priority project than it might spend on a project involving a less severe risk of injury. In addition, if the standard were to be developed by the Commission, there would be a savings of \$143,000 in contract funds that the Commission could use for other activities.

After considering the factors discussed above, the Commission has determined that it will be more expeditious for the Commission to develop a consumer product safety standard for omnidirectional CB base station antennas itself than for it to develop the standard by an offeror process.

The decision for the Commission to develop this standard itself does not mean that the Commission will not use the offeror process when appropriate in the development of future consumer product safety standards. The offeror process can be a useful way to develop standards with the expenditure a minimum of staff time. In the case of a standard for CB base station omnidirectional antennas, however, the need for a workable and effective standard to be developed as quickly and as inexpensively as possible must take precedence.

C. Public Participation

Section 7(d)(4) of the act requires that the Commission issue regulations governing the Commission's development of proposed consumer product safety rules by the Commission. These regulations must include requirements for notice and opportunity by interested persons (including representatives of consumers and consumer organizations) to participate in the development of such standard. Since the option of the Commission itself developing standards was recently enacted, regulations applicable to these proceedings have not been issued. However, the Commission has recently proposed regulations for the Commission development of proposed standards (44 FR 31208; May 31, 1979) and plans to issue regulations in final form by August 15, 1979.

In the case of CB base station antennas, it will also be necessary for the Commission to contract for technical assistance in the standard development effort. After this initial contracting effort is underway, and after the regulations for development of standards by the Commission have been issued, the Commission will publish a Federal Register notice formally beginning the standard development proceeding, stating the development plan for the standard, and describing the opportunity for participation of interested persons in the development of the standard. The Commission expects to publish this additional notice by August 15, 1979.

In the meantime, the Commission is interested in compiling a list of persons who would be interested in participating in the development of the proposed standard for omnidirectional CB base station antennas. Interested persons should provide the Office of the Secretary with their name and address and a description of their experience, qualifications, and interest. The Commission will send to those persons who express an interest in participating in this proceeding copies of the Federal Register notice that describes the opportunity for public participation. The Commission is especially interested in obtaining the names of technically oriented consumers who have no financial interest in the manufacture or use of antennas.

D. Public Comment on the Determination for the Commission To Develop the Standard

The act also provides that the Commission shall give interested persons an opportunity to submit written comments to the Commission

during the 30 day period following publication of its determination to develop a standard itself. Even though the Commission does not intend to formally begin the standard development proceeding until August, 1979, the Commission is announcing its determination at this time in order that it may receive public comment as soon as possible. Accordingly, interested persons may submit written comments on the Commission's determination to develop a standard itself for CB base station omnidirectional antennas by August 2, 1979. The Commission will consider any timely comments that may be submitted before developing a proposed standard itself.

E. Conclusion

Therefore, under section 7(b) of the Consumer Product Safety Act, 15 U.S.C. 2056(b), and after considering the factors specified in section 7(b)(2) of the act, the Commission states that it intends to develop a proposed consumer product safety standard for omnidirectional Citizens Band base station antennas.

Dated: June 22, 1979.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 79-20437 Filed 7-2-79; 8:45 am]

BILLING CODE 6355-01-M

[16 CFR Part 1201]

Safety Standard for Architectural Glazing Materials; Proposed Partial Revocation of Standard; Notice of Oral Presentation

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed Partial Revocation of Standard; Notice of Oral Presentation.

SUMMARY: This notice announces procedures for a public meeting at which interested persons will be given an opportunity to orally present data, views or arguments concerning the proposed partial revocation of the Safety Standard for Architectural Glazing Materials published in the Federal Register of May 31, 1979 (44 FR 31218).

DATES: (1) Written comments concerning the proposed partial revocation should be submitted by July 30, 1979. (2) There will be an opportunity for interested persons to orally present data, views or arguments on July 16, 1979 at 9:30 a.m. Those wishing to make oral presentations should have notified the Office of the Secretary by July 2, 1979. A summary or copy of testimony is to be

submitted to the Office of the Secretary by July 9, 1979.

ADDRESSES: Comments, summaries or copies of testimony should be sent to: Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207. Received material may be seen in, or copies obtained from the Office of the Secretary, 1111 18th St. NW., Third Floor, Washington, DC.

Hearing location: CPSC Hearing Room, 1111 18th St. NW., Third Floor, (9:30 a.m.), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harry I. Cohen, Office of Program Management, Consumer Product Safety Commission, Washington, DC 20207, (301) 492-6453; for information on the oral presentation, contact Richard Danca or Sheldon Butts, Office of the Secretary, (202) 634-7700.

SUPPLEMENTARY INFORMATION: The oral presentation will take place on July 16, 1979 before the members of the Commission, with the Chairman presiding, and will be conducted in accordance with the Commission's procedural regulations for oral presentations concerning consumer product safety rules, 16 CFR Part 1109. These procedural regulations provide that the purpose of the oral presentation is to give interested persons an opportunity to participate in person in the Commission's rulemaking proceedings. The oral presentation is an informal, non-adversary, legislative-type proceeding at which there are no formal pleadings or adverse parties.

Persons wishing to make oral presentations must have notified the Office of the Secretary in writing on or before July 2, 1979, and must provide the Office of the Secretary with a summary or copy of the testimony to be presented, including an estimate of the amount of time required, on or before July 9, 1979. The oral presentation will begin at 9:30 a.m. in the Commission's hearing room, 3d floor, 1111 18th Street, NW., Washington, D.C.

As indicated in the proposed partial revocation published on May 31, 1979, interested persons also are invited to submit written comments concerning the proposal on or before July 30, 1979.

Dated: June 27, 1979.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 79-20678 Filed 7-2-79; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[18 CFR Ch. I]

[Docket No. RM79-56]

Regulations Implementing the Second Stage Incremental Pricing Provisions of the Natural Gas Policy Act of 1978

Issued: June 28, 1979.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Federal Energy Regulatory Commission (FERC) requests comments on the concept of integrating incremental pricing and curtailment policies that relate to industrial users of natural gas. The FERC seeks to explore whether alternative fuel prices designated by industrial customers could form a common basis for determining both the price of natural gas as well as curtailment priorities. A study proposal presented for comment would create a bidding mechanism for allocating natural gas among industrial users.

DATES: Comments should be filed by August 20, 1979. An informal conference will be held August 7, 1979.

ADDRESSES: All comments to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (Reference Docket No. RM79-56).

FOR FURTHER INFORMATION CONTACT: Walter W. Schroeder III, Executive Assistant to the Chairman, Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, D.C. 20426, (202) 275-4194.

Inquiry Into the Potential To Interface Incremental Pricing and Curtailment Policy

Issued: June 28, 1979.

The Commission seeks public comments on a proposal, hereinafter referred to as a "study proposal", that would link incremental pricing and curtailment policy. The Natural Gas Policy Act requires that industries using interstate natural gas as a boiler fuel pay a price equal to the cost of alternative petroleum fuels. Natural gas curtailment policies allocate natural gas during times of shortages in order to protect high priority customers.

The basic feature of the study proposal is to allow each industrial user subject to incremental pricing to determine its own alternative fuel value.

This alternative fuel value would then determine each user's curtailment status. Users choosing a low alternative fuel price would receive correspondingly low priority status, so that they would be curtailed prior to users choosing higher priced alternative fuels.

The Commission is interested in this proposal for a number of reasons. First, it is an intriguing approach to curtailment policy because it appears to address many of the problems that the courts have expressed with respect to current end use curtailment policy. Second, the proposal is viewed by some Commission staff as a means of lessening perceived administrative and economic burdens associated with incremental pricing. Finally, the proposal seeks to use market forces rather than regulations to create a stable and fair system for allocating supplies and costs of natural gas.

The Commission is in general accord with the objectives underlying the study proposal. But many of the concepts and operational aspects of the suggested approach deserve the fullest possible public review and discussion. Accordingly, the attached study proposal is offered at this time. Any proposed rule that may develop from the study proposal will be issued no sooner than September 1, 1979.

Comment Procedures

Interested persons and groups are invited to participate in this inquiry by submitting written comments. A written comment period will extend through August 20, 1979. Near the end of this comment period, the Commission intends also to convene an informal conference at which parties may orally present their views on the matters raised.

Written comments should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Any comments received will be included in a public reading file in the Commission's Office of Public Information.

By direction of the Commission,
Kenneth F. Plumb,
Secretary.

A Study Proposal To Interface Incremental Pricing and Curtailment Policy

Background

Two of the most difficult tasks before the Commission are to revise natural gas curtailment programs and to implement incremental pricing. The courts have ordered this Commission to review the

curtailment plans of interstate pipelines to insure that they can be justified in terms of their effectiveness in protecting high-priority uses. The court's concern stems largely from the fact that many curtailment plans are based upon end-use patterns that existed in 1972; the significant changes in interstate demand and supply patterns in recent years have caused the courts to question whether 1972 data is too "stale" to serve as a proper basis for allocating current or future natural gas shortages.

Meanwhile, the Natural Gas Policy Act of 1978 requires that the Commission construct an incremental pricing program that will peg the cost of natural gas to industrial boiler fuel users served by interstate pipelines at the price of alternative petroleum fuels.

These two tasks place extremely complex administrative responsibilities upon this Commission. We will have to take action on many interrelated issues directly affecting thousands, if not millions, of parties with different and often competing interests. Because of the potential adverse consequence to the public if these tasks are not properly designed and administered, the Commission invites comments on a study proposal to allow self-compensating market pressures to shape curtailment and incremental pricing policies.

Specifically, the proposal under study would permit each industrial natural gas user subject to incremental pricing to self-nominate its alternative fuel price ceiling while, at the same time, using this self-nominated alternative fuel ceiling as the basis for determining the user's curtailment priority. Simply put, this proposal would let each industrial customer subject to incremental pricing decide for itself how much it values natural gas. Incremental pricing will assure that industrial customers who nominate a relatively high priced alternative fuel (Number 2 fuel oil) will actually pay more for their gas than those who nominate lower priced Number 6 fuel oil. But the proposed curtailment policy would afford higher priority status to users nominating a higher priced alternative fuel so that it would be relatively more certain that its natural gas needs will be met.

This study proposal describes, in relatively greater detail than has been offered to date, a self-determination approach to resolving many of the complex issues concerning incremental pricing and curtailment policy. Some potential advantages and problems associated with such an approach are also discussed. We invite comments on both the specific issues raised in this

proposal, and on the general concepts embodied in the approach.

Program Objectives

The approach outlined below takes as its point of departure the proposed rule in RM79-21 governing the alternative fuel price ceiling applicable to large industrial boiler fuel users of interstate natural gas adopted by the Commission on May 9. That proposed rule contemplates three possible alternative fuel ceilings: Number 2 (distillate) fuel oil, low sulphur Number 6 (residual) fuel oil, or high sulphur Number 6 fuel oil. Under section 204 of the Natural Gas Policy Act, the Commission is given authority to reduce the alternative fuel ceiling from Number 2 fuel oil to no lower than Number 6 fuel oil. The proposed rule in RM79-21 permits each non-exempt user to self-certify his alternative fuel on the basis of actual use or engineer-certified capability of such use. This proposed self-certification is self-executing; the Commission merely requires record retention to permit auditing of user certificates.

In essence, the self-nomination approach to incremental pricing contained in RM79-21 is designed to avoid the problem associated with the Commission imposing too high an alternative price ceiling upon some industrial users, driving them from natural gas to other fuels, and causing the remaining higher priority customers to bear a larger proportion of their pipeline's fixed costs. Incremental pricing, improperly administered, may disadvantage the very high-priority customers it is intended to protect.

The approach in RM79-21 should all but eliminate this concern. But the proposed rule introduces other troubling considerations. There is a considerable price differential between Number 2 and Number 6 fuel oil prices (roughly \$3.00/MMBtu for Number 2 versus \$2.10/MMBtu for high-sulphur residual fuel oil in January, 1979). Given this price differential, users have a strong incentive to abuse the self-nomination system by alleging capability to burn the lowest priced alternative fuel, even where no such actual capability exists. A related concern is that users may feel compelled to install Number 6 fuel burning capability even in circumstances where it is not a suitable alternative to gas, solely in order to acquire a legal right to lower prices for natural gas. Some witnesses at recent hearings on RM79-21 stated that such conversions to Number 6 capability would be not only economically wasteful, in that they would entail

unproductive conversion expenditures, but would also disadvantage high-priority users, whose insulation from increasing gas purchase costs will have been significantly dissipated if incrementally priced users obtain their gas at low prices.

The self-determination approach to incremental pricing and curtailment policy, hereinafter referred to as industrial end-use deregulation, builds upon the advantages originating in the three-tiered alternative fuel mechanism in RM79-21. But under the end-use deregulation plan, the incentive for non-exempt users to misrepresent their alternate fuel burning capability, or to make any potentially non-economic conversion investments, will be virtually eliminated. Even more important than its ability to reconcile possible disadvantages associated with implementing incremental pricing, end-use deregulation could serve as a way of resolving many of the possible inequities caused by existing curtailment policy.

Under the end-use deregulation approach each industrial end-user subject to incremental pricing will be free to choose among the three tiers of alternate fuel prices for purposes of incremental pricing. Actual capability to burn the nominated price will not be required. The incremental pricing mechanism will assure that the industrial customer actually pays the nominated alternative fuel price for natural gas received.

The user's alternative fuel nomination will, however, also determine his curtailment priority. A local distribution company in curtailment will first curtail those industrial customers nominating a high-sulphur (low quality) residual fuel oil price. Second to be curtailed within this incremental pricing category would be low-sulphur Number 6 fuel oil users. Finally, Number 2 fuel oil users would receive the highest priority among the non-exempt industrial category served by each local distribution company. The incentive to self-nominate a low-priced alternate fuel for incremental pricing purposes will thus be counterbalanced by an equally strong incentive to nominate a high enough price to obtain desired supplies.

A further possible refinement to this approach would permit users to nominate multiple alternate fuels. For example, a user could nominate 20 percent of its requirements at the Number 2 fuel oil price. The remaining 80 percent could be nominated at a lower priced fuel.

While styled to permit each user to nominate its alternate *fuel* (with the assumption that EIA will monitor and

publish the price of each fuel) this end-use deregulation approach could just as easily operate by permitting each user to simply nominate an alternate fuel *price*, without reference to any specific fuel type. Under Title II of NGPA, users would not be able to nominate a price lower than the price of Number 6 Fuel oil. Curtailment priorities would then be determined according to different price ranges, rather than nominated fuels. An advantage of specifying a price rather than a fuel type is that this would eliminate the administrative burdens of collecting, processing, and publishing prices of fuel oil across the country, as presently required by the proposal in RM79-21. But both approaches would appear to give the same general results. The approach outlined in this staff proposal is offered to focus attention on conceptual issues rather than on specific mechanics. Much of the detail in the following pages is subject to considerable refinement, and is intended primarily to give clarity to the concepts.

Program Scope and Operation

Specific details of how industrial end-use deregulation might operate at the local distribution company and interstate pipeline levels are proposed below. A discussion of the economic, political, and legal implications of the approach follows the discussion of local distribution company and pipeline operation.

Scope

The philosophy behind industrial end-use decontrol is that the best mechanism for allocating natural gas among low-priority users is price. High-priority users will have first call upon system supply gas. But low-priority users will be free to bid among themselves for volumes not reserved for high-priority users. We specifically seek comments on what categories of users, in addition to large industrial boiler fuel users, should be made subject to end-use deregulation.

Electric utility boiler fuel users, who are normally considered low priority, are excluded by Title II of the NGPA from incremental pricing. It is not clear, therefore, whether end-use deregulation can be applied to these users. Assuming that electric utility boiler fuel users are prime ERA targets for coal conversion under the Fuel Use Act, it may make the most sense to give electric utilities high-priority access to natural gas if they are either subject to a coal conversion order or have voluntarily provided sufficient evidence that they will convert to coal within a reasonable period of time,

perhaps five years. This would give electric boiler fuel users the benefit of rolled-in pricing as a means and an incentive for acquiring coal burning equipment.

Low-priority users could, under the NGPA, include other industrial users. Agricultural and small boiler fuel users, along with process and feedstock users, may by rule be added to the category of users subject to incremental pricing 18 months after enactment of the NGPA, or May 1980. The scope issue is important, because the broader the pool of users subject to end-use deregulation, the more effective the approach becomes both for shielding high-priority users from NGPA price increases and for fully allocating shortages of natural gas supplies.

Local Distribution Company Operation

In order to give industrial users a balance of certainty and flexibility under this program, it is proposed that each industrial user be permitted to change his nominated alternate fuel price once each year. The "open season" for changing one's alternate fuel nomination should probably occur during a spring or summer month when supply and demand are most likely to be in balance. This period is also appropriate because it is the annual planning period for most local distribution companies and pipelines. Comments on the appropriateness of shorter or longer nominating intervals are invited.

As will be discussed more fully below in the section dealing with interstate pipeline operation under the plan, each local distribution company's entitlement of total natural gas from the interstate pipelines serving the local distribution company will initially be based upon present curtailment volumes. Because current curtailment plans appear to create variation among local distribution companies as to the supply condition confronting low-priority industrial customers who will be subject to incremental pricing, the resulting nominated alternate fuel price levels could vary significantly among local distribution companies.

For example, some local distribution companies could find themselves selling virtually all of their incrementally-priced volumes of natural gas at the Number 2 price equivalent whereas another local distribution company may be in such a surplus condition that none of its incrementally-priced industrial customers would see any need to bid higher than the high-sulphur (lowest priced) Number 6 fuel oil price. In the long run, it is proposed that these

imbalances be corrected through the operation of a modified pro rata approach to interstate pipeline curtailment plans that would each year move a small amount of additional gas away from local distribution companies with surplus gas, as measured by the average price paid by incrementally-priced industrial users, and toward those distribution companies with relative supply shortages.

But in the short run, it may be appropriate to allow local distribution companies to sell low-priority gas among themselves. Local distribution companies enjoying a temporary surplus might be permitted to sell gas at market prices to any other local distribution company able to profitably resell the gas to incrementally-priced industrial customers.

Interstate Pipeline Operation

Interstate pipeline curtailment plans would recognize the inherent higher priority and "public utility" nature of service provided to residential, small commercial, school, hospital and essential agricultural users. Interstate pipelines would be required to allocate natural gas first among their local distribution companies on the basis of these high-priority needs. Current high priority requirements would be measured on the basis of actual high-priority consumption in the previous year and then adjusted by projected growth and/or weather factors. To the extent that the cumulative requirements of all high priority customers are less than the total supply of an interstate pipeline, the remaining low priority volumes would be allocated on a modified pro rata basis to local distribution companies. The modified pro rata aspect of an interstate pipeline's curtailment plan would increase slightly (over the previous year) the fraction of low priority gas allocated to those local distribution companies serving industrial markets that are paying at or near ceiling prices (the Number 2 fuel oil price equivalent) and which would presumably be able to put additional supplies to a relatively higher and better use. The extra allocation of gas would come from reduced allocations to those local distribution companies who are serving industrials at lower tier prices, reflecting a relative surplus of natural gas for the incrementally-priced user group. When all local distribution companies on an interstate pipeline are serving incrementally priced users at roughly the same delivered price, then there would be no adjustment to each

company's fractional entitlement to low-priority gas in the subsequent year.

An example will help. An interstate pipeline serves two distribution companies. Seventy percent of the natural gas sold by the interstate pipeline is for high priority requirements, and is allocated to fully meet those requirements. Assume that in 1980, distribution company A was allocated two-thirds (66 percent) of the remaining low priority volumes, and sold these volumes at an average price of \$2.50 per Mcf. Distribution company B received the other 33 percent of the low priority volumes, but sold those volumes at an average price of \$3.25 per Mcf. The proposed interstate pipeline allocation scheme would increase distribution company B's allocation fraction for 1981 from 33 percent to, say, 35 percent. Distribution company A's allocation fraction would fall accordingly.

This pipeline allocation mechanism provides for a relatively small change in each local distribution company's allocation fraction in any year. A constraint on any sudden adjustment to a local distribution company's entitlement to low priority gas will not only give it a greater degree of revenue stability but should also give it time, in the face of a perceived weakening of industrial demand, to expand high priority markets in order to maintain total natural gas sales over the long-run. The proposal under study therefore appears to present a system of built-in rewards for load upgrading. An important area of inquiry is whether end-use deregulation would in fact encourage load upgrading and, if so, whether such a result would be in the public interest.

This proposed allocation scheme has interesting parallels to the recently-promulgated direct purchase program aimed at displacing distillate fuel oil. The new direct purchase program permits industrial and electric utility facilities to acquire natural gas outside of system supply if they can demonstrate an ability to displace high quality heating oil. This direct purchase program is premised on the argument that surplus gas, allocated through existing curtailment plans, will not always go to users who will displace high quality fuel oil. For example, some gas might go to coal or wood or low quality fuel oil users. The new direct purchase program was put into place to maximize the ability of eligible users to put surplus natural gas to its highest and best use. This same objective, to have additional natural gas deliverability used to displace high quality (and high priced) alternative fuels, would be

advanced *within* curtailment plans under an end-use deregulation approach. It would seem generally desirable, and consistent with the public interest, to have additional deliverability allocated on the basis of user-nominated alternative fuel prices. If such a system were in place now, there would be no additional need for a direct purchase program to displace scarce fuel oil with surplus natural gas.

Implications

The most obvious implication of such a plan is that it would allocate natural gas to low-priority users solely on the basis of price. It is emphasized that allocations to high-priority users are in fact given highest priority and would be allocated on the basis of need rather than price. Allocating on the basis of price to low-priority users subject to incremental pricing will reduce the administrative burden of both incremental pricing and curtailment policy. Equally important, such administrative simplicity would appear to be achieved in a manner entirely consistent with the purpose envisioned by the Congress in enacting Title II of the Natural Gas Policy Act and, it is suggested, as envisioned by the courts in the *State of North Carolina v. FERC* remand (584 F.2d 1003) in which the Commission was ordered to consider actual end-use impacts and compensation issues in its administration of curtailment plans.

A. Incremental Pricing Issues

There are at least two prominent purposes for incremental pricing in the legislative history of the Natural Gas Policy Act. The first purpose is to shield high priority customers from the full effects of wellhead price increases under the Natural Gas Policy Act. This protection of high-priority users is accomplished by initially directing a significant portion of the wellhead price increase to low-priority customers. The consequence is that high-priority delivered natural gas prices will rise somewhat less quickly than they would have risen absent incremental pricing.

The second purpose for incremental pricing may be less widely understood, but is far more important in the minds of Congressman Dingell, the principal architect of incremental pricing, and several of his colleagues. Specifically, the second purpose is to ready the natural gas market for wellhead price deregulation in 1985.

One of the most compelling arguments against sudden decontrol of natural gas prices, as articulated by both the Administration and Congressional

opponents of deregulation, is the potential that new gas prices would initially be driven far above long-run marginal prices. Such an occurrence was seen as producing an unjust and unacceptably large income transfer from consumers to producers. Several economic analyses prepared by the staff of the House Energy and Power Subcommittee stressed the potential for large income transfers to producers if natural gas is deregulated during a period when demand exceeds supply.

The basis for concern that deregulated prices could initially be driven to unacceptably high levels is the fact that average industrial delivered prices of natural gas were perceived as being far below the price of alternative fuels to those industrial users. Delivered prices are low because old gas has been and will remain regulated at prices far below its commodity value. Small amounts of new (deregulated) gas in the first few years after deregulation could rise to very high prices and, when averaged, or "rolled in" with supplies of low-priced old gas could still be delivered to industrial customers at marketable prices. The Congress repeatedly expressed concern that pipelines, heading the pleas of their large industrial customers for more gas at whatever price might be required, would bid \$5, \$6 or \$7 for new gas. Only as new gas became a significant portion of a pipeline's total supply would deregulated prices fall to long-term market-clearing levels of roughly \$3.00 per million Btu's. Such a result would produce an unacceptably high transitory benefit to producers and yet would not result in correspondingly increased investment in exploration because producers should be expected to invest only on the basis of long-run market-clearing prices.

Incremental pricing was viewed as a way of placing a pipeline's large industrial customers in a position where they would be less likely to urge their pipelines to bid whatever price was necessary to reap an acceptable share of new gas supplies. Incremental pricing places delivered industrial natural gas prices close to alternative fuel prices, and thereby eliminates the differential between average and marginal costs to this user category. Industrial customers receiving natural gas at its commodity value will tell their pipelines that any further price increases may cause them to switch off of natural gas. The threat of lost customers and reduced total revenues to pipelines and distribution companies was seen by the Congress as a means of putting a break on bidding practices during deregulation. Therefore,

the purpose of incremental pricing, as expressed in the legislative history of the Natural Gas Policy Act, was to ready the gas market for deregulation by placing industrial large boiler fuel customers at their alternate fuel price.

Against this background, the concept of end-use deregulation appears consistent with the market-ordering purpose of incremental pricing. This is an especially important point, because there is a common, but apparently mistaken, view that a system which permits industrial customers to nominate prices below their actual alternate fuel price would be inconsistent with the purpose of incremental pricing. We would invite comments on the alternative view that end-use deregulation is an inherently market ordering device that will advance, rather than conflict with, the objectives of incremental pricing.

Under end-use deregulation, low-priority users will be able to successfully obtain natural gas at prices below actual alternate fuel costs only when supplies are ample relative to demand, so that bidding pressures are relatively weak. If, as we approach deregulation in 1985, supplies are adequate to meet total interstate demand, the result will probably be a reduction in the price of natural gas paid by incrementally-priced users relative to the price they would be willing to pay if there were a shortage of natural gas. However, to the extent that there are surplus supplies in 1985, there is very little likelihood of a significant wellhead price jump. The "aberrant" price behavior described above can occur only if natural gas is in short supply. If pipelines are clearing markets prior to deregulation, then presumably there will be no significant price consequence after deregulation. Congress sought, through Title II of the Natural Gas Policy Act, to place industrial customers at or near market clearing levels through an artificial mechanism. But if, as a result of a supply surplus, market clearing can occur at prices lower than the Number 2 fuel oil equivalent, it would not be inconsistent with the purposes of Title II to permit such clearing to occur without regulatory interference.

Conversely, if supplies of natural gas are deficient as 1985 approaches, then a considerable number of incrementally-priced customers would voluntarily pay maximum prices for natural gas under end-use deregulation. They would be paying high prices in order to obtain the highest possible curtailment priority. In so doing, a maximum number of industrial users would be placing themselves at or near the price of

alternative fuels so that interstate pipelines would be well aware of the magnitude of potential loss of load should there be any dramatic increase in wellhead prices paid for natural gas upon deregulation. So the long-term objective of "market ordering" from incremental pricing is enhanced under the plan.

It could be further argued that the proposed approach to industrial end-use deregulation will also produce the greatest possible *near-term* benefit to high-priority users. Where gas supplies are tight, the result would be a maximization of prices paid by industrial customers for those supplies. Maximizing incremental surcharges paid by low-priority customers results in the minimization of incremental surcharges spilling over into the pipeline's general purchase gas cost recovery accounts. And when there is surplus natural gas, the end-use deregulation approach permits prices to adjust downward, maximizing industrial consumption of any surplus and thereby maximizing the industrial customer's contribution to the recovery of fixed pipeline and distribution company costs of service, again benefiting high-priority customers.

In short, high-priority customers will benefit from economically efficient allocation. It appears safe to suggest that current curtailment programs do not always offer the same promise of economically efficient allocation. By allowing prices to respond to supply conditions, high-priority customers will benefit in the short run, as described above, and will also benefit over the longer term from the inherent revenue stabilizing effect that such an approach will have with respect to local distribution companies. Revenue stabilization has always been regarded as an important objective of ratemaking policy.

It has been suggested that end-use deregulation be offered to states or local distribution companies as a basis for exemption from incremental pricing under section 206(d). Some states, particularly Wisconsin and California, are interested in "auction" approaches with some parallels to the end-use deregulation plan above. The willingness of states to move to a dramatically new natural gas pricing and allocation system could be greatly enhanced if rewarded by an exemption from the perceived disadvantages of incremental pricing. But one possible drawback of the exemption approach is that incremental pricing serves as a revenue-conserving device at the local distribution company level. Swings in industrial prices will be absorbed by the

incremental surcharge recovery account rather than by variations in higher priority rates and charges. If exempted from incremental pricing, local distribution companies experiencing volatile industrial pricing could suffer similarly volatile rates for high-priority customers. This is an important question requiring further analysis. However, the inherent revenue-stabilizing effects of end-use deregulation would seem to operate to neutralize any dramatic changes in the cost of service to high-priority users in the short term, and could reduce the longer term cost of service to all users by creating incentives for directing natural gas toward those users with highest priced alternative fuels.

B. Curtailment Issues

While the features of end-use deregulation appear consistent with Congressional requirements of incremental pricing, such a program must also meet the requirements of law applicable to curtailment plans. These requirements were most recently stated by the court in its remand to the Commission of the Transco curtailment plan in *State of North Carolina v. FERC*. In particular, that plan was rejected on the basis that it (a) did not fully take actual end-use impacts into account, and (b) did not address the issue of compensation. Because the approach outlined in this Notice is based upon actual end-use requirements and contains a built-in mechanism for allocating supplies on the basis of current data, it would appear to meet the court's first requirement. We also find reasons to suggest that the operation of end-use deregulation could satisfy many of the court's concerns underlying the issue of compensation.

The issue of compensation and curtailment plans is complex and this study proposal does not purport to reflect all facets of the issue. But it would appear that the court is most fundamentally concerned that the very imposition of pipeline curtailment plans has caused damage to some users who obtained firm long-term contracts for natural gas, made substantial investments in natural gas-using equipment in reliance upon those contracts, and then had those contracts effectively broken through federal curtailment policy. It is the court's view that the users who would not receive gas but for the existence of the curtailment plan should, in some manner, compensate the industrial user whose gas has been taken from him and who must purchase higher-cost substitute fuels.

If curtailment plans are redesigned so that each industrial user is free to decide for himself how much he needs gas and how much it is worth to him to obtain the equivalent of firm service, this supply availability aspect of the compensation issue would appear to be mooted. Industrial users who need gas the most are presumably willing to pay the most for it and will, under this plan, be most certain of receiving gas supplies.

Another aspect of the compensation issue relates to the user's contract price. Should not industrial users who successfully negotiated low-priced contracts with their suppliers be compensated for the higher cost of alternate fuels when their contractual gas volumes are not being fully delivered? Title II moots this issue for industrial boiler fuel users, because delivered natural gas prices are now tied to alternate fuel prices. The Congress took any right to low-cost gas away from these users, and eliminated much of the issue of user compensation in the process.

But there is a third compensation issue, this one relating to distribution companies. When an interstate pipeline is in curtailment, a distribution company serving a predominantly low-priority market will suffer reduced pipeline deliveries to a greater extent than another distribution company that has predominantly high-priority customers. Reduced volumes to the former distribution company will reduce that company's gas sales and, accordingly, sales revenues. The final result is that high-priority customers of the heavily curtailed company must make a greater contribution to the recovery of fixed costs, and so are adversely affected by the imposition of end-use curtailment plans. Payments by distribution companies suffering relatively little reduced deliverability to other companies more heavily curtailed would be a possible means of preventing potentially inequitable distribution of burdens among high-priority users.

It would be particularly useful to receive comments on the perceived relationships between distribution company compensation and end-use deregulation. Allowing distribution companies to sell among themselves could provide an additional source of revenue and might reduce the justification for additional compensation. This curtailment compensation issue may also relate to the incremental pricing exemption issue. Distribution companies practicing end-use deregulation and exempted from incremental pricing surcharge recovery

would enjoy inherently improved revenue stability. If supplies fall short of demand, industrial prices will tend to be bid higher. An exemption from incremental pricing would permit a local distribution company to retain the additional revenue derived from higher prices, so that rates to high-priority customers would be less directly affected by distributor supply conditions. Such a result, if realized, would move in the direction of eliminating the distribution company compensation issue.

One final feature of Title II is worth mentioning at this point. The second stage incremental pricing rule, to be promulgated six months after the first rule goes into effect, will be subject to single-House veto. While the prospect of Congressional veto raises particular concerns and uncertainty as to the ultimate status of any second stage rule, it also provides this Commission a unique opportunity to obtain Congressional review of federal natural gas curtailment policy. Although not specifically contemplated in Title II, it would not seem improper or inconsistent with the requirements of Title II to bring to the Congress a set of rules that address not only the scope of incremental pricing, but also provide that an industrial user's curtailment priority be based upon his self-determined alternate fuel ceiling. Congressional acquiescence to such rules would strengthen the Commission's position if required to defend the rules in court.

Potential Problems With the Approach

Obtaining Congressional review of this approach to end-use deregulation is important, especially in light of several potentially conflicting statutory requirements, such as those contained in this miscellaneous provisions of the Public Utility Regulatory Policies Act. For example, section 605 of that Act insulates against the loss of "conservation gas" by local distribution companies when and if interstate pipeline curtailment plans are updated. If "conservation gas" is treated as high-priority gas in the proposal outlined above, there would not appear to be any fundamental problem in harmonizing end-use deregulation with section 605 of PURPA.

Section 606 of PURPA has been suggested by some observers to create more serious problems. Section 606 provides industrial users who have contractual right to natural gas to sell that contractual right to an interstate pipeline, to a local distribution company or to a direct user. The problem is that

the statute appears to recognize the existence of contractual rights by end-users to receive natural gas. However, section 606 deals only with *intrastate* industrial and electric utility purchasers. Insofar as the proposal outlined above would apply solely to customers of interstate system supplies, section 606 of PURPA is not a barrier.

Finally, it is suggested that section 608 of PURPA, which gives statutory affirmation to direct purchases of natural gas, could lead to increased reliance upon direct sales, thereby reducing the efficacy of the deregulation approach contained herein. This remains a potential problem. Yet, it should be noted that the Statement of Managers clearly admonishes that section 608 "is not intended to require the Commission to issue a certificate of public convenience and necessity in any specific case."¹ The Commission retains flexibility to determine the scope of the direct-purchase program. Furthermore, because direct purchases are generally high priced, an expansion of the direct sales program would not necessarily be incompatible with the objectives of end-use deregulation.

Need for Coordination With Department of Energy

Under the Department of Energy Organization Act, the Secretary of Energy is assigned responsibility for establishing and reviewing natural gas curtailment priorities. By delegation order (DOE Delegation Order No. 0204-4, October 1, 1977), this authority has been given to the Administrator of the Economic Regulatory Administration. The Commission retains authority to administer and enforce actual curtailment plans.

The ERA issued a notice of inquiry on March 20, 1979, into the issues of whether, and to what extent, modifications to the existing curtailment priority system are either required because of the NGPA or otherwise warranted. Implementation of a policy to tie the curtailment status of low-priority users to their alternative fuel ceiling under incremental pricing may require coordinated rulemaking activities of both this Commission and the Department of Energy. Accordingly, the Department is invited to file comments on the issues raised in this study proposal. The Commission will, at the same time, transmit this proposal to the Secretary and to the Administrator for the purpose of its inclusion in the ERA's general inquiry into curtailment priority issues.

¹ U.S. House of Representatives, Report No. 95-1750, October 10, 1978, page 119.

Notice of Informal Conference

Issued: June 28, 1979.

A Notice of Inquiry into the Potential to Interface Incremental Pricing and Curtailment Policy has been issued in this docket. Commissioner Hall will convene an informal conference on August 7, 1979, to discuss this proposal. The informal conference will commence at 10:00 a.m. in Hearing Room A, 825 North Capitol Street, N.E., Washington, D.C.

A "roundtable" format will be used. Those who would like to participate and present prepared remarks should so notify the Secretary of the Commission and request time. Those who only wish to participate in the discussion should so notify the Secretary. The deadline for notifications is August 3, 1979.

The discussion will be transcribed and made a part of the record in this docket. The public is invited to observe.

By direction of the Commission.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-3041 Filed 7-3-79; 8:45 am]
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[18 CFR Part 292]

[Docket No. RM79-55]

Staff Paper Discussing Commission Responsibilities To Establish Rules Regarding Rates and Exemptions for Qualifying Cogeneration and Small Power Production Facilities Pursuant to Section 210 of the Public Utility Regulatory Policies Act of 1978

AGENCY: Federal Energy Regulatory Commission.

ACTION: Staff paper issued, by direction of the Commission, for comment.

SUMMARY: This paper discusses the Commission's responsibilities to issue final rules pursuant to section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) relating to the rates at which power should be exchanged between qualifying cogeneration and small power production facilities and electric utilities and the criteria under which certain qualifying facilities should be exempt from certain State and federal regulations.

DATE: Comments are due by August 1, 1979.

ADDRESS: All comments to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 (Reference Docket No. RM79-55).

FOR FURTHER INFORMATION CONTACT:

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June 26, 1979.

Memorandum to: The Commission.

From: John B. O'Sullivan, Chief Advisory Counsel; Robert E. Cackowski, Deputy Director, OEPR.
Subject: Section 210 of the Public Utility Regulatory Policies Act of 1978, Concerning Cogeneration and Small Power Production Facilities.

This memorandum is intended to serve as a discussion paper on Section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA). The memorandum will describe this section of the law, our preliminary view as to how the law might actually work, and some problems that might develop in implementation.

Introduction

Under the Federal Power Act (FPA), sales from cogenerators and small power producers to a public utility (as defined in Part II of the FPA) would, so long as the electricity might make its way into the bulk power transmission grid, make the cogenerator or small power producer itself a public utility. In other words, by virtue of its sale for resale in interstate commerce, the cogenerator or small power producer would itself become a public utility under Part II of the Power Act. Prior to the enactment of PURPA, the FERC was not authorized to abstain, in whole or in part, from exercising its jurisdiction over such cogenerator-public utilities and small power producer-public utilities. The prospect of plenary regulation unquestionably acted as a powerful disincentive to the generation and sale of surplus power by such facilities, particularly where the owner was an industrial concern unfamiliar with the arcane intricacies of utility regulation. It should be noted that sales of supplemental or back-up power to such cogenerators and small power producers by the local public utility would in most instances be a retail sale regulated by the State.

In Sections 201 and 210 of PURPA, Congress has grappled with both the split jurisdiction and the disincentive to certain desirable kinds of electric generation imposed by the rigid jurisdictional provisions of the FPA, as well as with allegations that some utilities were not dealing in good faith with certain existing or proposed

cogenerators and small power producers. The PURPA scheme, though certainly novel in the context of traditional utility regulation and probably complex to administer, is a logical approach to solving the problems with which Congress was concerned.

Section 201 of PURPA generally defines a "qualifying small power production facility," "qualifying small power producer," "qualifying cogeneration facility," and "qualifying cogenerator." The Commission is to establish by rule the detailed criteria for qualifying facilities of both types. Generally, a qualifying small power production facility (SPPF) can only use biomass, waste, renewable resources (including hydro from existing dams), or a combination thereof, as a primary energy source; and, together with other facilities at the same site, cannot have a capacity greater than 80 megawatts. A cogeneration facility is defined as a facility which produces both electricity and steam or some other useful form of energy, such as heat. There is no size limit for qualifying cogeneration facilities. A qualifying facility of either type must be "owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities)."¹

Having delineated by Section 201 and the Commission rules promulgated thereunder the class with which it was dealing, the Congress provided certain substantial benefits of qualification in Section 210. Broadly stated, these benefits are the following:

(1) Electric utilities (defined as any person, State agency or Federal agency which sells electric energy)² can be compelled to buy power from qualifying facilities. The price applied to such required purchases must be just and reasonable to the customers of the purchasing utility and in the public interest. The Commission may not prescribe a price for such sales that

"exceeds the incremental cost to the electric utility of alternative electric energy." The price shall not discriminate against the selling qualifying cogenerator or small power producer.

(2) Utilities can be compelled to sell to qualifying facilities. The price applied to such required sales shall be just and reasonable and in the public interest and shall not discriminate against the qualifying cogenerator or small power producer.

(3) Qualifying small power production facilities whose size does not exceed 30 megawatts of capacity and all qualifying cogeneration facilities may be exempted in whole or in part by Commission rule from the Federal Power Act, from the Public Utility Holding Company Act, and from State laws and regulations respecting the financial or organizational regulation of public utilities, if the Commission determines such exemption is necessary to encourage cogeneration and small power production.

Rules embodying these principles are to be issued by the Commission within one year after enactment; viz, by November 8, 1979. The law provides that the State regulatory authorities and nonregulated utilities are to implement the Commission's rules within a year after they are prescribed.

As this bare-bones description of the statute may or may not make apparent, there is the potential, if not a requirement, for a fundamental reordering of the traditional dual regulatory scheme as it applies to certain cogenerators and small power producers.³ Whereas before the FERC had jurisdiction over sales from such power producers for resale in interstate commerce, while the states regulated retail sales, PURPA provides for FERC rules governing *both* transactions. And the states, which have not had jurisdiction over sales for resale in interstate commerce, will in all likelihood carry out the day-to-day regulation of such sales where they involve qualifying facilities (QFs) in addition to continuing to regulate all retail sales, including sales to QFs. However, the regulation of transactions involving QFs may well be conducted under the state regulations implementing the FERC's rules promulgated pursuant to Section 210, rather than under State laws. In other words, the requirement that the States and nonregulated utilities implement the FERC's rules, together with the FERC's authority to exempt

QFs from some or all of Parts II and III of the FPA and from State law could (and almost certainly will) result in the delegation-by-exemption to the States of both old and new FERC regulatory responsibilities.

The second major departure from or reordering of traditional utility regulation inherent in the Section 210 scheme is a consequence of the Congress's intention to avoid the treatment of qualifying cogenerators and small power producers as utilities, where such treatment is a disincentive to these kinds of generation. Traditional regulation has, naturally, focused on the seller. For the most part, regulators regulate the public utility, not its customers. There is plentiful precedent for a requirement to sell (Sections 202(b) and (c) of the FPA, virtually all State laws concerning service to retail customer), but almost none for required purchases of the sort provided for in Section 210. Similarly, under conventional regulation, the seller's rates are subject to regulatory approval, the test of the reasonableness of which is the seller's costs. Here, because of the effort to relieve some generators of the burdens of regulation, Congress has established a scheme in which the primary reference point for determining the price for a sale from a QF to a utility is not the seller's cost but the buyer's avoided cost. Indeed, the Congress has specifically instructed FERC that QFs are not to be subjected to the same scrutiny and requirements for organization and reporting as regular utilities; and the authority to grant exemptions is the device which Congress has given the Commission not only to avoid such regulation on its own part, but also to ensure that once the Federal preemption of such regulation is removed, the States do not begin to regulate QFs as utilities.

All this is not to say that there is a lack of precedent for the Commission, State regulators, and nonregulated utilities to look to in implementing Section 210 of PURPA. Many utilities have experience with their own cogeneration (primarily those that provide district heat steam service.) With regard to the sale from a utility to a qualifying facility, the primary model is conventional State-regulated retail sales, though in some instances partial requirements or interchange wholesale rates provide a better basis of comparison. With regard to the sale from a qualifying facility to an electric utility, wholesale rates probably provide the best analogy in most cases, particularly where a relationship between a utility and a number of

¹ However, a utility or a number of utilities may participate in the ownership of a facility; and nothing in the statute bars a utility from operating a qualifying facility. In fact, a utility operating such a facility which it did not own would become a "qualifying cogenerator" or "qualifying small power producer."

² The definition of electric utility applicable to Section 210 is that which appears in Title I of PURPA (and which includes the Federal power marketing agencies), not the Title II definition (which does not). The Title II definition (from PURPA § 201) has become a part of the Federal Power Act (specifically, § 3(22)), and thus applies to the parts of PURPA which amend the Power Act. Section 3(4) of PURPA establishes the definition to be applied to those parts of PURPA which, like Section 210, are not made a part of the Federal Power Act.

³ Except where a precise point of statutory construction is being discussed, we will use the terms "cogenerator" and "small power producer", interchangeably with, respectively, "cogeneration facility" and "small power production facility".

qualifying facilities begins to resemble a power pool. Useful information may also be gleaned from the not-uncommon arrangement whereby a utility purchases power from an industrial cogenerator or self-generator. A number of States have already begun work on rules concerning cogenerators and a few are quite far along this road, and this also can provide substantial guidance.

Nonetheless, it is fair to say that in many instances the transactions between utilities and those who will qualify under Section 201 have in the past fallen into a gap between the FPC/FERC and State regulators. It is certain that the terms under which these transactions take place vary enormously from utility to utility and region to region. In the following more detailed discussion, we will not attempt to provide in all instances a single correct or even preferred approach to implementation. Because of regional differences in circumstances, the enormous range of characteristics as to both loads and power production likely to be exhibited by various qualifying facilities, and simple uncertainty as to what the law means or what the best approach to a problem is, we will often merely list some apparent alternatives. By this we do not mean to imply that the Commission will in every case ultimately be faced with making a choice of a single approach from among a number of alternatives. It is quite likely that the Commission will want to leave the States and the nonregulated utilities flexibility for experimentation and accommodation of special circumstances on a number of these matters.

With respect to the nonregulated utilities, consideration will be given as to the necessity of a separate set of rules from that applicable to the State commissions due to the fact that the nonregulated electric utility will be both the entity responsible for implementing the Commission's rules and the utility directly dealing with the cogenerator or small power producer.

Exemptions

Section 210 directs the Commission within a year of enactment to prescribe rules exempting small power production facilities with no more than 30 megawatts of capacity and all cogenerators from part or all of the Federal Power Act, from the Public Utility Holding Company Act, and from State laws and regulations respecting the rates or respecting the financial or organizational regulation of utilities, if the Commission determines such exemption is necessary to encourage

cogeneration and small power production. Small power production facilities of greater than 30 megawatt capacity using biomass exclusively as a primary energy source may be exempted from the Holding Company Act and State laws, but not from the Federal Power Act.⁴ Under 210(e)(3), no QF can be exempted from Part I of the Power Act, Sections 210, 211 and 212 of the Power Act (added by Sections 202, 203 and 204 of PURPA, and having to do with interconnection and wheeling), and State laws and regulations implementing the Commission's rules promulgated pursuant to Section 210.

It is clear from the Conference Report that Congress intended the Commission to make liberal use of its exemption authority:

The conferees wish to make clear that cogeneration is to be encouraged under this section and therefore the examination of the level of rates which should apply to the purchase by the utility of the cogenerator's or small power producer's power should not be burdened by the same examination as are utility rate applications * * *. The conferees expect that the establishment of utility type regulation over them would act as a significant disincentive to firms interested in cogeneration and small power production.

Although we have not conducted an exhaustive survey, there is good reason to believe that many if not most State laws provide for regulation of cogeneration and small power production facilities as utilities. These State laws have been rendered ineffective in most instances because of the FPA preemption of regulation of sales for resale in interstate commerce. Were the Commission to exempt QFs from FPA regulation, but not from State regulation, the State laws would then take effect, frustrating the intent of Congress that QFs not be subjected to the same scrutiny and organizational

⁴Thus the Commission is not authorized to exempt small power production facilities of 30 to 60 megawatt capacity from any of these laws, with the exception of biomass users who still cannot be exempted from the FPA. As a technical matter, this would leave in place two conflicting regulatory schemes covering this group: Section 210 pricing, and traditional Federal Power Act regulation of the QSPF who becomes a Part II public utility by virtue of a wholesale sale into interstate commerce. The Conference Report resolves this for the most part by instructing the Commission to use Section 210 pricing for this group. Left unresolved are two questions: (1) What will be the effect of State regulation on small power producers of greater than 30 megawatts who are making sales for resale but not into interstate commerce (such as in Alaska, Hawaii, Puerto Rico and most of Texas)? and (2) Should the Commission exempt biomass small power producers in these areas from State regulation, where the consequence is that they will not be regulated at all?

requirements as utilities. It would be difficult to maintain that the Federal preemption continued even after the Commission exempted QFs from the FPA (that is, that the area was deliberately left vacant, and that the States could not then occupy the area) if the Commission chose not to exercise its authority to exempt from State regulation. Therefore, it seems likely that in the great majority of cases where the Commission provides an exemption from the FPA it will also want to provide substantial exemptions from State law.⁵

Basically, there are two approaches that can be taken to the State law exemption. The first, which is both more precise and more cumbersome, is to analyze the laws of each State and specify the exemptions to be provided citing sections of State law and regulations. We do not recommend this approach, except possibly for the non-contiguous states and territories and contiguous areas not hooked into the interstate grid (primarily parts of Texas). The second approach is to make a broad prescription exempting from any and all provisions of State law and regulations as would conflict with the State's implementation of the Commission's rules under Section 210. This approach, while it may lead to some disputes which the Commission will have to become involved in, has the advantages of simplicity, administrative ease, and permanence (i.e., the language of the exemption would not have to be changed every time a State changed its laws or regulations).

While the proper course seems obvious with regard to Federal and State rate regulation and the requirements for filing voluminous reports concerning operating, cost and revenue data,⁶ the matter of exemption from provisions of the FPA concerning financing and related matters and from the Public Utility

⁵Note that the Commission does not have the authority to exempt cogenerators from State regulation as a steam utility. This fact may have somewhat disparate consequences (assuming that some cogenerators may be interested in selling steam), since some States do not regulate steam sales, some do so only if the seller is already a utility, and some do so whether or not the seller is an electric utility.

A quite different and somewhat anomalous situation involving preemption may arise if a State has by statute directed the State regulatory authority not to regulate cogenerators. The most reasonable approach to this situation would seem to be to treat the State law as consistent with Section 210 of PURPA, in that (as the Introduction points out) it is really the utility as buyer and seller that is regulated.

⁶Though it is worth noting that some exemptions here will affect the data provided to the Energy Information Administration, where EIA's authority is derived from the Federal Power Act.

Holding Company Act is not nearly so clear. Pending consultation with the Staff of the Securities and Exchange Commission, we will not attempt an exhaustive analysis of this subject. However, as a rule of thumb it seems reasonable to provide that where a firm is subjected to more stringent regulation than other companies simply because it is engaged in electric utility business, those requirements should be eased through exemptions for QFs; but where a certain kind of regulation is applied to electric companies under the FPA or the Public Utility Holding Company Act, and applied in equal measure to non-utilities under other statutes enforced by the S.E.C., the argument for exemption is not nearly so strong. An example of the former, utility-only kind of provision is the requirement that a holding company show that its subsidiaries are or are capable of being operated on an integrated basis. In this case, we think exemption warranted. By contrast, exemption from certain security acquisition and interlocking directorship provisions may not be warranted.

As the Conference Report indicates, some participation by one or more utilities in the ownership of qualifying facilities may be permitted by the Commission's Section 201 rules. However, an exemption granted to a facility under 210(e) would not serve to release a utility or holding company participating in some way in a QFs ownership from any other unrelated obligations it may have under the law, since Section 210 permits the exemption of the QF, not of a parent (or grandparent). (In this context, we take this to mean that where a facility is granted an exemption, participation in the ownership of the facility will not give rise to a particular legal obligation that would have otherwise attached). We interpret 210(e) as giving the Commission sufficient flexibility to grant an exemption such that a non-utility parent is relieved of certain obligations while a utility or holding company participating in the same project is not. Again, the test for an exemption is whether it is "necessary to encourage cogeneration and small power production."

Finally, it should be noted that the exemption of QFs from traditional utility-type regulation, as specifically discussed in the Conference Report, may have the effect of making QFs eligible for a 20% energy investment tax credit. A recent change (March 1979) in Treasury Department regulations permits the exclusion from "public utility property" of property used in the business of the furnishing or sale of

electric energy if the rates are not subject to regulation that fixes a rate of return on investment. Prior to the change, any rate regulation made property subject thereto (and involved in the furnishing or sale of electric energy) public utility property. Being thus excluded from public utility property, qualifying facilities have an opportunity to come within the definition of "alternative energy property," and thus qualify for the 20% ITC.

In fact, it may well be that even small power production facilities too large to be exempted may be eligible for the higher tax credit, due to the Conference Report's instruction to set the prices for sales by these SPPFs to utilities "in accordance with the requirements of" Section 210 rather than by "utility-type regulation."

Interconnection

Section 210 requires that utilities buy from and sell to QFs. It does not, however, explicitly provide authority to the Commission to order any interconnection necessary to effect the required transaction. The question thus arises as to whether there is inherent in section 210 of PURPA the authority to order such interconnections, or whether QFs must use Sections 210 and 212 of the FPA (added by Sections 202 and 204 of PURPA) to gain interconnection.

Perhaps the strongest argument against the finding that there is an interconnection authority within the cogeneration section is that the interconnection section itself explicitly lists qualifying cogenerators and small power producers as among those who are eligible to make an application. (By contrast, the next section, dealing with wheeling, does not confer eligibility on QFs.) Moreover, the requirement under Sections 210 and 212 of the FPA that the party seeking interconnection must show himself to be ready, willing and able to pay the resulting costs, and the companion criterion that the interconnection order not be issued if it would result in a reasonably ascertainable uncompensated economic loss for any electric utility, might be seen as consistent with the statement in the Conference Report that the cogeneration section was not to be applied so as to force a utility's customers to subsidize a qualifying facility.

Although this argument is respectable, we think it the better view that the requirement to interconnect is subsumed within the requirement to buy and sell. To hold otherwise would mean that Congress intended to have qualifying

facilities go through an extended and expensive proceeding simply to gain interconnection, contrary to the entire thrust of Sections 201 and 210.

These sections evince the clear Congressional intent to encourage development of these desirable forms of generation, and to have the commercial development of these facilities proceed expeditiously. In other words, Congress has already made the judgment that these kinds of facilities serve one of the purposes of the Act as set out in Section 101, viz, "the optimization of the efficiency of use of facilities and resources by electric utilities", and it would be both redundant and unduly burdensome to have the sponsors of individual facilities show in an evidentiary hearing (FPA § 210(b)(2)) that their project in particular would serve this end (or one of the other related goals established as criteria for an interconnection order in § 210(c)(2)). After all, the purpose of an interconnection application, whether under Section 202 or 210 of the FPA, is to secure service, whether emergency or otherwise; and Section 210 of PURPA establishes the entitlement of a QF to service from the interconnected utility. In effect, the proponents of the view that a QF must apply under Sections 210 and 212 of the FPA have the burden of showing that Congress intended interconnection and the entitlement to buy and sell be denied to a QF which is unable to make the showings required by those sections even though a previously-interconnected customer installing qualifying facilities would not have to do so.

This is not to say that all of the protections that Congress has given the target of an interconnection application in Sections 210 and 212 of the FPA are necessarily absent from Section 210 of PURPA. The Conference Report on Section 210 states that customers of utilities are not to be compelled to subsidize QFs, and this principle would seem to bear on the question of who pays the costs of interconnection as well as on the per-unit price to be paid for energy. On the other hand, the conference Report includes a prescription against "unreasonable rate structure impediments, such as *unreasonable hook up charges*." (emphasis added) This provides another argument in favor of reading Section 210 as including interconnection authority, since the elaborate cost determination required under Sections 210 and 212 of the FPA is redundant if the costs of interconnection are viewed simply as a feature of the rate structure with the

charge therefor based on the cost of the utility.

Reliability

Section 210(a) states that the rules requiring utilities to buy from and sell to QFs "shall include provisions respecting minimum reliability of [QFs] (including reliability of such facilities during emergencies) and rules respecting reliability of electric energy service to be available to such facilities from electric utilities during emergencies."

This statutory language raises the question of whether the Commission *must* prescribe minimum reliability requirements for qualifying facilities selling to utilities.

Section 201 specifically mentions reliability as one of the factors the Commission may take into account in establishing the criteria for qualifying small power production facilities. (It is not mentioned in the parallel language concerning co-generators.) We read Section 201 as permitting but not requiring the Commission to establish a minimum standard for the reliability of small power producers. Whether one agrees with this interpretation or believes that the Commission must establish such a threshold, the question remains as to why the Congress included provisions concerning reliability in Section 210 for both kinds of facilities after having mentioned it in Section 201 as to one kind but not the other.

Of course, the degree of reliability and/or availability can and should be reflected in the price for electric service, whether a utility or a QF is the seller. Putting a price tag on a particular degree of reliability is practically an everyday exercise for utilities and regulatory agencies. Put another way, then, the question is whether the Congress intended the Commission to establish rules on QF reliability under Section 210 that went beyond a requirement that differences in reliability be fully reflected in prices.

The Congress evinced a clear concern that utility customers not be required by the Commission's Section 210 rules to subsidize QFs. The 210(a) language concerning reliability might well have been intended to prevent indirect subsidies resulting either from frivolous or otherwise uneconomical interconnections (with the costs borne by the utility's customers) or from a diminution in the quality of service rendered by a utility due to an interconnected facility's disruption of a utility's operations.

Elsewhere in this memorandum we have recommended that the incremental

costs of interconnection or reinforcement of a utility's distribution and transmission facilities (*i.e.* those costs which the utility would not have incurred in securing the same power from an alternative source, or in providing service to the qualifying facility if the facility did not have its own generation) should be borne by the QF. So long as facilities can be devised which are sufficient to protect the utility from disruption of its operations by a QF—and our present understanding is that such protective devices can always be provided—and the QF rather than the utility bears the costs of these facilities, then no such indirect subsidy would occur.

Our analysis thus leads us to the conclusion that every incidence of a QF's reliability (or unreliability) can be accounted for through prices. If this conclusion withstands the test of public comment, we would recommend to the Commission that it establish no minimum reliability standard pursuant to Section 210(a), but that it make full provision for the consequences of varying degrees of reliability in the rules on pricing.

It is reasonable to expect many different kinds of facilities to be covered by and become involved with Section 210, ranging from large, self-sufficient and previously-isolated industrial generators to small, experimental and somewhat exotic facilities. The reliability that these different kinds of QFs will need from utilities and will be able to offer utilities will run the gamut. The needed services may vary from something comparable to a typical firm retail sale to more sophisticated pooling and interconnection arrangements. Similarly the service offered by QFs to electric utilities will range from dump or interruptible energy to firm power sales, *i.e.*, a reliable substitute for capacity that would otherwise be installed by the utility.

It is difficult, if not impossible, to predict what kinds of facilities will present themselves to any given utility. Thus it appears that the approach that would best satisfy the statutory mandate to encourage cogeneration and certain types of small power production is to require all electric utilities to offer to buy and sell services providing a complete range of reliability,⁷ with the proviso that in each instance the price will have to be calculated so as to

⁷We do not mean to imply by this that qualifying facilities could rely on this requirement to secure a higher degree of reliability than firm, full requirements customers, or secure for themselves a higher priority than other customers with similar end-uses under a short- or long-term emergency load-shedding plan.

satisfy the other provisions of section 210, including the principle that utility customers not be compelled to subsidize QFs.

This requirement that electric utilities offer a complete menu of services (at appropriate prices) should not be too great a hardship, at least for public utilities, since between their wholesale and retail rate schedules most now offer a broad range of services, including firm all requirements, standby, interruptible and emergency services (though many do not offer what may be the closest parallel in many instances, partial requirements service).

With regard to emergency sales from QFs to utilities, we would note that cogenerators and small power producers can be the subject of an order under Section 202(c) of the FPA to provide energy if the Economic Regulatory Administration determines that an emergency exists. Absent the declaration of a 202(c) emergency, we would recommend leaving the terms of emergency availability to the negotiations of the parties, subject only to the rule recommended in the preceding paragraphs.

Sales from Utilities to Qualifying Facilities

Section 210(c) of PURPA provides that:

The rules prescribed under Subsection (a) [which requires, *inter alia*, that utilities sell to QFs] shall insure that in requiring any electric utility to offer to sell electric energy to any qualifying cogeneration facility or qualifying small power production facility, the rates for such sale—

(1) shall be just and reasonable and in the public interest, and

(2) shall not discriminate against the qualifying cogenerators or qualifying small power producers.

This statutory language is similar to the language contained in Sections 205 and 206 of the FPA and is probably similar to many of the State statutes with respect to utility regulation. Such language thus permits traditional ratemaking concepts with respect to the sales to QFs.

In most instances, it would appear appropriate for the proposed rules to require the States to apply their standard ratemaking concepts in establishing rates for the QFs to the extent possible, even where there is a significant difference between FERC's approach and that of a state. That is, in most instances the test as to whether a QF is being discriminated against *as a utility customer* will be made by comparing the QF to other retail customers of the utility. For example,

although California might choose to exempt qualifying facilities from having to pay a share of the subsidy for lifeline rates required of other industrial customers, there does not seem to be a valid argument that the failure to exempt QFs is discriminatory, since the QFs would simply be treated like others in the class to which they would belong if they did not have their own generation. Similarly, there seems no reason why any steps taken under Title I of PURPA with respect to such matters as time of day rates should not also apply to QFs.

In determining the rates to QFs, one of the first issues likely to arise is whether all or some QFs should be served as a separate rate class or included among a more general class such as the industrial or large power customers. It would appear that latitude should be given in the rules to permit inclusion of QFs within a general rate class to the extent that the load characteristics permit. This may be the most practical approach where the number of potential QFs is relatively small and might not warrant the costs associated with developing a separate rate class. Similarly, latitude should be given to permit classification as a separate rate class if the number of potential customers is large and/or the load characteristics are likely to impose substantially different costs on the system from the general rate class. These general problems of customer classification will of course become less important to the extent the states move to time-of-day rates.

Two major problems arise in the area of customer class assignment due to a shortage of good data: First, a majority of utilities do not have good load data even for their major retail customer classes, and in a number of states neither the utilities nor their regulatory agencies set rates based upon a class cost of service calculation. (The load data problem will be resolved over the long haul for the larger electric utilities by Section 133 of PURPA, which requires the collection of cost and load information by customer class.) Second, even where utilities have good data for their existing major classes, estimates as to the service requirements of QFs, and thus the costs imposed on the utility (determined to a considerable extent by the outages of the customer's own generation and the type of standby service the customer wants), may not at first rise above the level of speculation.

The second problem may be eased substantially over the short run if QFs and utilities can agree to contracts specifying the services the utility will be called on to provide. However, where

the two parties cannot reach this kind of agreement (such as where a cogenerator is unsure of its own production and is not willing to contract for interruptible service from the utility for any part of its potential load), the problem remains.

Whether or not a QF agrees to specific contractual levels of service, and whether a QF is assigned to an existing customer class, has a custom-designed individual rate, or is placed in a special class (or one among several special classes) for QFs, the first problem does not seem susceptible of precise solution over the short term. It would seem difficult to declare with any confidence that rates for a particular customer or class of customers is just and reasonable if there is no approved way of determining the customer's cost responsibility; and it would seem to be impossible to determine with any precision whether or not a proposed rate were discriminatory when one does not know the cost of serving the class or classes whose rates the QF's rates are to be compared to. Indeed, it may even be difficult to determine whether or not some or all QFs should be grouped with a particular class or subclass when little is known about the cost and load characteristics of the class.

Since some cogenerators and small power producers may have operations similar to those of utilities with generating facilities, the rules should provide sufficient latitude to permit interconnection and coordination agreements or partial requirement agreements similar to those subject to this Commission's jurisdiction. This would provide contractually specified operating criteria and would allow a full range of services including the sharing of mutual benefits of diversity and coordination. In fact, wholesale rates may provide some makeshift basis for determining what retail rates are appropriate for QFs where little is known about retail loads and costs by class.

Where large numbers of existing customers are converting their operations from those of a full requirements customer to that of a cogenerator or small power producer, such conversion may significantly alter total system loads and costs and almost certainly alter the outcome of a class cost allocation. To the extent that the conversion increases the total system costs from what they would otherwise be, or, more likely, leaves roughly the same fixed costs to be spread over fewer units sold, the rules should permit consideration of this fact by the states in determining the rates for such customers and the remaining customers on the

system.⁸ This situation might become a significant factor in determining whether the rates are in the "public interest" as required by Section 210(c). (The effect on system loads and costs is also an important consideration in determining the rates for power purchased by the utility from the cogenerator or small power producer, as discussed later.)

One of the most often discussed problems of rates for cogenerators or small power producers is the charge for backup or standby service. Here, the question of what costs the customer(s) imposes on the utility, and thus what the appropriate rate is, essentially turns on three factors: first, the reliability of the customer's generating equipment, or, put another way, the likelihood that the customer will be unable to supply part or all of his own electricity needs; second, the extent to which the customer will call on the utility to make up such a deficiency; and third, the degree of coincidence between such outages and the utility's peak demands. Cogenerators generally argue for lower backup charges based on the fact that they are unlikely to experience outages all at the same time, whereas the utilities argue for higher charges due to lack of ability to predict the time or duration of an outage since the operation of the facilities is outside a utility control. In part, this argument comes down to prudent utility planning for meeting loads that are potentially volatile and are dependent in part on the maintenance practices of the non-utility operators.

Where there is not a retail class of customers for backup service, with a rate based upon group outage probabilities, or perhaps even where there is such a class, latitude should be given in the rules to permit groups of qualifying cogenerators or small power producers to contractually "pool" their operations among themselves to minimize the potential cost impact on the utilities. By first pooling among themselves, QFs might facilitate individual contractual dealings with utilities and reduce its attendant costs. Pooled QFs certainly could make a much stronger argument that probabilistic analysis should be used in determining the backup charges, and based on the coordination the analysis would show a lowered probability of coincident outages. Such "pooling" might include arrangements such as coordinated maintenance or mutual

⁸ We do not mean to imply that the entire shortfall, if there be any, should be imposed on QFs; rather, we merely suggest that it does not seem inappropriate for QFs to bear some share of the burden.

spinning reserves.⁹ The pooled operations could also be coordinated with the utility further to minimize the potential cost impact of outages. Such pooling would entail some sacrifice of the QFs' flexibility in operations, but the resulting lower backup charges may provide a sufficient incentive. To the extent that operations are not coordinated and individual QFs and the group of QFs as a whole impose greater capacity requirements on the utility system, the costs of such backup service should be fully recovered.

In the analysis of and negotiations over backup probabilities and responsibilities, recognition should be given to the fact that some cogenerators will not be able to continue part or all of their industrial operations if their steam (and thus electric) production facilities break down or are closed down. In other words, some cogenerators may not want or need backup for the part of their electric requirements related to industrial processes that also require steam—when there is no steam, they shut down and go home. On a related matter, recognition should be given to a customer's own backup or reserves in the form of redundant capacity. A customer having sufficiently reliable facilities of its own might consider contracting for backup service from the utility on an as-available basis for the portion of its load that it is sure it can supply itself.

One likely area of contention that arises in connection with interruptible and standby service is the recovery of the utility's customer or facilities costs. There is likely to be somewhat less debate concerning the magnitude of these costs where the customer is a large industrial or commercial facility, since the design of facilities and determination of their cost is often arrived at on the basis of individual negotiation now even where the customer does not have its own generation. (We will discuss these interconnection costs in the next section.) Where smaller customers are involved, however, the rate design for the class to which the customer is assigned may provide for the recovery of some customer costs through usage charges, and may also provide for the recovery of some capacity costs through energy charges. In these situations, the utility is likely to assert—and with considerable merit—that minimum charges have to be increased so as to ensure the recovery of its fixed costs (and some expenses) from dedicated

facilities when the customer does not buy enough energy in a given period to reimburse the utility under the conventional rate design. A minimum bill calculated to recover these costs would seem to be a reasonable approach to this matter, though a discrimination problem might arise if the QF is paying a fully compensatory minimum charge while substantial numbers of customers in the class to which the QF would belong but for its own generation do not return their customer costs.

The final question to be addressed in this section is whether the Commission should specify the kinds of interconnection that should be made available to QFs as customers of a utility. Specifically, the question is whether QFs in general should have an entitlement to operate in parallel with utilities (so that the same customer circuits can be served simultaneously by both customer- and utility-generated electricity), or whether this should be left to the States or the parties (in which case some QFs may be forced to segregate circuits).

In addition to the considerations of cost and possible interference with system operations, there are safety aspects which will require coordination and procedural safeguards. For example, when certain lines are taken out of service in order to perform maintenance or repairs on such lines, adequate procedures must be in place to ensure that they are not energized by the other party prior to completion of the work. However, on the basis of preliminary discussion it appears that problems of operations, equipment protection and worker safety can all be solved, and that in the final analysis this question mostly concerns cost. Therefore, we recommend that operation in parallel be a required option, so long as the customer is willing to bear the costs of the facilities necessary to protect workers and equipment.

Sales From Qualifying Facilities to Utilities

Section 210(b) of PURPA provides that the Commission's rules shall insure that in requiring any electric utility to offer to purchase electric energy from any qualifying cogeneration facility or qualifying small power production facility, the rates for such purchase—

- (1) Shall be just and reasonable to the electric consumers of the purchasing utility and in the public interest, and
- (2) Shall not discriminate against qualifying cogenerators or qualifying small power producers.

* * * * *

The statute provides that the rate for required purchases not exceed the incremental cost of alternative electric energy, which is defined as the cost of energy which, but for the purchase, the utility would generate or purchase from another source. The rules may not authorize a QF to make a sale other than for resale, though State law may permit a QF to make such sales.

Perhaps the most important question facing the Commission in the pricing area (but probably not the most difficult question) is whether Section 210 contemplates the payment of capacity charges to QFs under any conditions. Section 210 itself speaks only in terms of "electric energy." While this term does not exclude the payment of capacity charges, it does not clearly include it either. For the most part, the Conference Report also uses the term "electric energy." Even the example given in the Conference Report (in support of the point that the cheapest energy available at a given time does not necessarily fix the ceiling of the amount to be paid a QF, because the utility may not have intended to use that cheap (hydro) power at the time the sale took place) is cast in terms of energy costs and energy charges.

There is, however, considerable language in both the statute and the Conference Report in support of the proposition that capacity payments are, at least in some circumstances, not only legal but mandated. First, the "incremental cost to the electric utility of alternative electric energy" would, where capacity is purchased or installed, include a capacity cost. If a cogenerator were offering energy of a like reliability for a similar term, the alternative cost would clearly not be limited to, for example, the energy component of the alternative rate where the alternative is a firm or unit purchase. Indeed, one can well argue that to pay the QF a price based only on displaced energy costs where another utility would receive a capacity payment as well for the same service is discriminatory in violation of the statute.

The Conference Report addresses the calculation of the alternative cost standard at some length. The final paragraph of this section of the Report is the following:

The conferees expect that the Commission, in judging whether the electric power supplied by the cogenerator or small power producer will replace future power which the utility would otherwise have to generate itself either through existing capacity or additions to capacity or purchase from

⁹Although the latter would arguably reduce backup-generating requirements on the utility's system it may not reduce transmission costs.

other sources, will take into account the reliability of the power supplied by the cogenerator or small power producer by reason of any legally enforceable obligation of such cogenerator or small power producer to supply firm power to the utility.

The references to "additions to capacity" and to obligations "to supply firm power" (the rates for which, in our experience, always include a capacity component) bring us to the conclusion that the better reading of Section 210 is that capacity payments to QFs can be required under certain circumstances; and that, indeed, a utility's refusal to make payments based in part on avoided capacity payments could be discriminatory.

The paragraph from the Conference cited above also has a message for QFs, however: utilities make capacity payments to each other where firm commitments to make and hold capacity available are involved. A cogenerator or small power producer which is unwilling or unable to make such a commitment and to achieve a high degree of reliability, is not enabling the purchasing utility to avoid the costs of construction or a capacity purchase, and thus these costs do not serve to increase the ceiling on the rates the QF can demand.

In short, the statute provides an upper limit on the price for a capacity purchase (including an energy rate component) at the alternative capacity and energy costs avoided due to such purchase. Among other things, the duration of the purchase, the planning horizon of the utility and the capacity and load situation of the utility will affect such alternative costs. Generation expansion models (which discount the future costs of alternatives to a common present value) may be used to quantify such costs once the magnitude and duration of capacity purchases are known. The composition of such studies would vary depending on the answers to certain questions: Will utilities be required to pay now on a discounted basis for capacity not yet needed? Will capacity sales have priority over dump energy? How far into the future must utilities commit to buy, both as to initiation and duration of the sale?

Interruptible (by the QF) energy sales can be priced a number of ways. For example, a split-the-savings concept similar to economy energy purchases in existing interchange agreements could be employed.¹⁰ Although economy

¹⁰This analogy may be of some assistance where a State's fuel adjustment clause rules, like FERC's, permit a complete pass-through to customers of the cost of economy purchases where the cost is lower than that of the displaced fuel.

energy is normally priced on an hour-by-hour, transaction-by-transaction basis, consideration should be given to a more general approach with lower administrative costs such as estimated monthly or annual savings. The difference between the cogenerator's out-of-pocket cost and the utility's out-of-pocket cost avoided as a result of the transaction would be shared on an equitable basis between the QF and the utility. Rather than the typical equal split of the savings, latitude should be given to permit negotiations resulting in a greater proportion of the savings going to the cogenerator in order to encourage cogeneration as intended by the statute. So long as the price is less than the alternative cost to the utility, the buying utility's ratepayers benefit from such transactions, and the statute would seem to be satisfied.¹¹ Such an approach may seem to depart from the Conference's directive not to scrutinize the costs of QFs as though they were utilities. However, this approach should not generally produce a substantial burden on the QF since in most cases the QF should have calculated its marginal energy cost to determine if it can afford to sell to a utility, particularly at times when the utility's marginal running cost is low. In any case, the statute does not prohibit all inquiry into a QF's costs, and this approach would not require a determination of a reasonable rate of return to the QF, which appears to be the conference's primary concern.

Where a utility is a member of a centrally dispatched pool, the pool's marginal running cost will probably be the appropriate measure of the ceiling for energy rates. Similarly, if a pool has coordinated planning for capacity additions, the pool's method of sharing those costs should be considered, and in some instances utilized, in determining a pool member's avoided capacity costs.

¹¹The Conference Report states that a utility shall not be required to purchase energy from a QF at a rate which exceeds the lower of (1) the rate that is just and reasonable to the utility's customers and nondiscriminatory as to the QF and (2) the incremental cost of alternate electric energy. As stated above, we think that so long as the service being offered by a QF is fully comparable to the alternative, the payment to the cogenerator of the full cost of the alternative would be just and reasonable to the utility's customers. Thus we have difficulty in describing some particular price other than the avoided cost as being just and reasonable to the utility's customers; and difficulty in giving the Conference Report language cited above any precise meaning in a particular situation, other than that some price below the avoided cost is also just, reasonable, and permitted by statute. We do not understand the prescription that the proper price is the lower of the just and reasonable price and the avoided cost as requiring that the selling QF be restricted to a minimal mark-up from its marginal generation cost on its sales to a utility.

As in the case of purchases by QFs, the rules for sales by QFs should permit sufficient latitude to allow "contractual pooling" among QFs to "firm up" capacity available to utilities. Such pooling could permit such things as coordinated scheduling for maintenance which would increase the assured availability of capacity to the utility. Although this may assure increased generating capacity, further consideration should be given to the potential impact on transmission costs of such arrangements.

Section 210(b) also requires that the rates for the purchases by the electric utilities not discriminate against QFs. It is not clear whether the statute only bars discrimination against QFs as a class, or whether it would also bar discrimination among QFs. If the latter, this may create some practical problems in administration. Since the price to be paid for the purchases by the utility is dependent, in part, on the utility's avoided costs, and these costs will vary over time and with the number and magnitude of cogeneration arrangements previously entered into, the rates paid will probably have to differ from one arrangement to another depending on when they were entered into and what future costs are being avoided. Further, as with multiple simultaneous interchange transactions, some priority among QFs may have to be established to determine which is viewed as displacing the utility's highest cost alternative power. Some vintaging arrangement or consistent formula approach to the computation of the costs avoided may be considered in the rule for the purpose of determining whether the rates discriminate among qualifying facilities.

Under certain circumstances it may be desirable to allow a cogenerator or small power producer to sell all its output to a utility and, at the same time, purchase all its needs from the utility. Specifically, where a utility needs additional capacity, and one of its customers can build and operate a new generator more cheaply than the utility can, it would be in everyone's interest for the QF to build the unit. However, if the utility's embedded cost-based rates even after it built the new plant are lower than the incremental cost of power from the new facility the QF would have built, then it would be in the QF's interest to let the utility build the plant and supply its needs. Put another way, if a QF were prohibited from buying from and selling to a utility simultaneously, it would be compelled to "buy" from itself at its marginal cost. Where this is lower than the utility's

rate based on average embedded cost, then the QF would still build the facility, as it should in this situation; but where the utility's rate is lower than the QF's marginal cost, the wise firm would allow the utility to build and operate the new plant, even though it cannot do so as cheaply as the QF. This problem only arises where a new facility is involved. We have no idea how often the costs would be such that the more costly plant would be built,¹² but since the utility's customers would benefit whenever a QF builds a lower-cost plant than the utility can build, we tentatively recommend that this simultaneous buying and selling be permitted in connection with new facilities.¹³

With regard to existing facilities, however, the situation is exactly the reverse. Here, permitting a customer who has been providing part or all of its own power needs to sell to a utility at or near the utility's incremental cost and simultaneously buy back the same power at average embedded cost would drive up the costs of power to the utility's other customers without doing anything to encourage new cogeneration or desirable kinds of small power production. Thus we would recommend that the rule prohibit this practice.

As indicated in the preceding section, the ratemaking aspects of the interconnection costs may be handled in a variety of ways. Depending upon the size and type of generating equipment a QF has, whether or not the QF wants to operate in parallel with the interconnected utility, and the extent to which the QF expects to sell to the utility, many different types of facilities and arrangements may be appropriate. In many situations, all the required facilities may not be placed on the QF's facilities or at the point of interconnection; rather, it may be necessary for the utility to install or modify equipment elsewhere on the system in order to protect its and QF's equipment and operations.

While we are of the view that the authority to order interconnections is inherent in the Commission's other powers under Section 210, we do not regard this as settling the question of who bears the attendant cost. As to this

question, we think the proscription against compelling to the utility's customers to subsidize QFs is dispositive: the QF should pay the reasonable costs of the interconnection necessary and appropriate to its circumstances. By the same token, however, the comparable costs attending the purchase or supplying of the same electric energy from an alternative source should be taken into account in determining the price the utility should pay the QF for electricity.

The recovery of the utility's costs of interconnection can be accomplished in either of two ways: through a lump-sum hook-up charge, or through a credit (where the utility is buying from the QF) or surcharge (where the QF is buying from the utility) to the basic price. Where these facilities' costs are to be amortized over a period of years or volume of sales, it would seem reasonable to allow the utility to secure its investment in some manner where either the financial integrity of the QF or the duration of the arrangement are in question.

As this entire discussion of pricing and interconnection indicates, the variety of arrangements that might be made between QFs and utilities is enormous. Therefore, we would recommend that the Commission promulgate broad general rules in the nature of guidelines, leaving flexibility for the States to experiment and accommodate local circumstances, and leaving room for the parties to negotiate the particular terms and conditions of their arrangements within the broad parameters of the Commission's rules. Under this approach, the States and the Commission would function more as arbitrators of disputes the parties can not resolve than as traditional regulators. This approach is, in our view, practically unavoidable with regard to the sales by QFs to utilities. On the other hand, as noted above, the sale from utilities to QFs is in most instances the type of transaction the States now regulate, and continuation of this regulation without substantial change is certainly a real option.

Finally, we must observe that the arbitration of disputes approach espoused above is not appropriate where a utility is participating in the ownership or even the operation of a QF. We would recommend that the specific terms of such arrangements be scrutinized by the States to ensure that the pricing or other provisions are not unduly discriminatory or beneficial.

Environmental Impact Statement

It appears to us that an environmental impact statement will not be necessary for Section 210 alone. We reach this preliminary conclusion on the basis that most of the effect of Section 210 flows from statutory mandates as to which the Commission has little or no discretion. the requirement that utilities buy from and sell to QFs; the requirement that the Commission grant exemptions necessary to encourage QFs (though it is not authorized to grant exemptions from environmental laws or regulations); and the requirement that prices be set within certain guidelines. In other words, we do not think that the Commission's adoption of one set of rules rather than another on those matters as to which the Commission has discretion or flexibility would constitute a major Federal action significantly affecting the quality of the human environment.

There does exist some question in our minds, though, as to whether the Section 201 rules together with the Section 210 rules might not require an environmental impact statement. The Section 201 rules will establish the fuel use and fuel efficiency standards for qualifying cogenerators and qualifying small power producers; and the Section 210 rules will describe with some greater specificity than does the statute the benefits of qualification. The environmental impact of this part of PURPA (whether or not the impact is significant) will be a product of the two rules acting together.

As stated elsewhere in this memorandum, we anticipate that the number, size, and kind of QFs that will develop will vary considerably from state to state and region to region. Similarly, the amount and kinds of utility fuel displaced by QFs will differ significantly around the country. As a consequence, the states would appear to be in a very good position to provide the information from which the Commission can determine whether the Section 201 and 210 rules would have a significant effect on the quality of the human environment, and whether that effect will be beneficial or detrimental. Therefore, we recommend that the Commission promptly invite comment from the States in particular and the public in general on this matter so that, at the least, there will be a basis for an assessment of environmental impact.

End of Memorandum.

Written Comments

Interested persons are invited to submit written comments on this staff paper to the Office of the Secretary, Federal Energy Regulatory Commission.

¹² Unfortunately, it is quite possible that the difference in the investment tax credits which may be available to, respectively, a utility and an owner of a QF will distort this cost comparison.

¹³ Under the provisions of the Fuel Use Act of 1978, the sale of more than 50% of the output of a new installation would give the facility the status of an electric power plant. As a consequence, absent exemption on other grounds, a cogenerator could not use oil or gas as the basic generation fuel. However, the Fuel Use Act does not apply to installations consuming less than 100 million Btus per hour.

825 North Capitol Street, N.E., Washington, D.C. 20426. Comments should reference Docket No. RM79-55 on the outside of the envelope and on all documents submitted to the Commission.

Fifteen (15) copies should be submitted. All comments and related information received by the Commission by August 1, 1979, will be considered prior to the promulgation of final regulations.

By the Commission,
Kenneth F. Plumb,
Secretary.

[FR Doc. 79-20413 Filed 7-2-79; 8:45 am]
BILLING CODE 6450-01-M

[18 CFR Part 292]

[Docket No. RM79-54]

Proposed Regulations Providing for Qualification of Small Power Production and Cogeneration Facilities Under Section 201 of the Public Utility Regulatory Policies Act of 1978.

Issued June 27, 1979.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: These regulations establish rules under which small power production and cogeneration facilities may be certified as qualifying facilities under Section 201 of the Public Utility Regulatory Policies Act of 1978.

DATES: Comments by August 1, 1979.

ADDRESS: All comments to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426 (Reference Docket No. RM79-54).

FOR FURTHER INFORMATION CONTACT:

Adam Wenner, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426 (202) 275-0423.

Bernard Chew, Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426 (202) 275-4770.

Issued June 27, 1979.

Section 201 of the Public Utilities Regulatory Policies Act of 1978 (PURPA) mandates that the Commission prescribe rules under which small power production facilities and cogeneration facilities can obtain "qualifying" status.

Section 201 of PURPA¹ defines a "small power production facility" as a facility which:

(1) produces electric energy solely by the use, as a primary energy source of

biomass, waste, renewable resources, or any combination thereof; and

(2) has a power production capacity which, together with any other facilities located at the same site (as determined by the Commission) is not greater than 80 megawatts.

A cogeneration facility is defined as a facility which produces electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes.²

A cogeneration or small power production facility may be deemed "qualified" if it is owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration or small power production facilities), and if it meets such requirements as the Commission may prescribe, such as fuel use, fuel efficiency, reliability and minimum size.

In this notice of proposed rulemaking the Commission sets forth proposed requirements for qualifying cogeneration and small power production facilities and procedures by which such facilities may obtain qualification. Subsequent rulemaking proceedings will implement the provisions of Section 210 of PURPA.

A qualifying facility may be exempted from the Federal Power Act, the Public Utility Holding Company Act, and from State laws and regulations. Section 210(a) of PURPA requires that the Commission prescribe such rules as it finds necessary to encourage cogeneration and small power production, including rules requiring electric utilities³ to offer to sell electric energy to and purchase electric energy from qualifying small power production and cogeneration facilities.

Under Section 210(b), the Commission's rules must insure that, in requiring any electric utility to purchase electric energy from qualifying facilities, the rates for such a purchase must be "just and reasonable to the electric consumer of the electric utility", "in the public interest," non-discriminating against qualifying facilities, and shall not exceed the incremental cost to the electric utility of alternative sources. Finally, under Section 206(c)(3) of the Natural Gas Policy Act of 1978 (NGPA), the Commission may exempt qualifying cogeneration facilities from the

²Section 3(18)(A) of the Federal Power Act.

³Section 3(22) of the amended Federal Power Act defines "electric utility" as "any person or State agency which sells electric energy; such term includes the Tennessee Valley Authority, but does not include any Federal power marketing agency." The definition includes intrastate utilities which are not "public utilities" under Section 201(b) of the Federal Power Act.

incremental pricing provision of the NGPA.

Purpose of the Proposed Requirements and Procedures

The Commission believes that the intent of § 201 and § 210 of PURPA is to Encourage the development or better utilization of energy resources through cogeneration and small power production. These provisions of PURPA attempt, among other purposes, to assure entrepreneurial opportunities to sell electricity to electric utilities, when such electricity is generated through use of renewable energy sources or better use of industrial process heat. They reflect a belief that improved energy resource utilization may be accomplished with projects based on unconventional technologies or using small unit sizes which might not be developed by electric utilities. The provisions are not intended, however, to require the rate payers of a utility to subsidize cogenerators or small power producers.

It is the commission's view that an objective of the qualifying requirements is to limit the benefits of the qualifying designation to facilities which represent serious and significant efforts to improve energy resource utilization. Moreover, qualifying facilities must be suitable for interconnected operation with electric utility systems and must make effective use of resources.

Any specific requirements of our regulations will necessarily reflect the current state of the the art, and the commission recognizes the need to consider facilities of novel character as well as to provide for operation of experimental and developmental facilities. Consequently, the proposed regulations contain a provision for granting qualifying status to facilities which might not otherwise qualify, if the commission determines that granting such status is in the public interest.

Scope of the Proposed Rules

In this rulemaking the Commission proposes to deal only with the determination of qualifying status under Section 201 of PURPA. Subsequent rulemakings will implement the PURPA provisions regarding terms and conditions for sale and purchase of electricity by qualifying facilities, including the rates for such transactions, and the provisions for exemption from some forms of electric utility regulation.

Summary of the Proposed Regulations

§ 292.201 Scope.

The proposed new § 292.201 of the Commission's Regulations states that the section applies to the certification of

¹Section 3(17)(A) of the Federal Power Act.

small power production and cogeneration facilities for qualifying status.

§ 292.202 Application for certification of qualifying status.

Subparagraph (a) provides that any person seeking qualifying status must file an application pursuant to this section. The Commission believes that many potential problems between applicants for certification of qualifying status and affected electric utilities may be eliminated by the initiation of informal discussions between the applicant and the affected utility. In order to insure that an applicant has considered the suitability of his facility for interconnected operation, we propose to require that the applicant initiate discussions with affected utilities, and submit a summary of these discussions with his application for certification. This requirement appears in paragraph (b).

Paragraph (c) sets forth the contents of an application for certification. The application must contain technical information describing the facility, a summary of discussions between the applicant and affected electrical entities, and a description of the equity ownership of the facility.

Paragraph (d) sets forth requirements specifically applicable to small power production facilities. The applicant is required to submit information identifying the primary energy source as one of the energy sources which qualifying small power production facilities are permitted to use by section 3(17)(A)(i) of the Federal Power Act. Generally, applicants are required to supply the location of the facility in relation to other qualifying small power production facilities owned by the applicant and using the same energy resource. This subparagraph provides information needed to implement the power production capacity requirement of section 3(17)(A)(ii) that qualifying small power production facilities located at the same site not exceed 80 megawatts.

Paragraph (e) sets forth additional requirements for applications for cogeneration facilities. In addition to the information acquired under § 292.202(c), applications for certification as qualifying cogeneration facilities must contain information set forth describing the energy input and energy output of the facility in both the heat engines and thermal processes.

§ 292.203 Notice.

This section requires an applicant for qualifying status to serve notice of the

application upon any electric utility with which the applicant proposes to operate in coordination, and to any state regulatory body with jurisdiction over that entity.

§ 292.204 Protests.

This section provides that any entity served with notice under § 292.203, or any other interested party may file a protest to the application for certification. The protest must be filed within 30 days of the service of notice of application. Any person filing a protest is required to serve a copy of the protest on the applicant.

Subparagraph (b) provides that the applicant may file an answer to the protest. Such an answer must be filed within 15 days of the filing of the protest and must be served on the party filing the protest.

§ 292.205 Qualifying requirements for small power production facilities.

Section 292.205 sets forth qualification requirements for small power production facilities. Paragraph (a) sets forth the requirement that the primary energy source for a qualifying small power production facility must be biomass, waste, renewable resources or any combination thereof. The statement on the part of the managers which accompanies the Conference Report of PURPA states that the definition of small power production facility includes solar electric systems, wind electric systems, systems which produce electric energy from waste or biomass, electric energy storage systems, and hydroelectric facilities for existing dams. It also states that the term "waste" includes wood and liquid or solid waste.

For the purpose of the regulations, the term "biomass" means plant materials which are obtained from cultivation, or harvested from naturally occurring vegetation without significant depletion of the resource. The term "waste" covers municipal, agricultural, and industrial wastes and includes any byproduct materials of any operation for which market value is less than disposal cost. Waste may be solid, liquid, or gaseous. Municipal sewage sludge would be a qualifying fuel under this definition. Manure and cornstalks are examples of qualifying agricultural wastes. Wood derived waste and debris from sawmill, lumbering, or pulp mill operations would qualify as biologically derived industrial wastes.

A fuel (such as methane) which is conventionally derived from fossil sources would be a permissible primary fuel if it is obtained from biomass or waste as defined above.

The term "renewable resource" means any application of solar, wind, or geothermal energy. Biomass also may be a renewable resource, but fossil fuels are not. Electric energy storage facilities such as electro-chemical systems, flywheels, or pumped storage units qualify as long as they do not involve the primary use of fossil fuels as direct inputs to the storage cycle. Senate floor debate established that the definition also includes systems using geothermal resources to produce electricity (S17806, October 9, 1978).

The Conference Report states that water is to be included within the meaning of the term renewable resources "with respect to hydro-electric facilities at existing dams." Clause (i) of paragraph (a) implements this requirement by excluding water as a renewable resource if it is used at a facility which contains a dam or other structure for impounding water, construction of which was not complete as of the date of the application for qualification, or which requires additional construction or enlargement (other than repair or reconstruction) in order to become operative. Under these standards, a hydroelectric facility can not become a qualifying small power production facility unless the impoundment portion of the facility is complete as of the date of the filing for qualification.

The definition of "primary energy source" for small power production facilities as set forth in section 3(17)(B) of the Federal Power Act, indicates that qualifying small power production facilities may make limited use of fossil fuels for ignition, startup, testing, flame stabilization and control purposes, as well as for fuel substitution during outages of a normal fuel supply system.

For ignition, startup and testing purposes, the Commission proposes in subparagraph (2), that the amount of fossil fuel planned to be burned for such purposes not exceed 500 barrels of oil (or its Btu equivalent in gas) per megawatt of rated capacity per year. For flame stabilization and control purposes, the proposed maximum amount is the equivalent of 0.2 barrels of oil per megawatt-hour of generation except for facilities burning solid municipal waste, for which the limit is the equivalent of 0.5 barrels of oil per megawatt-hour of generation.

Most facility outages are likely to involve essential power generation equipment, including the fuel combustion unit, and substitution of a fossil fuel would not restore the facility to proper operation. Based on utility experience with outages which do not

involve the generator, turbine or fuel combustion unit, we propose that the amount of fossil fuel used as a substitute during outages of the normal fuel supply system not exceed the Btu equivalent of 110 barrels of oil per megawatt of rated capacity per year.

The proposed total amount of fossil which may be utilized for all purposes thus would not exceed the equivalent of 610 barrels of oil per year per megawatt of rated capacity, plus the equivalent of 0.2 barrels of oil per hour (0.5 for solid municipal waste) per megawatt of rated capacity during operation of the facility. Subparagraph (3) requires the applicant to submit an estimate of planned use of fossil fuel by the facility, supported by any design characteristics or specifications of the equipment used in the facility.

Paragraph (b) implements the statutory requirement that the rated power production capacity of a small power production facility not exceed 80 megawatts. In order to implement this limitation, we propose to limit the maximum size standard to facilities that use the same energy resource and are owned by the same person. The Commission believes that limiting the applicability of the 80 megawatt maximum size to facilities meeting these stricter standards will encourage the development of small power production facilities as intended by the Congress. For purposes of this section, we propose to define "facilities located at the same site", except for hydroelectric facilities, as facilities located within one mile of the facility for which certification is sought. For hydroelectric facilities, we set forth the additional requirement that, to be considered to be located at the same site, the hydroelectric facilities must use water from the same impoundment for power generation. We propose to add this additional limitation to hydroelectric facilities because use of the one mile rule alone might discourage the development of facilities on a portion of a river with high energy potential which could not be effectively developed with one larger unit.

Clause (iii) states that an applicant may seek to rebut the presumption that facilities located within one mile of the facility for which certification is sought, using the same energy resource and owned by the same person should be considered to be located at the same site. Determinations regarding the rebuttal of the presumption will be based upon the extent to which factors other than an attempt to circumvent the 80 megawatt capacity limitation required smaller physically separated facilities and the extent to which

rebutting the presumption is consistent with conservation of energy and optimal development of resources.

We considered but rejected as administratively infeasible a rule by which facilities located beyond the one mile limit solely for the purpose of circumventing the 80 mw limit would be excluded from qualification. We invite comment on how to implement the Congressional purpose of limiting the benefits of qualifying status and yet not discourage the development of resources.

Subparagraph (2) sets forth provisions for the minimum size of qualifying small power production facilities. It is clear that the minimum fixed costs associated with a small power production facility will set some minimum size of a generating unit below which there is little possibility that the unit can be economic, and therefore resource-efficient. These minimum fixed costs will vary between alternative forms of small power production facilities, both as a consequence of technology advancements and because the cost of interconnecting each facility to a power system varies with respect to metering, switching, supervision, control and safety provisions.

Nevertheless, we have made an effort to identify a practical minimum size, in order to reduce consideration of possibilities which are unlikely to prove viable. A 10-kilowatt unit is proposed as the minimum size for qualification, unless there is a showing that waiver is necessary to encourage conservation of energy and optimization of use of resources.

We recognize that the Department of Energy is sponsoring the development of a number of wind power units of less than 10 kilowatts capacity. Testing and demonstration of these units will require interconnection with utility systems, and, in the event that qualifying status is needed, we may invoke the standard as set forth above for such test operations. However, there seems to be no advantage in encouraging uneconomic operation of commercial systems or burdening utilities with analysis and planning for hypothetical systems which are unlikely to be constructed because they cannot recover the investment costs. Hence, we propose a minimum size of 10-kilowatts with a provision for exemption. We request comment on the feasibility and advisability of a 10-kilowatt minimum size limitation.

Paragraph (c) sets for efficiency standards for small power production facilities using limited access renewable resources.

Where use of a primary energy resource will not significantly limit its use by others, economics will generally dictate the optimum level of efficiency for a small power production facility. Therefore, no minimum standard of efficiency will be mandated for facilities deriving primary energy input from biomass and renewable resources such as solar energy or the wind, which at this time are characterized by essentially unlimited access.

For facilities deriving primary input from energy sources characterized by limited supply or access, such municipal waste, geothermal wells or existing dams, minimum efficiency standards may be desirable to assure reasonable energy recovery from a limited resource. (Access to the limited resource may confer a degree of monopoly power, so that economic forces may not necessarily assure efficient use of the resource.)

For such limited energy resources other than hydroelectric facilities, we propose that the facility achieve a minimum level of 40 percent of the ideal Carnot efficiency achievable with practical working fluid temperatures. Efficiency is defined as the ratio of the output of the heat engine as useful mechanical energy to the energy input to the facility.

Hydroelectric small power production facilities are a special case of a limited access energy resource. The existing licensing criteria include a determination of whether a proposed installation will have an acceptable level of efficiency. For non-jurisdictional hydroelectric projects, we propose that a minimum hydraulic efficiency of 60 percent be realized.

Paragraph (d) is designed to implement the requirement in the new sections 3(17)(C)(ii) and 10(B)(ii) that a qualifying small power production facility or cogeneration facility be owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogenerational facilities or small power production facilities). Regarding this provision, the Commission notes that the Conference Report states that:

[e]lectric utilities may participate in an entity which owns such (qualifying small power production or cogeneration) facilities with other persons, and such entity could qualify under these definitions.

The test of this case is whether the entity which owns the facility is primarily engaged in the generation or sale of electric power other than in connection with its ownership of the cogeneration facilities or small power production facilities.

Thus, either directly or through a subsidiary company, an electric utility could participate in the ownership of a qualifying cogeneration or small power production facility. We note that under a literal interpretation of the Conference Committee's statement, several electric utilities could form a subsidiary which owned small power production or cogeneration facilities. Such a subsidiary would constitute an entity which is not primarily engaged in the generation or sale of electric power other than in connection with its ownership of cogeneration or small power production facilities. Under such an interpretation, the subject facilities would be eligible to receive qualifying status. We believe, however, that the thrust of Section 201 of PURPA is to limit the advantages of qualifying status to cogeneration and small power production facilities which are not owned exclusively by electric utilities or their subsidiaries. Under the proposed regulations, based on the proportion of ownership by electric utilities, public utility holding companies, or subsidiaries of either, the Commission will determine whether more than 50 percent of the entity which owns the cogeneration or small power production facility is comprised of these electric interests. If it is, then the facilities may not be granted qualifying status.

§ 292.206 Qualifying requirements for cogeneration facilities.

Section 292.206 sets forth the requirements for qualifying cogeneration facilities. Paragraph (a) provides that the cogeneration facility must produce electric energy and other forms of useful energy (such as heat or steam) which are used for industrial, commercial heating or cooling purposes. These standards are set forth in subsection 3(18)(A) of the Federal Power Act, as amended by PURPA. This definition reflects the focus of PURPA on sales of electricity by industrial or commercial generating facilities. The key concept is that electricity production as a co-product of process heat or non-electric energy forms may be more resource-efficient than separate production of electricity and other energy forms and, when so, should not be inhibited by artificial barriers. Resource efficiency translates generally to economic efficiency. Hence, a major objective of the Commission's rules is to help assure that projects are economic, and specifically to assist potential cogenerators in their evaluations of project economic feasibility.

Paragraph (b) sets forth the same limitations on utility ownership as apply

to small power production facilities (see pp. 16-18, *supra*).

Paragraph (c) sets forth definitions for terms used to provide efficiency standards for qualifying cogeneration facilities. The Commission's concern with the fuel efficiency of a qualifying cogeneration facility is that the benefits obtained by such a designation be matched by significant improvement in resource utilization. Addition of a heat recovery unit to a diesel engine exhaust, or of a steam turbine generator unit to a process heat waste gas stream might constitute cogeneration in the strict sense of the term, but would only represent a significant improvement in resource utilization if a substantial fraction of the energy potentially available from the thermal stream is actually recovered and used. Consequently, threshold values of efficiency and heat utilization are proposed as a primary basis for qualification of units using energy resources of limited availability, specifically natural gas and petroleum. Lower values may be justified by presentation of evidence that the specified levels are not practicably attainable and that significant resource conservation will be achieved.

For a cogeneration facility coupled to an industrial process which operates in a batch mode, the performance of the facility shall be determined in terms of average values over the duration of a batch run. For any other cogeneration process, the performance of the system shall be determined in terms of steady state operation at rated capacity.

Subparagraph (1) defines "heat engine" as a device which operates on a thermodynamic cycle and converts heat energy to mechanical energy. Subparagraph (2) defines "efficiency of a heat engine" as the ratio of the useful output of a heat engine as mechanical energy to the sum of the energy inputs to the heat engine. Subparagraph (3) defines the "useful energy output of a thermal process" as the difference between the heat inputs to the process and the heat carried away by the heating medium. Subparagraph (4) specifies that, in the use of energy in the form of fossil fuel, energy input is to be measured by the lower heating value of such fuel.

Finally, subparagraph (5) defines "overall energy efficiency" as the ratio of the sum of all useful energy outputs including the useful output of any thermal process to the energy input to the facility. Any energy used exclusively in the thermal process of a topping cycle, or exclusively in the heat engine of a bottoming cycle (supplementary

filing) is not included as energy output or energy input for the purpose of determining the overall cogeneration system efficiency.

A qualifying cogeneration facility may be subject to fuel use regulations established under the Powerplant and Industrial Fuel Use Act (FUA). Under the Act, new powerplants or fuel burning installations of a single unit having a design fuel heat input of 100 million Btu's per hour or greater, or which result in two or more units at the same site having a combined design fuel heat input rate of 250 million Btu's per hour or greater, are prohibited from burning natural gas or petroleum, unless an exemption is provided by the Secretary of Energy. FUA specifically authorizes the Secretary to exempt cogeneration facilities from the prohibition if the benefits of cogeneration are otherwise unobtainable. The Economic Regulatory Administration has issued interim rules under which such exemptions might be granted.

Under PURPA, the Commission may establish fuel use requirements for qualifying cogenerators of any size, but any such requirements regarding the use of natural gas or petroleum would only be effective at fuel heat input levels below the thresholds established by FUA for action by the Secretary of Energy. At such lower levels, a fuel burning installation that does not seek classification as a qualified cogenerating facility would not be subject to an FERC rule and could burn natural gas or oil. Hence, a restriction on the use of gas or oil for cogeneration, imposed by the Commission, could discourage cogeneration at the lower heat input levels, while not significantly reducing the use of oil or natural gas. We conclude that restrictions or requirements on fuel use by qualifying cogeneration facilities are not appropriate in this proposed rule.

Paragraph (d) sets forth efficiency standards for cogeneration facilities using bottoming cycles which use any primary energy source except coal or coal-derived fuels. Because of the abundance of this energy resource at this time, we propose not to impose any limit on the efficiency of such cogeneration facilities and rather to let the marketplace provide the motivation for optimization of efficiency.

For bottoming cycle cogeneration facilities using energy resources other than coal or coal-derived fuels to obtain qualifying status, either the useful energy output of the heat engine must be no less than 15 percent of the difference between the energy input to the facility

and the useful energy output of the thermal process, or the heat engine must attain a minimum of 40 percent of the ideal Carnot efficiency achievable with the maximum and minimum temperatures experienced by the working fluid. In either case, the overall cogeneration facility energy efficiency must be no less than 60 percent.

Efficiency standards for cogeneration facilities using topping cycles vary depending on the primary energy source. Paragraph (e) sets forth efficiency standards for topping-cycle cogeneration facilities using natural gas, petroleum, or any derivative thereof as a primary energy source. The prices of these energy sources are subject to government control, and therefore the prices do not reflect replacement costs. As a result the failure to limit the benefits of qualification to efficient facilities might encourage overconsumption of these fuels. To prevent that result, we propose only to qualify gas or oil burning facilities if:

- (1) the useful energy output of the heat engine is no less than 20 percent of the energy input to the facility;
- (2) the useful energy output of the thermal process is no less than 45 percent of the heat energy discharged by the heat engine; and
- (3) the overall facility energy efficiency is no less than 60 percent.

The next category of topping-cycle cogeneration facilities are those whose primary energy source is characterized by limited access. Use of these resources by one cogenerator deprives another, possibly more efficient cogeneration facility of the opportunity to use these particular energy sources. As a result, we propose to impose efficiency standards on facilities using these resources. The proposed standards are lower than those imposed on facilities using oil or gas.

There is an additional need for efficiency standards for facilities of over 30 megawatts electrical capacity which use biomass or renewable resources, and for which a condition of limited access characterizes the primary energy source. For such facilities, efficiency standards are necessary to ensure that the facility represents a *bona fide* cogeneration system, and not merely an attempt to evade the 30 megawatt statutory limit on exemption from regulation for small power production facilities. The proposed standard is identical to that proposed for facilities of all sizes using primary energy sources characterized by limited access. We do not expect that this standard will exclude any serious cogeneration

proposal from the benefits of qualifying status.

Accordingly, in paragraph (f), we propose that, for topping-cycle cogeneration facilities over 30 megawatts using biomass, renewable resources and waste other than municipal waste, or geothermal energy or any combination thereof, and for topping cycle facilities of any size using geothermal or municipal waste as their primary energy source, efficiency standards be set as follows:

- (1) the useful energy output of the heat engine must be no less than 15 percent of the energy input to the facility;
- (2) the energy output of the thermal process must be no less than 40 percent of the heat energy discharged by the heat engine; and
- (3) the overall facility energy efficiency must be no less than 55 percent.

For cogeneration facilities using either topping or bottoming cycles, using coal or coal-derived fuel as the primary energy source. There are no statutory limits on efficiency for qualification. The abundance of this energy resource permits reliance on the market to optimize efficiency.

Paragraph (g) sets forth a proposed minimum size of 10 kilowatts (electric).

§ 292.207 Exemptions from qualifying requirements.

This section provides that the Commission may waive certain requirements for qualification of cogeneration or small power production facilities, if it determines that waiver is necessary to encourage conservation of energy and optimization of efficiency of use of resources. The Commission may not waive the qualifying requirements for small power production facilities concerning the primary energy source of the facility and limiting ownership to persons not primarily engaged in the generation or sale of electric power. We propose that the ownership limitations for cogeneration facilities similarly be excepted from the waiver provisions along with the statutory definition of a cogeneration facility set forth in § 292.206(a).

§ 292.208 Procedures for determination of qualifying status.

Section 292.208 sets forth the procedures to be used for the Commission to determine whether a facility is to be granted a qualifying status. Paragraph (a) provides that in uncontested proceedings the Commission shall issue an order granting, denying or tolling the time for issuance of an order within 90 days of

the filing of the application. Unless the applicant requests that the presumptions set for in § 292.205(b)(1) be rebutted, if no order is issued within 90 days of the filing of the application, it shall be deemed to have been granted. If any party files a protest to an application, the time for the issuance of an order is extended to 120 days. In the case of contested applications, the provisions for automatic granting of qualifying status do not apply.

Under clause (2) if an applicant seeks to rebut the presumptions concerning facilities located at the same site for purposes of compliance with the 80 megawatt maximum limit on small power production facilities, the application will be treated as a contested application. In that case, the time for issuance of an order is extended to 120 days and qualifying status is not automatically granted if the Commission does not issue an order within that time period.

§ 292.209 Modification of qualifying facilities.

Paragraph (a) provides that the Commission may revoke the qualifying status of a facility if it ceases to comply with the qualifying requirements for small power production or cogeneration facilities. Paragraph (b) provides that, prior to undertaking any substantial alteration of a qualifying facility, a small power producer or cogenerator may apply to the Commission for a determination that the facility, as modified, will retain its qualifying status.

If a small power producer or cogenerator undertakes such changes without obtaining prior Commission approval, he must apply to the Commission to retain qualifying status. Under these procedures, the Commission is attempting to assure that facilities enjoying the benefits of qualifying status continue to comply with the standards for qualification, and also to enable a qualifying facility to undergo necessary changes with assurance that its qualifying status will not thereby be imperiled.

Written Comments

Interested persons are invited to submit written comments on the proposed regulation to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Comments should reference Docket No. RM79-54 on the outside of the envelope and on all documents submitted to the Commission. In order that the Commission be able to take into account

as many comments as possible, the Commission requests that persons submitting comments assist in three ways. First, persons should identify specifically the section or subpart they are addressing. Second, comments should clearly state whether they involve technical, policy or legal matters. Finally, where comments urge a different approach from one presented, specific alternative language should be proposed to the extent practicable.

Fifteen (15) copies should be submitted. All comments and related information received by the Commission by August 1, 1979, will be considered prior to the promulgation of final regulations.

(Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617, Energy Supply and Environmental Coordination Act, 15 U.S.C. 791 *et seq.*, Federal Power Act, as amended, 16 U.S.C. 792 *et seq.*, Department of Energy Organization Act, Pub. L. 95-91, E.O. 12009, 42 FR 46267, Natural Gas Policy Act of 1978, Pub. L. 95-621).

In consideration of the foregoing, it is proposed to amend Chapter I of Title 18, Code of Federal Regulations, as set forth below.

By Direction of the Commission.

Kenneth F. Plumb,
Secretary.

(1) Subchapter K is amended in the table of contents by adding in the appropriate numerical order a new Part number and heading to read as follows:

SUBCHAPTER K—REGULATIONS UNDER THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

PART 292—QUALIFICATION OF SMALL POWER PRODUCTION AND COGENERATION FACILITIES UNDER SECTION 201 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

(2) Subchapter K is amended by adding a new Part 292 to read as follows:

PART 292—QUALIFICATION OF SMALL POWER PRODUCTION AND COGENERATION FACILITIES UNDER SECTION 201 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978

Subpart A—[Reserved]

Subpart B—Certification of Qualifying Status

Sec.

- 292.201 Scope.
- 292.202 Applications for certification of qualifying status.
- 292.203 Notice.
- 292.204 Protests.

292.205 Qualifying requirements for small power production facilities.

292.206 Qualifying requirements for cogeneration facilities.

292.207 Exemptions from qualifying requirements.

292.208 Procedures for determination of qualifying status.

292.209 Modification of qualifying facilities. (Authority: This part issued under the Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617, Energy Supply and Environmental Coordination Act, 15 U.S.C. 791 *et seq.*, Department of Energy Organization Act, Pub. L. 95-91, E.O. 12009, 42 FR 46267, Natural Gas Policy Act of 1978, Pub. L. 95-621.)

Subpart B—Certification of Qualifying Status

§ 292.201 Scope.

This subpart applies to the certification of small power production and cogeneration facilities as qualifying small power production and cogeneration facilities under sections 3(17)(C) and 3(18)(8) of the Federal Power Act, as amended by section 201 of the Public Utility Regulatory Policies Act of 1978 (PURPA).

§ 292.202 Applications for certification of qualifying status.

(a) *Filing requirements.* Any person seeking qualifying status for a small power production facility or cogeneration facility must file an application pursuant to the provisions of this section.

(b) *Pre-application requirements.* Before filing an application under this section, an applicant shall initiate or shall attempt to initiate discussions regarding the feasibility of interconnected operation with the entity with which the applicant proposes to so operate.

(c) *Contents of application.* Each application shall contain the following information:

- (1) the name, address, and business of the applicant and, if the operator of the facility is a person other than the applicant, the name, address, and business of the operator;
- (2) the electrical capacity of the facility;
- (3) information regarding the efficiency of any heat engines, thermal process, other energy conversion processes, and the facility as a whole;
- (4) the projected mode of operation of the facility, including anticipated daily and annual capacity factors of electric power generation and sale, a proposed plan for interconnected operation, and the proposed interconnection facilities to be provided by applicant and by the utility;

(5) a summary of the discussions between the applicant and the affected entity regarding the feasibility of interconnected operation between the applicant and affected entity conducted pursuant to § 292.202(b);

(6) a description of the equity ownership of the facility. If the owner of the facility, including any person which has ownership in any owner of the facility, is engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities, or small power facilities) the applicant shall state:

(i) the percentage of ownership by electric utilities, or by public utility holding companies, or by any person owned by either; and

(ii) the State and federal bodies which exercise ratemaking authority with respect to the applicant;

(7) a statement that the cogeneration or small power production facility complies or will comply with all applicable FERC rules and regulations.

(d) *Additional application requirements for small power production facilities.* In addition to the information required under § 292.202(c), applications for certification as qualifying small power production facilities must contain the following additional information:

(1) a description of the facility;

(2) information sufficient to identify the primary energy source as biomass, waste or renewable resources and identifying any planned usage of fossil fuel; and

(3) the location of the facility in relation to other qualifying small power production facilities owned by the applicant and using the same energy resource.

(e) *Additional application requirements for cogeneration facilities.* In addition to the information required under § 292.202(c), applications for certification as qualifying cogeneration facilities must contain the following additional information:

(1) a basic description of the facility, including whether the facility uses a topping or bottoming cycle;

(2) a description of the energy inputs, including the primary energy source, any additional energy sources, and the energy content of any fuels used as energy sources; and

(3) a description of the energy outputs, indicating the type and size of heat engines, thermal processes, and other energy conversion processes.

§ 292.203 Notice.

(a) Applications filed under this section shall include a copy of a notice

of the request for certification. The notice shall state the applicant's name, the date of the application, and a brief description of the facility for which qualification is sought and of the proposed interconnection. The notice shall be in the following form:

United States of America—Federal Energy Regulatory Commission

(Name of Applicant) _____

Notice of Application for Certification of a (Small Power Production) (Cogeneration) Facility Pursuant to Section 3(17)(C) or 3(18)(B) of the Federal Power Act

On (date application was filed), (name and address of applicant) filed with the Federal Energy Regulatory Commission an application to be certified as a qualifying (small power production facility) (cogeneration facility) under Paragraph 3(17)(C) or 3(18)(B) of the Federal Power Act.

[Brief description of the facility]:

Any person objecting to the granting of qualifying status may file a protest in accordance with the provisions of § 1.10 of the Commission's Rules and Regulations. All protests must be filed within 30 days after the date of issuance of this notice and must be served on the applicant.

(b) The applicant shall serve a copy of the notice on any entity with which the applicant proposes to interconnect, and a copy on any state regulatory authority with jurisdiction over the entity.

§ 292.204 Protests.

(a) Any entity served under § 292.203, or any other interested party, may file a protest pursuant to § 1.10 of the Commission's Regulations. Protests must be filed within 30 days of the issuance of public notice of the application. Protests must set forth specifically the grounds on which the protestant believes the facility for which the application is made should be denied certification of qualifying status. Any person filing such a protest shall serve a copy of the protest on the applicant.

(b) The applicant may file an answer to any protest. Such answer must be filed within 15 days of the service date of a protest. The applicant shall serve a copy of the answer on the party filing the protest.

§ 292.205 Qualifying requirements for small power production facilities.

To be certified as a qualifying small power production facility, a facility for which an application is filed must meet the following requirements:

(a) Fuel use.

(1) The primary energy source of the facility must be biomass, waste, renewable resources or any combination thereof. For purposes of this section,

water is a renewable resource with respect to hydroelectric facilities except to the extent that such facilities:

(i) include dams or other structures for impounding water, the construction of which was not completed on or before the date of the filing of the application for qualification under § 292.202(a), or

(ii) require any construction or enlargement of impoundment structures (other than repair or reconstruction) in connection with their installation.

(2) Planned use of fossil fuel for start-up, testing, flame stabilization and control purposes and during outages of the fuel supply system may not exceed the following limits:

(i) for ignition, start-up and testing, not more than 500 barrels (bbl) of oil per year (or its Btu equivalent in gas) per megawatt of rated capacity;

(ii) for flame stabilization and control, not more than 0.2 bbl of oil per hour (or its Btu equivalent in gas) per megawatt of rated capacity during operation of the facility; except for facilities burning solid municipal waste, in which case the limit is the equivalent of 0.5 bbl of oil per megawatt hour of generation; and

(iii) during outages of the normal fuel supply system, not more than 110 bbl of oil (or its Btu equivalent in gas) per year per megawatt of rated capacity.

(3) An applicant shall submit an estimate of the planned use of fossil fuel by the facility and this estimate shall be supported, where available, by design characteristics or specifications of the equipment used in the facility.

(b) Size of the facility.

(1) *Maximum size.* (i) The rated power production capacity of the facility for which certification is sought, together with the capacity of any other facilities that use the same energy resource and are owned by the same person and are located at the same site, must be no greater than 80 megawatts.

(ii) For purposes of this paragraph, facilities are presumed to be located at the same site as the facility for which certification is sought if they are located within one mile of the facility for which certification is sought and, for hydroelectric facilities, if they use water from the same impoundment for power generation.

(iii) An applicant may seek to rebut the presumption in subparagraph (ii) for any facility located within one mile of the facility for which certification is sought. In determining whether the presumption has been rebutted, the Commission will consider:

(A) the extent to which factors other than the 80 megawatt capacity limitation dictate smaller, physically separated

facilities rather than larger, integrated or physically contiguous facilities; and

(B) the extent to which consideration of the facility as being at a different site from other facilities is consistent with conservation of energy and optimally efficient use of resources.

(2) *Minimum size.* A facility must have a design capacity of at least 10 kilowatts. This provision may be waived if the Commission finds that granting qualifying status to the facility is necessary to encourage conservation of energy or the optimization of the efficiency of use of resources.

(c) *Efficiency standards for facilities using limited access renewable resources.*

(1) A facility using geothermal resources or municipal waste as a primary energy source must achieve a minimum of 40 percent of the ideal Carnot efficiency achievable with the maximum and minimum temperatures experienced by the working fluid.

(2) Hydroelectric facilities not regulated under Part I of the Federal Power Act must achieve hydraulic efficiency of at least 60 percent.

(d) *Ownership.* A small power production facility must be owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities). For purposes of this paragraph, a small power production facility shall be considered to be owned by a person primarily engaged in the generation or sale of electric power if more than 50 per cent of the equity interest in the facility is held by an electric utility or utilities, or by a public utility holding company, or companies, or any combination thereof. If a subsidiary of an electric utility or public utility holding company has an ownership interest in a facility, the subsidiary's ownership interest shall be considered as ownership by an electric utility or public utility holding company.

§ 292.206 Qualifying Requirements for Cogeneration Facilities.

(a) The cogeneration facility must produce electric energy and other forms of useful energy (such as heat or steam) which are used for industrial, commercial, heating or cooling purposes.

(b) A cogeneration facility must be owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities). For purposes of this paragraph, a cogeneration facility may not be certified as qualifying if more than 50

per cent of the facility is owned by an electric utility or utilities or a public utility holding company, or any combination thereof. If a wholly or partially owned subsidiary of an electric utility or public utility holding company has an ownership interest in a facility, the subsidiary's ownership interest shall be counted as ownership by an electric utility.

(c) For purposes of this subsection,

(1) "heat engine" means a device which operates on a thermodynamic cycle and converts heat energy to mechanical energy;

(2) "efficiency of a heat engine" means the ratio of the useful output of a heat engine as mechanical energy to the energy inputs to the heat engine;

(3) "useful energy output of a thermal process" means the difference between the heat input to the process and the heat carried away by the heating medium;

(4) "energy input", in the case of energy in the form of fossil fuel, is to be measured by the lower heating value of such fuel;

(5) "overall energy efficiency" means the ratio of the sum of all useful energy outputs including the useful output of any thermal process to the energy input of the facility. Any energy used exclusively in the thermal process of a topping cycle, or exclusively in the heat engine of a bottoming cycle (supplementary filing) shall not be included as energy output or energy input for the purpose of determining the overall cogeneration system efficiency.

(d) For bottoming cycle cogeneration facilities using any primary energy source, except coal or coal-derived fuels, the following efficiency standards apply:

(1)(i) the efficiency of the heat engine must be no less than 15 percent with regard to the difference between the energy input to the facility and the useful energy output of the thermal process; or

(ii) the heat engine must attain a minimum of 40 percent of the ideal Carnot efficiency achievable with the maximum and minimum temperatures experienced by the working fluid; and

(2) the overall cogeneration facility energy efficiency must be no less than 60 percent.

(e) For topping-cycle cogeneration facilities using natural gas, petroleum, or any derivative thereof, as a primary energy source, the following efficiency standards apply:

(1) the efficiency of the heat engine must be no less than 20 per cent with regard to the energy input to the facility;

(2) the energy output of the thermal process must be no less than 45 per cent of the difference between the energy output of the heat engine and the useful energy output of the heat engine; and

(3) The overall facility energy efficiency must be no less than 60 per cent.

(f) for topping-cycle cogeneration facilities over 30 megawatts using biomass, renewable resources other than municipal waste, or any combination thereof, and for any facilities using geothermal energy or municipal waste as their primary energy source, the following efficiency standards apply:

(1) the useful energy output of the heat engine must be no less than 15 percent of the energy input to the facility;

(2) the energy output of the thermal process must be no less than 40 percent of the energy output of the heat engine minus all useful energy output of the heat engine; and

(3) The overall facility energy efficiency must be no less than 55 per cent.

(g) *Minimum size.* The cogeneration facility must have a design capacity of at least 10 kilowatts (electric).

§ 292.207 Exemptions from Qualifying Requirements.

The Commission may waive any of the provisions of §§ 292.205 and 292.206 except for §§ 292.205(a)(1); 292.205(d); 292.206(a); and 292.206(b), if it determines that the waive is necessary to encourage conservation of energy and optimization of efficiency of use of resources.

§ 292.208 Procedures for determination of qualifying status.

(a) *Uncontested applications.* Except as set forth in subparagraph (2), the following procedures apply to uncontested applications for certification of qualifying status:

(1) If no protest is received during the period allowed, the Commission shall issue an order within 90 days of the filing of a complete application, granting or denying the application, tolling the time for issuance of an order, or setting the matter for hearing. Any order denying certification shall identify the specific requirements which were not met. If no order is issued within 90 days of the filing of the application, it shall be deemed to have been granted.

(2) An application for certification as a small power production facility seeking to rebut the presumption set forth in § 292.205(b)(1)(ii) of this subpart will be considered a contested

application under paragraph (b) of this section.

(b) *Contested applications.* If any person files a protest to an application for certification, the Commission shall issue an order within 120 days of the filing of the original application.

§ 292.209 Modification of qualifying facilities.

(a) The Commission may revoke the qualifying status of a qualifying cogeneration or small power production facility if such facility undergoes changes which cause the facility not to be in compliance with the provisions of § 292.205 or § 292.206.

(b) Prior to undertaking any substantial alteration or modification of qualifying facilities, a small power producer or cogenerator may apply to the Commission for a determination that the proposed alteration or modification will not result in a revocation of qualifying status.

(c) If a small power producer or cogenerator undertakes any substantial alteration or modification of qualifying facilities without a determination of the Commission that such alteration or modification will not result in a revocation of qualifying status, the small power producer or cogenerator shall apply for certification pursuant to § 292.202(a) of the facilities as altered or modified.

(d) For purposes of this section, the term "substantial alteration or modification of qualifying facilities" means such alteration, modification or other changes as would materially affect the accuracy of the information submitted pursuant to § 292.202(a).

[FR Doc. 79-20412 Filed 7-2-79; 8:45 am.]

BILLING CODE 6450-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Parts 404 and 416]

[Regs. No. 4, 16]

Federal Old-Age, Survivors, and Disability Insurance Benefits, Supplemental Security Income for the Aged, Blind, and Disabled; Determining Disability and Blindness

AGENCY: Social Security Administration.
ACTION: Proposed Rule.

SUMMARY: The Department of Health, Education, and Welfare is proposing to revise the regulations in Subpart P of Part 404 and Subpart I of Part 416 to make them clearer and easier for the

public to use. These subparts contain the rules for determining disability and blindness under titles II and XVI of the Social Security Act. We have completely reorganized and rewritten these rules in simpler, briefer language.

We have updated these regulations by including important policies which we are now following in evaluating disability and blindness. We have also changed the provisions on the amount of earnings we consider representative of substantial gainful activity, and the monetary amount we do not count for trial work period purposes.

DATES: We will consider your comments if we receive them no later than August 2, 1979.

ADDRESSES: Send your written comments to the Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Md. 21203.

You may see copies of all comments we receive at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, room 4146, 330 Independence Avenue SW, Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT: Harry J. Short or William J. Ziegler, Legal Assistants, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Md. 21235, telephone 301-594-7337 or 301-594-7415.

SUPPLEMENTARY INFORMATION:

Revising the Disability Regulations

We have completely revised the regulations under "Operation Common Sense" in accord with Executive Order 12044. These regulations describe how we determine disability and blindness for paying benefits under the disability insurance program (Part 404) and supplemental security income program (Part 416). These regulations explain (1) the requirements for receiving cash benefits because you are disabled or blind and for getting a "period of disability", (2) the evidence you must give us when you apply for benefits or a "period of disability", (3) how we evaluate the evidence to make a determination on your claim, (4) what we need to know and what you must do after you begin receiving benefits, and (5) the factors we consider to determine whether you will continue to receive these benefits.

Our Goals

We have rewritten the disability regulations to make them easier to read and understand. We have tried to

remove legalistic language and bureaucratic jargon, and to define the terms we use in simpler language. We have also arranged the sections to make it easier for you to find information that you may be looking for.

We have also taken out of the regulations policies which we no longer follow or which we very seldom use. For example, we have taken out the rules for determining disability in 1965 and earlier, before the law was changed.

At the same time we have added to the regulations the important policies which we are now following in determining disability. These are based on provisions of the law and properly should be included in the regulations.

Most of these policies are already in our Disability Insurance State Manual, which State and Federal employees use when evaluating disability. This manual is available for anyone to see at any of our local social security offices, but we are now putting in the regulations some of the important policies in this manual. We are also putting into the regulations other important policies we have adopted based on our experience in evaluating disability claims over many years. When these policies are in the regulations, they will clearly apply to all determinations, including appeals. Since the courts and administrative law judges use the regulations and not our operations manual to decide cases, the rules used in deciding cases at the initial and reconsideration level may have been different than those applied at the hearing and appeals council level and in the courts. Since it is desirable that the same rules apply at all levels, we have included our basic policies in the regulations. Several recent studies of the disability program have pointed out the problem of inconsistent determinations.

Policies We Are Including in the Regulations for the First Time

What We Mean by an Impairment That Is Not Severe

To receive disability benefits, a person must have a severe impairment. We deny a disability claim if we find that a person does not have a severe impairment. In § 404.1521 and § 416.921, we explain in more detail that an impairment is not severe when it does not in any way limit a person's physical or mental ability to do those things needed to work. For the first time, we explain what abilities we consider necessary in order for a person to work.

When a Person Has Two or More Impairments—Initial Claims

To get disability benefits or establish a period of disability, a person must have a severe impairment, and the impairment must either be expected to result in death or to last for 12 continuous months or longer. In §§ 404.1522 and 416.922 we explain that, when a person has two or more impairments, we will evaluate them together to see if they are severe enough to keep the person from doing substantial gainful activity. However, in doing this evaluation, we will only include impairments which are expected to result in death or to last for 12 months or longer.

The Meaning of Medical Equivalence

When a person has a severe impairment which is one that is shown in our Listing of Impairments in Appendix 1 or is medically equivalent (equal) to one shown there, we consider that person disabled if he or she is not doing substantial gainful activity. We explain in §§ 404.1526 and 416.926 how we decide whether an impairment is equal to a listed impairment. If a person's impairment is not listed, we will consider the listed impairment most like the person's impairment to decide whether it is medically equal. If the person has more than one impairment, and none of them meets or equals a listed impairment, we will review the symptoms, signs, and laboratory findings about the impairments against the listed impairments most like the person's impairment. We will then decide whether we can consider the combination of impairments medically equal to any listed impairment.

Medical Evidence of Disability

We have stated more clearly what we consider acceptable medical evidence by listing acceptable sources and by describing the required content of medical evidence (See §§ 404.1513 and 416.913). We have also added osteopaths, optometrists, and psychologists to the list of acceptable medical sources.

When We Will Purchase Medical Evidence

In § 416.914 we explain that we will usually pay for medical evidence for a person who is applying for supplemental security income benefits based on disability or blindness. We will always pay for this medical evidence when we decide that we need it to make a determination of disability or blindness. We may pay for the evidence in other situations. There has been some

confusion about our policies on when we will pay for medical evidence. In § 404.1514 we explain when we will pay for medical evidence for a person who is applying for title II disability benefits. We pay only in limited situations.

Consultative Examination at Our Expense

Sometimes we must arrange a special medical examination for a person to get the information we need to make a determination. In § 404.1517 and § 416.917, we explain when we may ask a person to go for one of these special examinations. Frequently, we need more detailed medical information or a technical, specialized medical test which a person's treating physician cannot give us or do for us. Sometimes, we must resolve a conflict or difference in medical findings in the evidence we already have. In these sections we also point out that we will give the examiner information about the person we are sending for the examination. We will always tell the person the purpose of the examination and the name of the examiner before the examination.

Failure To Appear at a Consultative Examination

If a person does not go to an examination so that we do not get information we ought to have to determine disability or blindness we may find that the person is not disabled or blind, unless he or she had a good reason for not going. In § 404.1518(c) and § 416.918(c) we give examples of what we consider good reasons for not going to an examination. These include illness on the day of the examination, not receiving sufficient notice from us, receiving incorrect information from us, a death or serious illness in the family, or previous contact with the examiner which shows possible bias.

How We Evaluate Subjective Symptoms, Including Pain

In § 404.1529 and § 416.929 we explain how we evaluate pain and other subjective symptoms. We recognize that the effects of pain and other subjective symptoms can usually be evaluated by clinical and laboratory diagnostic techniques.

Refusal To Follow Prescribed Treatment

The Secretary is responsible for determining whether a person has an impairment which keeps him or her from working. To get benefits, a person must follow treatment that will enable him or her to work. In most cases that treatment will be prescribed by the

person's physician. Under current regulations, we only require that a person must follow treatment prescribed by his or her own physician or other treating source. In some cases a person will not be getting any treatment at all. In other cases there will be available other treatment under generally accepted medical practice which, if followed, will enable the person to work.

Under the proposed regulation, if we believe that treatment might enable a person to work, we may send him or her to a physician at our expense for a medical opinion on treatment. In determining whether treatment can correct the impairment enough so that the person can work, we will consider that physician's findings and recommendations along with any other medical findings and recommendations we have received from the person's physician or any other source. We cannot pay benefits to a person who refuses to follow treatment which can correct the impairment enough to enable him or her to work unless there is good reason for the person to refuse the treatment. We have added examples of what we consider good reasons. We explain this new policy in §§ 404.1530 and 416.930.

Residual Functional Capacity

We consider a person's residual functional capacity when we are deciding whether a person is able to do his or her past work or other work. Residual functional capacity is generally the physical and mental abilities a person still has to do the things necessary to work even though these abilities are limited because of his or her impairment. In § 404.1545 and § 416.945, we explain how we determine residual functional capacity. Anyone qualified to make medical judgments may assess residual functional capacity. Qualified persons include treating or examining physicians consultative physicians, work evaluation center staff, and State agency physicians at the initial and reconsideration levels. While there are no preferred sources, the final responsibility for the assessment at the initial and reconsideration levels is with the State agency staff physician. For cases at the hearing and Appeals Council level, the responsibility for assuring that the assessment of residual functional capacity is supported by the evidence in file rests with administrative law judges or members of the Appeals Council.

Impairments Which May Warrant a Finding of Presumptive Disability or Presumptive Blindness

Under certain circumstances, we may pay benefits to a person applying for supplemental security income benefits on the basis of disability or blindness before we make a formal determination of disability or blindness. We call these payments presumptive disability and presumptive blindness payments. We only make these payments when it appears, on the basis of the available evidence, that the person is disabled or blind. If we decide later, after we get more evidence, that the person is not disabled or blind, he or she will not have to pay back the money we have already paid to him or her. In § 416.934, we give examples of 10 specific impairment categories where we will make a presumptive determination before we get any more medical evidence. We have been making presumptive payments on the basis of these impairment categories for several years.

When Vocational Factors Are Considered

In § 404.1560 and § 416.960, we explain what evidence we will need when we cannot make a decision about whether a person is disabled on medical evidence alone. We will need information about the person's age, education, and work experience, as explained below. We may also need additional medical evidence to determine that person's residual functional capacity. If we find that the person cannot do work he or she has done in the past, we will use authoritative publications and, in some cases, the services of vocational experts, to determine what range of work or specific occupations, if any, that he or she can do. These jobs must exist in significant numbers in the national economy. We define "significant numbers in the national economy" in § 404.1566 and § 416.966.

Age as a Vocational Factor

In § 404.1563 and § 416.963, we explain when we will ask a person to prove his or her age. We do not generally do this. However, if we need to know a person's exact age to determine whether he or she is disabled, or if the amount of the benefit will be affected, we ask for proof of age.

Education as a Vocational Factor

In § 404.1564 and § 416.964, we explain what information we need to know about a person's education to make a disability determination. We

will ask how long a person attended school, but we will also consider how much formal or informal education a person has had through previous work, community projects, hobbies, and any other activities which may help a person to work. We will also consider any information which shows that the formal education may not have given the person as much education as the grade level might show.

Work Experience as a Vocational Factor

In § 404.1565 and § 416.965, we explain what information we may need about a person's work experience. If we need to consider, whether that person can do past work or work that is different from what he or she did in the past, we will ask for a description of jobs done in the last 15 years. This will include job duties, tools, machinery and equipment used, and physical and mental activities. If all the work that the person did in the last 15 years was hard labor and unskilled, and that person has very little education, we ask about all the work the person did since he or she first began working. We also explain that we consider past work experience to be work that will help the person work now if the work at any skill level was done within the past 15 years, lasted long enough (generally at least 6 months to a year), and was substantial and gainful.

Work Which Exists in the National Economy

We explain in § 404.1566 and § 416.966 that, in determining whether jobs requiring unskilled, sedentary, light or medium work exist in the national economy in significant numbers in one or more regions of the country, we will use reliable job information available in various governmental and other publications. We also explain that we may use the services of a vocational expert or other specialist when there is a question about whether the work skills used in past work can be useful in doing other work and the kinds of jobs or specific occupations they can be used in.

Substantial Gainful Activity

In §§ 404.1574(c), 416.974(c), and 404.1584 we list the rules on determining whether a person is engaging in substantial gainful activity. We are increasing from \$240 to \$280 a month, for 1978 and from \$260 to \$280 a month for 1979 the amount of earnings we consider representative of substantial gainful activity. In § 404.1574(e) and § 416.974(e), we explain what we mean by significant services by self-employed

persons. Whether a person is doing significant services depends upon how much he or she is involved in the management of the business. Significant services are important in determining whether a self-employed person is doing substantial gainful activity.

Subsidies

We explain in § 404.1574(b) and § 416.974(b) how we evaluate earnings when a person is receiving a subsidy. Subsidies are payments by an employer to an employee for more than the reasonable value of his or her work. We exclude subsidies in determining whether work is substantial gainful activity. When the employer does not set the amount of the subsidy or does not adequately explain how he figured the subsidy, we will try to develop how much the work is worth.

Responsibility To Notify Us of Discharge From a Hospital

We no longer require a person to tell us when he or she is discharged from a hospital or similar institution. We used to require this and we usually obtained a special medical examination to determine whether the person was still disabled. However, we have found that release from a hospital is not a reliable indication of recovery from disability. Also, advances in medical treatment have reduced the average period of hospitalization, and more people are now receiving treatment outside hospitals. Therefore, we no longer need to schedule a medical examination when a person is discharged from a hospital. Elimination of this reporting requirement (1) relieves the beneficiary of a responsibility, (2) eliminates premature, unproductive investigations, (3) reduces costs to the Government and (4) reduces inconvenience to beneficiaries. We are updating §§ 404.1588 and 416.988 to reflect this change.

We May Investigate Whether Disability or Blindness Continues

After we find that a person is disabled, we may determine from time to time if he or she is still disabled or blind. We may begin an investigation for this purpose for any number of reasons, including the person's failure to follow the requirements of the Social Security Act or these regulations. If our investigation shows that we should stop benefits, we will tell the person and give him or her a chance to reply. We explain these policies in §§ 404.1589 and 416.989. In sections 404.1590 and 416.990, we discuss the events which will prompt us

to investigate whether a person is still disabled.

If Medical Recovery Was Expected When a Person Returned to Work

In § 404.1591 and § 416.991, we explain that when a person, who has an impairment which is expected to improve, returns to full-time work with no significant medical limitations, we may determine that he or she is no longer disabled or blind in the first month in which he or she returned to work.

Why and When Disability May Be Determined to Have Stopped

In §§ 404.1579, 404.1586, 404.1594 and 416.994 we explain a new policy on when disability is considered to stop. At one time we did not find that disability or blindness stopped unless the medical evidence showed that a person's condition had improved since we last determined that he or she was disabled. About two years ago, we changed this policy and began to find that disability or blindness had stopped if we found, on the basis of new evidence, that the person was not disabled or blind as defined in the law.

Before We Make a Determination That Disability Stopped

In § 404.1595 we explain that we will always give a person advance notice before we make a final determination that he or she is no longer disabled, unless that person already knows our decision. In this notice, we will tell the person the reason why we have decided that he or she is no longer disabled and allow the person a chance to answer and give us additional information.

When We May Stop Benefits Before Making a Final Determination

We explain in § 404.1596 when we will stop payments before determining whether a person is still disabled. We will do this to prevent an overpayment, when a beneficiary does not cooperate in a continuing disability investigation, or if his or her whereabouts are unknown.

When a Person Becomes Disabled by Another Impairment

In §§ 404.1598 and 416.998 we explain how we treat a person who gets another impairment. If a person already receiving benefits becomes disabled by another impairment, the new impairment need not be expected to last 12 months or result in death in order for us to find the person still disabled. However, the new impairment must be severe enough to prevent substantial

gainful activity and must begin in or before the month in which disability caused by the last impairment ended.

The Trial Work Period

We explain our policies on the trial work period in §§ 404.1580, 404.1585, 404.1592 and 416.992. The trial work period is a period during which a disabled person may test his or her ability to return to work. If a disabled person does return to work, that person may work for 9 months (they do not have to be consecutive) before we evaluate this work. We will consider that any month in which a person gives services is a trial work month. In § 404.1592 and § 416.992, we define "services" to mean any activity, even though it is not substantial gainful activity, which is done by a person in employment or self-employment for remuneration, generally wages or profit, or is the kind normally done for remuneration. For an employee, we consider work "services" if he or she is paid more than \$75 a month in cash or in kind. For a self-employed person, we consider activities "services" if his or her net earnings are more than \$75 a month or the time spent in work is more than 15 hours a month.

The Appendices

The medical criteria and the medical-vocational guides used in making disability determinations are currently appendices to both subpart P of Part 404 and subpart I of Part 416. Since these guides were recently published in the Federal Register—the medical criteria on March 27, 1979 (44 FR 18170) and the medical-vocational guides on 11/28/78 (43 FR 55349)—we are not repeating them here. Except for Part B of Appendix 1 to subpart I, these appendices are the same, word-for-word, and are currently repeated after both subparts only for ease of reference. Part B of Appendix 1 contains medical criteria applicable to children and, since they apply mainly to claims under title XVI, are currently located only in Part 416. In this recodification we have taken the appendices out of Part 416 and located them only in subpart P of Part 404. This eliminates some of the unnecessary repetition in our regulations and is consistent with the goals of "Operation Common Sense." We have made the changes needed to cross-refer subpart I of Part 416 to the appendices in Part 404.

What We Need to Know From You

We have rewritten these regulations to make them easier for you to understand and to use. We also hope

that the revised regulations will help you to understand better the disability programs which we are responsible for administering under the law. However, we are only publishing these amendments now as proposals. They will not become effective as regulations unless they are adopted and published again in the Federal Register as final regulations. The purpose of this notice is to give you an opportunity to participate in the rulemaking before the adoption of the final rules. Your participation is very important to us in improving the regulations. We would like to know your opinions and views on these revised regulations. Therefore, we welcome your comments, and we will carefully consider any suggestions we receive from you on or before August 2, 1979.

The proposed amendments are issued under the authority contained in sections 205, 223, 1102, 1614, and 1631, of the Social Security Act, as amended; 53 Stat. 1368, as amended; 70 Stat. 815, as amended; 49 Stat. 647, as amended; 86 Stat. 1471; 86 Stat. 1475; 42 U.S.C. 405, 423, 1302, 1382c, 1383.

(Catalog of Federal Domestic Assistance Program No. 13.802, Disability Insurance; No. 13.807, Supplemental Security Income Program.)

Dated: June 13, 1979.

Stanford G. Ross

Commissioner of Social Security.

Approved: June 23, 1979.

Hale Champion,

Acting Secretary of Health, Education, and Welfare.

PART 404—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE (1950-)

1. Subpart P of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is revised, except for Appendix 1 and Appendix 2, to read as follows:

Subpart P—Determining Disability and Blindness

General

Sec.

- 404.1501 Scope of subpart.
404.1502 General definitions and terms for this subpart.

Determinations

- 404.1503 Who makes disability and blindness determinations.
404.1504 Determinations by other organizations and agencies.

Definition of Disability

- 404.1505 Basic definition of disability.
404.1508 What is needed to show an impairment.

- 404.1509 How long the impairment must last.
404.1510 Meaning of substantial gainful activity.

Evidence

- 404.1512 Your responsibility to submit evidence.
404.1513 Medical evidence of your impairment.
404.1514 When we will purchase existing evidence.
404.1515 Where and how to submit evidence.
404.1516 If you fail to submit medical and other evidence.
404.1517 Consultative examination at our expense.
404.1518 If you do not appear at a consultative examination.

Evaluation of Disability

- 404.1520 Evaluation of disability in general.
404.1521 What we mean by an impairment that is not severe.
404.1522 When you have two or more unrelated impairments—initial claims.

Medical Considerations

- 404.1525 Listing of impairments in Appendix 1.
404.1526 Medical equivalency.
404.1527 Conclusion by physicians concerning your disability.
404.1528 Symptoms, signs and laboratory findings.
404.1529 How we evaluate symptoms including pain.
404.1530 Need to follow prescribed treatment.

Residual Functional Capacity

- 404.1545 Your residual functional capacity.
404.1546 Responsibility for assessing and determining residual functional capacity.

Vocational Considerations

- 404.1560 When your vocational background will be considered.
404.1561 Your ability to do work depends upon your residual functional capacity.
404.1562 If you have done only arduous unskilled physical labor.
404.1563 Your age as a vocational factor.
404.1564 Your education as a vocational factor.
404.1565 Your work experience as a vocational factor.
404.1566 Work which exists in the national economy.
404.1567 Physical exertion requirements.
404.1568 Skill requirements.
404.1569 Listing of Medical—Vocational Guidelines in Appendix 2.

Substantial Gainful Activity

- 404.1571 General.
404.1572 What we mean by substantial gainful activity.
404.1573 Evaluation guides for work activity.
404.1574 Evaluation guides if you are an employee.
404.1575 Evaluation guides if you are self-employed.

Widows, Widowers, and Surviving Divorced Wives

- 404.1577 Disability defined for widows, widowers and surviving divorced wives.
 404.1578 How we determine disability for widows, widowers and surviving divorced wives.
 404.1579 Why and when we will stop your cash benefits.
 404.1580 You are not eligible for a trial work period.

Blindness

- 404.1581 Meaning of blindness as defined in the law.
 404.1582 A period of disability based on blindness.
 404.1583 How we determine disability for blind persons who are age 55 or older.
 404.1584 Evaluation of work activity of blind people.
 404.1585 Trial work period for persons age 55 or older who are blind.
 404.1586 Why and when we will stop your cash benefits.
 404.1587 Circumstances under which we may suspend your benefits before we make a determination.

Continuing or Stopping Disability

- 404.1588 Your responsibility to tell us of events that may cause a change in your disability status.
 404.1589 We may investigate to find out whether you continue to be disabled.
 404.1590 When we will investigate whether your disability continues.
 404.1591 If your medical recovery was expected and you return to work.
 404.1592 The trial work period.
 404.1593 We may ask you to help us determine if you are still disabled.
 404.1594 Why and when we will stop your cash benefits.
 404.1595 When we determine that you are not now disabled.
 404.1596 Circumstances under which we may suspend your benefits before we make a determination.
 404.1597 After we make a determination that you are not now disabled.
 404.1598 If you become disabled by another impairment.

Appendix 1—Listing of Impairments

Appendix 2—Medical-Vocational Guidelines

Subpart P—Determining Disability and Blindness**General****§ 404.1501 Scope of subpart.**

In order for you to become entitled to any benefits based upon disability or blindness or to have a period of disability established, you must be disabled or blind as defined in title II of the Social Security Act. This Subpart explains how we determine whether you are disabled or blind. We discuss a "period of disability" in subpart D of this Part. We have organized the rules in the following way.

(a) We define general terms, then discuss who makes our disability determinations and state that disability determinations made under other programs have no effect on our determinations.

(b) We explain the term "disability" and note some of the major factors that are considered in determining whether you are disabled in §§ 404.1505–404.1510.

(c) Our general rules on evaluating disability are stated in §§ 404.1520–404.1523. We describe the steps that we go through and the order in which they are considered.

(d) Sections 404.1512–404.1518 contain our rules on evidence. We explain your responsibilities for submitting evidence of your impairment, state what we consider to be acceptable sources of medical evidence, and describe what information should be included in medical reports.

(e) Our rules on medical considerations are found in §§ 404.1525–404.1530. We explain in these rules—

(1) The purpose of the Listing of Impairments found in Appendix 1 of this subpart and how to use it;

(2) What we mean by the term "medical equivalence" and how we determine medical equivalence;

(3) The effect of a conclusion by your physician that you are disabled;

(4) What we mean by symptoms, signs, and laboratory findings;

(5) How we evaluate pain and other symptoms; and

(6) The effect on your benefits if you fail to follow treatment that is expected to restore your ability to work, and how we apply the rule.

(f) In §§ 404.1545–404.1546 we explain what we mean by the term "residual functional capacity," state when an assessment of residual functional capacity is required, and who may make it.

(g) Our rules on vocational considerations are found in §§ 404.1560–404.1569. We explain when vocational factors must be considered along with the medical evidence, discuss the role of residual functional capacity in evaluating your ability to work, discuss the vocational factors of age, education, and work experience, describe what we mean by work which exists in the national economy, discuss the amount of exertion and the type of skill required for work, and describe and tell how to use the Medical-Vocational Guidelines in Appendix 2 of this subpart.

(h) Our rules on substantial gainful activity are found in §§ 404.1571–404.1574. These explain what we mean

by substantial gainful activity and how we evaluate your work activity.

(i) In §§ 404.1577–404.1580 we explain the special rules covering disability for widows, widowers, and surviving divorced wives, and in §§ 404.1581–404.1587 we discuss disability due to blindness.

(j) Our rules on when disability continues and stops are contained in §§ 404.1588–404.1598. We explain what your responsibilities are in telling us of any events that may cause a change in your disability status, when you may have a trial work period, and when we will investigate to see if you are still disabled.

§ 404.1502 General definitions and terms for this subpart.

As used in this subpart—

"Secretary" means the Secretary of Health, Education, and Welfare.

"State agency" means an agency of a State which enters into an agreement with the Secretary to make determinations of disability for the Secretary.

"We" or "us" refers to either the Social Security Administration or the State agency making the disability or blindness determination.

"You" refers to the person who has applied for benefits or for a period of disability or is receiving benefits based on disability or blindness.

Determinations**§ 404.1503 Who makes disability and blindness determinations.**

(a) *State agencies.* When there is an agreement between the State and the Secretary, the State agency designated in the agreement makes disability determinations for the Secretary for—

(1) Any person living in that State; and

(2) Any group of people named in the agreement.

(b) *Social Security Administration.* The Social Security Administration will make disability and blindness determinations for the Secretary for—

(1) Any people in any State that has not entered into an agreement with the Secretary;

(2) Any group of people not covered by an agreement with any State; and

(3) Any people living outside the United States.

(c) *What determinations are authorized.* The Secretary has authorized the State agencies and the Social Security Administration to make determinations about—

(1) Whether you are disabled or blind;

(2) The date your disability or blindness began; and

(3) The date your disability stopped.

(d) *Review of State Agency determinations.* On review of a State agency determination we may find that—

(1) You are not disabled or blind, although the State agency found you disabled;

(2) Your disability or blindness began later than found by the State agency; and

(3) Your disability or blindness stopped earlier than the date found by the State agency.

§ 404.1504 Determinations by other organizations and agencies.

A decision by any nongovernmental agency or any other Governmental agency about whether you are disabled or blind is based on their rules and is not our decision about whether you are disabled or blind. We must make a disability and blindness determination based on social security law.

Definition of Disability

§ 404.1505 Basic definition of disability.

(a) The law defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. To meet this definition, you must have a severe impairment, which makes you unable to do your previous work or any other substantial gainful activity which exists in the national economy. To determine whether you are able to do any other work, we consider your residual functional capacity and your age, education, and work experience.

(b) There are different rules for determining disability for individuals who are statutorily blind. We discuss these in §§ 404.1581 through 404.1587. There are also different rules for determining disability for widows, widowers, and surviving divorced wives. We discuss these in §§ 404.1577 through 404.1580.

§ 404.1508 What is needed to show an impairment.

If you are not doing substantial gainful activity, we always look first at your physical or mental impairment(s) to determine whether you are disabled or blind. Your impairment must result from anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by

medical findings consisting of signs, symptoms, and laboratory findings, not only by your statement of symptoms.

§ 404.1509 How long the impairment must last.

Unless your impairment is expected to result in death, it must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement.

§ 404.1510 Meaning of substantial gainful activity.

Substantial gainful activity means work that—

(a) Involves doing significant and productive physical or mental duties; and

(b) Is done (or intended) for wages or profit.

(See § 404.1572 for further details about what we mean by substantial gainful activity.)

Evidence

§ 404.1512 Your responsibility to submit evidence.

(a) *General.* In general, you have to prove to us that you are blind or disabled. Therefore, you must bring to our attention everything which shows that you are blind or disabled. In making a decision we will consider all information we get from you and others about your impairments.

(b) *Kind of evidence.* You must provide medical evidence showing that you have an impairment and how severe it is during the time you say that you are disabled. We will consider only impairments you say you have or about which you give us evidence. If we ask, you must also provide evidence about your—

(1) Age;

(2) Education and training;

(3) Work experience;

(4) Daily activities both before and after you say that you became disabled;

(5) Efforts to work; and

(6) Any other evidence showing how your impairment(s) affects your ability to work. (We discuss in more detail the evidence we need when we consider vocational factors in §§ 404.1560 through 404.1569.)

§ 404.1513 Medical evidence of your impairment.

(a) *Acceptable sources.* We need reports about your impairments from acceptable medical sources. Acceptable medical sources are—

(1) Licensed physicians;

(2) Licensed osteopaths;

(3) Licensed or certified psychologists; and

(4) Persons authorized to certify a copy or summary of the medical records of a hospital, clinic, sanatorium, medical institution, or health care facility. The copy or summary must be certified as accurate by the custodian or by any authorized employee of the Social Security Administration, Veterans' Administration, or State agency.

(b) *Medical reports* should include—

(1) Medical history;

(2) Clinical findings (such as the results of physical or mental status examinations);

(3) Laboratory findings (such as blood pressure, x-rays);

(4) Diagnosis (statement of disease or injury based on its signs and symptoms);

(5) Treatment prescribed with response, and prognosis; and

(6) Medical assessment (except in statutory blindness claims, and disability claims for widows, widowers, and surviving divorced wives).

(c) *Medical assessment.* This should describe—

(1) Your ability to do work-related activities such as sit, stand, move about, lift, carry, handle objects, hear or speak, and travel and

(2) In cases of mental impairment, your ability to reason or make occupational, personal, or social adjustments.

(d) *Completeness.* The medical evidence, including the clinical and laboratory findings, must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. It must allow us to determine—

(1) The nature and limiting effects of your impairment(s) for any period in question;

(2) The probable duration of your impairment; and

(3) Your residual functional capacity to do work-related physical and mental activities.

(e) *Information from other sources.* Information from other sources may also help us to understand how your impairment affects your ability to work. Other sources include—

(1) Public and private social welfare agencies;

(2) Observations of non-medical sources; and

(3) Practitioners not medically licensed (for example, naturopaths, optometrists, chiropractors, audiologists, etc.). A report from an optometrist can establish only the degree of your loss of sight. A report from your physician is necessary to determine if your condition is disabling.

§ 404.1514 When we will purchase existing evidence.

You are responsible for submitting evidence to support your disability claim. This requires you to secure the medical evidence we will need to make a disability of blindness determination from the medical sources where you were examined or treated. Although we will help you get this information by asking these sources on your behalf, we will not usually pay for this information. However, there are rare situations when we will pay for existing evidence. For example, if the evidence in file shows that you may be disabled, but it does not contain the medical findings needed to make a disability determination, and we must have this additional information. If we find that one (or more) of your medical sources has this information, but that they will not give us the information until they are paid for it, we may pay for the report. Generally, we may pay when a hospital or clinic charges a small fee to cover its copying and mailing costs, and the only other way we can get the information would be to have you take a special examination at our expense.

§ 404.1515 Where and how to submit evidence.

You may give us evidence about your impairment at any of our offices or at the office of any State agency authorized to make disability determinations. You may also give evidence to one of our employees authorized to accept evidence at another place. For more information about this, see Subpart H of this Part.

§ 404.1516 If you fail to submit medical and other evidence.

If you do not give us the medical and other evidence that we need and request, we will find that you are not disabled. We will not excuse you from giving us evidence because you have religious or personal reasons against medical examinations, tests, or treatment.

§ 404.1517 Consultative examination at our expense.

(a) *Notice of the examination.* If your medical sources cannot give us sufficient medical evidence about your impairment for us to determine whether you are disabled, we may ask you to take part in physical or mental examinations or tests. We will pay for these examinations. We will give you reasonable notice of the date, time, and place of the examination or test, and the name of the person who will do it. We will also give the examiner any necessary background information

about your condition when your own physician will not be doing the examination or test.

(b) *Reasons why we may need evidence.* We may need more medical evidence—

- (1) To obtain more detailed medical findings about your impairment(s);
- (2) To obtain technical or specialized medical information; or
- (3) To resolve conflicts or differences in medical findings or assessments in the evidence we already have.

§ 404.1518 If you do not appear at a consultative examination.

(a) *General.* If you are applying for benefits and do not have a good reason for failing or refusing to take part in a consultative examination or test which we arrange for you to get information we need to determine your disability or blindness, we may find that you are not disabled or blind. If you are already receiving benefits and do not have a good reason for failing or refusing to take part in a consultative examination or test which we arranged for you, we may determine that your disability or blindness may have stopped because of your failure or refusal. Therefore, if you have any reason why you cannot go for the scheduled appointment, you should tell us about this as soon as possible before the examination date. If you have a good reason, we will schedule another examination.

(b) *Examples of good reasons for failure to appear.* Some examples of what we consider good reasons for not going to a scheduled examination include—

- (1) Illness on the date of the scheduled examination or test;
- (2) Not receiving timely notice of the scheduled examination or test, or receiving no notice at all;
- (3) Being furnished incorrect or incomplete information, or being given incorrect information about the physician involved or the time or place of the examination or test;
- (4) Having had death or serious illness occur in your immediate family; or
- (5) Having had professional or personal contact with the scheduled examiner and believing that the examiner could not be objective.

(c) *Objections by your physician.* If any of your treating physicians tell you that you should not take the examination or test, you should tell us at once. In many cases, we may be able to get the information we need in another way. Your physician may agree to another type of examination for the same purpose.

Evaluation of Disability

§ 404.1520 Evaluation of disability in general.

(a) *Steps in evaluating disability.* We consider all material facts to determine whether you are not disabled. If you are doing substantial gainful activity, we will determine that you are disabled. If you are not doing substantial gainful activity, we will first consider your physical or mental impairment(s). Your impairment must be severe and meet the duration requirement before we can find you to be disabled. We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity and your age, education, and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review further.

(b) *If you are working.* If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled without considering your medical condition or your age, education, and work experience.

(c) *You must have a severe impairment.* If you do not have any impairment(s) which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. However, it is possible for you to have a period of disability for a time in the past even though you do not now have a severe impairment.

(d) *When your impairment meets or equals a listed impairment in Appendix 1.* If you have an impairment which meets the duration requirement and is listed in Appendix 1, or we determine that the impairment is equal to one of the listed impairments, we will find you disabled without considering your age, education, and work experience.

(e) *Your impairment must prevent past relevant work.* If we cannot make a decision based on your current work activity or on medical facts alone, and you have a severe impairment, we then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled.

(f) *Your impairment must prevent you from doing any other work.* (1) If you cannot do any work you have done in the past because you have a severe impairment, we will consider your residual functional capacity and your age, education, and past work

experience to see if you can do other work. If you cannot, we will find you disabled.

(2) If you have only a marginal education, and long work experience (e.g., 35 years or more) where you only did arduous unskilled physical labor, and you can no longer do this kind of work, we use a different rule (see § 404.1562.)

§ 404.1521 What we mean by an impairment that is not severe.

(a) An impairment is not severe if it does not significantly limit your physical or mental abilities to do basic work activities.

(b) *Basic work activities.* When we talk about basic work activities, we mean the abilities and aptitudes necessary to do most jobs. Examples of these include—

(1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;

(2) Capacities for seeing, hearing, and speaking;

(3) Understanding, carrying out, and remembering simple instructions;

(4) Use of judgment;

(5) Responding appropriately to supervision, co-workers and usual work situations; and

(6) Dealing with changes in a routine work setting.

§ 404.1522 When you have two or more unrelated impairments—initial claims.

We cannot combine two or more unrelated severe impairments to meet the 12-month duration test. If you have a severe impairment(s) and then develop another unrelated severe impairment(s) but neither one is expected to last for 12 months, we cannot find you disabled. However, we can combine unrelated impairments to see if together they are severe enough to keep you from doing substantial gainful activity. We will consider the combined effects of unrelated impairments only if all are severe and expected to last 12 months.

Medical Considerations

§ 404.1525 Listing of impairments in Appendix 1.

(a) *Purpose of the Listing of Impairments.* The Listing of Impairments describes, for each of the major body systems, impairments which are considered severe enough to prevent a person from doing any gainful activity. Most of the listed impairments are permanent or expected to result in death, or a specific statement of duration is made. For all others, the evidence must show that the impairment

is expected to last for a continuous period of at least 12 months.

(b) *Adult and childhood diseases.* The Listing of Impairments consists of two parts:

(1) *Part A* contains medical criteria that apply to adult persons age 18 and over. The medical criteria in Part A may also be applied in evaluating impairments in persons under age 18 if the disease processes have a similar impairment impact on adults and younger persons.

(2) *Part B* contains additional medical criteria that apply only to the evaluation of impairments of persons under age 18. Certain criteria in Part A do not give appropriate consideration to the particular effects of the disease processes in childhood; i.e., when the disease process is generally found only in childhood or when the disease process differs in its effect on children than on adults. Additional criteria are included in Part B, and the impairment categories are, to the extent possible, numbered to maintain a relationship with their counterparts in Part A. In evaluating disability for a person under age 18, Part B will be used first. If the medical criteria in Part B do not apply, then the medical criteria in Part A will be used.

(c) *How to use the Listing of Impairments.* Each section of the Listing of Impairments has a general introduction containing definitions of key concepts used in that section. Certain specific medical findings, some of which are required in establishing a diagnosis or in confirming the existence of an impairment for the purpose of this Listing, are also given in the narrative introduction. If the medical findings needed to support a diagnosis are not given in the introduction or elsewhere in the listing, the diagnosis must still be established on the basis of medically acceptable clinical and laboratory diagnostic techniques. Following the introduction in each section, the required level of severity of impairment is shown under "Category of Impairments" by one or more sets of medical findings. The medical findings consist of symptoms, signs, and laboratory findings.

(d) *Diagnosis of impairments.* We will not consider your impairment to be one listed in Appendix 1 solely because it has the diagnosis of a listed impairment. It must also have the findings shown in the Listing of that impairment.

(e) *Addiction to alcohol or drugs.* If you have a condition diagnosed as addiction to alcohol or drugs, this will not, by itself, be a basis for determining whether you are, or are not, disabled. As

with any other medical condition, we will decide whether you are disabled based on symptoms, signs, and laboratory findings.

§ 404.1526 Medical equivalence.

(a) *How medical equivalence is determined.* We will decide that your impairment(s) is medically equivalent to a listed impairment in Appendix 1 if the medical findings are at least equal in severity and duration to the listed findings. We will compare the symptoms, signs, and laboratory findings about your impairment(s), as shown in the medical evidence we have about your claim, with the medical criteria shown with the listed impairment. If your impairment is not listed, we will consider the one most like a listed impairment to decide whether your impairment is medically equal. If you have more than one impairment, and none of them meets or equals a listed impairment, we will review the symptoms, signs, and laboratory findings about your impairments against the one most like the listed impairments to determine whether the combination of your impairments is medically equal to any listed impairment.

(b) *Medical equivalence must be based on medical findings.* We will always base our decision about whether your impairment(s) is medically equal to a listed impairment on medical evidence only. Any medical findings in the evidence must be supported by medically acceptable clinical and laboratory diagnostic techniques. We will also consider the medical opinion given by one or more physicians designated by the Secretary in deciding medical equivalence.

(c) *Who is a designated physician.* A physician designated by the Secretary includes any physician employed or engaged to make medical judgments by the Social Security Administration, the Railroad Retirement Board, or a State agency authorized to make disability determinations.

§ 404.1527 Conclusion by physicians concerning your disability.

We are responsible for determining whether you are disabled. Therefore, a statement by your physician that you are "disabled" or "unable to work" does not mean that we will determine that you are disabled. We have to review the medical findings and other evidence that support a physician's statement that you are "disabled."

§ 404.1528 Symptoms, signs, and laboratory findings.

Medical findings consist of symptoms, signs, and laboratory findings:

(a) *Symptoms* are your own description of your physician or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.

(b) *Signs* are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific abnormalities of behavior, affect, thought, memory, orientation and contact with reality. They must also be shown by observable facts that can be medically described and evaluated.

(c) *Laboratory findings* are anatomical, physiological, or psychological phenomena which can be shown by the use of medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram, etc.), roentgenological studies (X-rays), and psychological tests.

§ 404.1529 How we evaluate symptoms, including pain.

If you have a physical or mental impairment, you may also have symptoms (like pain, shortness of breath, weakness or nervousness). We consider all your symptoms, including pain, and the extent to which objective signs and laboratory findings confirm these symptoms. The effects of all symptoms, including severe and prolonged pain, must be evaluated on the basis of a medically determinable impairment which can be shown to be the cause of the symptom. We will never find that you are disabled based on your symptoms, including pain alone.

§ 404.1530 Need to follow prescribed treatment.

(a) *What treatment you must follow.*
(1) In order to get benefits, you must follow treatment which can restore your ability to work.

(2) In most cases, this treatment will be prescribed by your physician. However, if your physician has not prescribed treatment or if we believe there is need for another opinion about treatment, we may send you to a physician at our expense for a medical opinion. In making a decision on

whether there is treatment that would enable you to work, we will consider all medical findings and recommendations.

(b) *When you do not follow prescribed treatment.* If you do not follow the prescribed treatment without a good reason, we will not find you disabled or, if you are already receiving benefits, we will stop paying you benefits.

(c) *Acceptable reasons for failure to follow prescribed treatment.* The following are examples of a good reason for not following treatment:

(1) The specific medical treatment is contrary to the established teaching and tenets of your religion.

(2) The prescribed treatment would be cataract surgery for one eye, when there is an impairment of the other eye which meets, or is equivalent in severity to one that is in the Listing of Impairments and is not subject to improvement through treatment.

(3) Surgery was previously performed with unsuccessful results and the same surgery is again being recommended for the same impairment.

(4) The treatment because of its enormity (e.g. open heart surgery), unusual nature (e.g., organ transplant), or other reason is very risky for you; or

(5) The treatment involves amputation of an extremity, or a major part of an extremity.

Residual Functional Capacity

§ 404.1545 Your residual functional capacity.

(a) *General.* Your impairment(s) may cause physical and mental limitations. We need to know how these limitations apply to work requirements and how your impairment affects what you can do in a work setting. We call what you can do with these limitations your residual functional capacity. We consider your capacity for various functions as described in the following paragraphs (b) physical abilities and (c) mental impairments. If you have more than one impairment, we consider all your impairments. We may base our assessment of your residual functional capacity solely on medical evidence when it is enough to permit and support the necessary judgments about your physical and mental abilities. If we cannot make a decision based on all reasonably obtainable medical findings, we may consider other factors along with the medical findings. These other factors may include your description of your impairment(s), recorded observations about your limitations, or any other evidence we have.

(b) *Physical abilities.* When we assess your physical abilities, (e.g., strength) we assess the severity of your impairment(s) and determine your residual functional capacity for work activity on a regular and continuing basis. We consider your ability to do physical activities such as walking, standing, lifting, carrying, pushing, pulling, reaching, handling and the evaluation of other physical functions and sensory characteristics. A limited ability to do these things may reduce your ability to do work.

(c) *Mental impairments.* When we assess your impairment because of mental disorders we consider factors such as your ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, co-workers and work pressures in a work setting.

(d) *Other impairments.* Some medically determinable impairments, such as skin impairments and epilepsy, do not limit physical exertion. If you have this type of impairment, in addition to one that affects physical exertion, we consider both in deciding your residual functional capacity.

§ 404.1546 Responsibility for assessing and determining residual functional capacity.

Treating or examining physicians, consultative physicians, State agency physicians, or any other physicians designated by the Secretary may make this assessment. If it is made by someone who has not examined or treated you, it must be based on all of the evidence we have. The responsibility for assuring that the agency makes a decision about your residual functional capacity is with the State agency staff physicians or other physicians designated by the Secretary. For cases at the hearing or Appeals Council level, the responsibility for assuring that the assessment of residual functional capacity is supported by the evidence in file rests with the administrative law judges or members of the Appeals Council.

Vocational Considerations

§ 404.1560 When your vocational background will be considered.

(a) *General.* We may consider vocational factors when you are applying for a period of disability, or disability insurance benefits as a disabled worker, or child insurance benefits based on disability before age 22.

(b) *Disability determinations in which vocational factors must be considered along with the medical evidence.* When

we cannot decide whether you are disabled on medical evidence alone, we must use other evidence.

(1) We will use information from you about your age, education and work experience.

(2) We will consider your doctors' reports and hospital records as well as your statements and other evidence to determine your residual functional capacity and how it affects the work you can do. Sometimes, to do this, we will need to ask you to have special examinations or tests. (See § 404.1517).

(3) If we find that you can no longer do the work you have done in the past, we will determine whether you can do other work (jobs) which exist in significant numbers in the nation's economy.

§ 404.1561 Your ability to do work depends upon your residual functional capacity.

If you can do your previous work (your usual work or other applicable past work), we will determine that you are not disabled. However, if your residual functional capacity is not enough to enable you to do any of your previous work, we must still decide if you can do any other work. To do this, we consider your residual functional capacity, and your age, education, and work experience. Any work (jobs) that you can do must exist in significant numbers in the national economy (either in the region where you live or in several regions of the country). Sections 404.1563-404.1565 explain how we evaluate your age, education, and work experience when we are deciding whether or not you are able to do other work.

§ 404.1562 If you have done only arduous unskilled physical labor.

If you have only a marginal education and long work experience of 35 years or more where you did arduous unskilled physical labor, and you are not working and are no longer able to do this kind of work because of a severe impairment(s), we will consider you unable to do lighter work, and therefore, disabled. However, if you are working or have worked despite your impairment(s) except where the work is sporadic or is not medically advisable, we will review all the facts in your case, and we may find that you are not disabled. In addition, we will consider that you are not disabled if the evidence shows that you have training or past work experience which enables you to do substantial gainful activity in another occupation with your impairment, either

on a full-time or a reasonably regular part-time basis.

Example: B is a 60-year old miner with a fourth grade education who has a life-long history of arduous physical labor. B says that he is disabled because of arthritis of the spine, hips, and knees, and other impairments. Medical evidence shows a combination of impairments and establishes that these impairments prevent B from performing his usual work or any other type of arduous physical labor. His vocational background does not show that he has skills or capabilities needed to do lighter work which would be readily transferable to another work setting. Under these circumstances, we will find that B is disabled.

§ 404.1563 Your age as a vocational factor.

(a) *General.* "Age" refers to how old you are (your chronological age) and the extent to which your age affects your ability to adapt to a new work situation and to do work in competition with others. However, we do not determine disability on your age alone. We must also consider your residual functional capacity, education, and work experience. If you are unemployed because of your age and you can still do a significant number of jobs which exist in the national economy, we will find that you are not disabled. We explain in detail how we consider your age as a vocational factor in Appendix 2.

(b) *Younger person.* If you are under age 50, we generally do not consider that your age will seriously affect your ability to adapt to a new work situation. In some circumstances, however, we consider age 45 a handicap in adapting to a new work setting (see Rule 201.17 in Appendix 2).

(c) *Person approaching advanced age.* If you are closely approaching advanced age (50-54), we will consider that your age, along with a severe impairment and limited work experience, may seriously affect your ability to adjust to a significant number of jobs in the national economy.

(d) *Person of advanced age.* We consider that advanced age (55 or over) is the point where age significantly affects a person's ability to do substantial gainful activity. If you are severely impaired and of advanced age and you cannot do medium work (see § 404.1567(d)), you may not be able to work unless you have skills that can be used in (transferred to) less demanding jobs which exist in significant numbers in the national economy. If you are close to retirement age (60-64) and have a severe impairment, we will not consider you able to adjust to sedentary or light work unless you have skills which are highly marketable.

(e) *Information about your age.* We will usually not ask you to prove your age. However, if we need to know your exact age to determine whether you get disability benefits or if the amount of your benefit will be affected, we will ask you for evidence of your age.

§ 404.1564 Your education as a vocational factor.

(a) *General.* "Education" is primarily used to mean formal schooling or other training which contributes to your ability to meet vocational requirements, for example, reasoning ability, communication skills, and arithmetical ability. However, if you do not have formal schooling, this does not necessarily mean that you are uneducated or lack these abilities. Past work experience and the kinds of responsibilities you had when you were working may show that you have intellectual abilities, although you may have little formal education. Your daily activities, hobbies, or the results of testing may also show that you have significant intellectual ability that can be used to work.

(b) *How we evaluate your education.* The importance of your educational background may depend upon how much time has passed between the completion of your formal education and the beginning of your physical or mental impairment(s) and by what you have done with your education in a work or other setting. Formal education that you completed many years before your impairment began, or unused skills and knowledge that were a part of your formal education, may no longer be useful or meaningful in terms of your ability to work. Therefore, the numerical grade level that you completed in school may not represent your actual educational abilities. These may be higher or lower. However, if there is no other evidence to contradict it, we will use your numerical grade level to determine your mental abilities. The term "education" also includes how well you are able to communicate in English since this ability is often acquired or improved by education. In evaluating your educational level, we use the following categories:

(1) *Illiteracy.* Illiteracy means the inability to read or write. We consider someone illiterate if the person cannot read or write a simple message such as instructions or inventory lists even though the person can sign his or her name. Generally, an illiterate person has had little or no formal schooling.

(2) *Marginal education.* Marginal education means ability in reasoning, arithmetic, and language skills which

are needed to do simple, unskilled types of jobs. We generally consider that formal schooling at a 6th grade level or less is a marginal education.

(3) *Limited education.* Limited education means ability in reasoning, arithmetic, and language skills, but not enough to allow a person with these educational qualifications to do most of the more complex job duties needed in semi-skilled or skilled jobs. We generally consider that a 7th grade through the 11th grade level of formal education is a limited education.

(4) *High school education and above.* High school education and above means abilities in reasoning, arithmetic, and language skills acquired through formal schooling at a 12th grade level or above. We generally consider that someone with these educational abilities can do semi-skilled through skilled work.

(5) *Inability to communicate in English.* Since the ability to speak, read and understand English is generally learned or increased at school, we may consider this an educational factor. Because English is the dominant language of the country, it may be difficult for someone who doesn't speak and understand English to do a job, regardless of the amount of education the person may have in another language. Therefore, we consider a person's ability to communicate in English when we evaluate what work, if any, he or she can do. It generally doesn't matter what other language a person may be fluent in.

(6) *Information about your education.* We will ask you how long you attended school and whether you are able to speak, understand, read and write in English and do at least simple calculations in arithmetic. We will also consider other information about how much formal or informal education you may have had through your previous work, community projects, hobbies, and any other activities which might help you to work.

§ 404.1565 Your work experience as a vocational factor.

(a) *General.* "Work experience" means skills and abilities you have acquired through work you have done which show the type of work you may be expected to do. Work you have already been able to do shows the kind of work that you may be expected to do. We consider that your work experience applies when it was done within the last 15 years, lasted long enough (usually 6 months to a year) for you to learn to do it, and was substantial gainful activity. We do not usually consider that work you did 15 years or more before the time

we are deciding whether you are disabled (or when the earnings requirement was last met, if earlier) applies. A gradual change occurs in most jobs so that after 15 years it is no longer realistic to expect that skills and abilities acquired in a job done then continue to apply. The 15-year guide is intended to insure that remote work experience is not currently applied. If you have no work experience or worked only "off-and-on" or for brief periods of time during the 15-year period, we generally consider that these do not apply. If you have acquired skills through your past work, we consider you to have these work skills unless you cannot use them in other skilled or semi-skilled work that you can now do. If you cannot use your skills in other skilled or semi-skilled work, we will consider your work background the same as unskilled. However, even if you have no work experience, we may consider that you are able to do unskilled work because it requires little or no judgment and can be learned in a short period of time.

(b) *Information about your work.* Under certain circumstances, we will ask you about the work you have done in the past. If you cannot give us all of the information we need, we will try, with your permission, to get it from your employer or other person who knows about your work, such as a member of your family or a co-worker. When we need to consider your work experience to decide whether you are able to do work that is different from what you have done in the past, we will ask you to tell us about all of the jobs you have had in the last 15 years. You must tell us the dates you worked, all of the duties you did, and any tools, machinery, and equipment you used. We will need to know about the amount of walking, standing, sitting, lifting and carrying you did during the work day, as well as any other physical or mental duties of your job. If all of your work in the past 15 years has been arduous and unskilled, and you have very little education, we will ask you to tell us about all of your work from the time you first began working. This information could help you to get disability benefits.

§ 404.1566 Work which exists in the national economy.

(a) *General.* We consider that work exists in the national economy when it exists in significant numbers either in the region where you live or in several other regions of the country. It does not matter whether—

(1) Work exists in the immediate area in which you live;

(2) A specific job vacancy exists for you; or

(3) You would be hired if you applied for work.

(b) *How we determine the existence of work.* Work exists in the national economy when there is a significant number of jobs (in one or more occupations) having the requirements which you are able to do with your physical or mental abilities and vocational qualifications. Isolated jobs that exist only in very limited numbers in relatively few locations outside of the region where you live are not considered "work which exists in the national economy". We will not deny you disability benefits on the basis of the existence of these kinds of jobs. If work that you can do does not exist in the national economy, we will determine that you are disabled. However, if work that can do does exist in the national economy, we will determine that you are not disabled.

(c) *Inability to obtain work.* We will determine that you are not disabled if your residual functional capacity and vocational abilities make it possible for you to do work which exists in the national economy, but you remain unemployed because of—

- (1) Your inability to get work;
- (2) Lack of work in your local area;
- (3) The hiring practices of employers;
- (4) Technological changes in the industry in which you have worked;
- (5) Cyclical economic conditions;
- (6) No job openings for you; or
- (7) You would not actually be hired to do work you could otherwise do.

(d) *Administrative notice of job data.* When we determine that unskilled, sedentary, light, and medium jobs exist in the national economy (in significant numbers either in the region where you live or in several regions of the country), we will take administrative notice of reliable job information available for various governmental and other publications. For example, we will take notice of—

- (1) *Dictionary of Occupational Titles*, published by the Department of Labor;
- (2) *County Business Patterns*, published by the Bureau of the Census;
- (3) *Census Reports*, also published by the Bureau of the Census;
- (4) *Occupational Analyses* prepared for the Social Security Administration by various State employment agencies; and
- (5) *Occupational Outlook Handbook*, published by the Bureau of Labor Statistics.

(e) Use of vocational experts and other specialists. If the issue in determining whether you are disabled is

whether your work skills can be used in other work and the specific occupations in which they can be used, or there is a similarly complex issue, we may use the services of a vocational expert or other specialist.

§ 404.1567 Physical exertion requirements.

To determine the physical exertion requirements of work in the national economy, we classify jobs as "sedentary," "light," "medium," "heavy," and "very heavy." These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor. In making disability determinations under this subpart, we use the following definitions:

(a) *Sedentary work.* Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

(b) *Light work.* Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

(c) *Medium work.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work we determine that he or she can also do sedentary and light work.

(d) *Heavy work.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work.

(e) *Very heavy work.* Very heavy work involves lifting objects weighing 100 pounds or more at a time with

frequent lifting or carrying of objects weighing 50 pounds or more. If someone can do very heavy work, we determine that he or she can also do heavy, medium, light and sedentary work.

§ 404.1568 Skill requirements.

In order to evaluate your skills and to help determine the existence in the national economy of work you are able to do, occupations are classified as unskilled, semi-skilled, and skilled. In classifying these occupations, we use materials published by the Department of Labor. When we make disability determinations under this subpart, we use the following definitions:

(a) *Unskilled work.* Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength. For example, we consider jobs unskilled if the primary work duties are handling, feeding and offbearing (that is, placing or removing materials from machines which are automatic or operated by others), or machine tending, and a person can usually learn to do the job in 30 days, and little specific vocational preparation and judgment are needed. A person does not gain work skills by doing unskilled jobs.

(b) *Semi-skilled work.* Semi-skilled work is work which needs some skills but does not require doing the more complex work duties. Semi-skilled jobs may require alertness and close attention to watching machine processes; or inspecting, testing or otherwise looking for irregularities; or tending or guarding equipment, property, materials, or persons against loss, damage or injury; or other types of activities which are similarly less complex than skilled work, but more complex than unskilled work. A job may be classified as semi-skilled where coordination and dexterity are necessary, as when hands or feet must be moved quickly to do repetitive tasks.

(c) *Skilled work.* Skilled work requires qualifications in which a person uses judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity of material to be produced. Skilled work may require laying out work, estimating quality, determining the suitability and needed quantities of materials, making precise measurements, reading blueprints or other specifications, or making necessary computations or mechanical adjustments to control or regulate the work. Other skilled jobs may require dealing with people, facts, or figures or

abstract ideas at a high level of complexity.

(d) *Skills that can be used in other work (transferability).* (1) *What we mean by transferable skills.* We consider you to have skills that can be used in other jobs, when the skilled or semi-skilled work activities you did in past work can be used to meet the requirements of skilled or semi-skilled work activities of other jobs or kinds of work. This depends largely on the similarity of occupationally significant work activities among different jobs.

(2) *How we determine skills that can be transferred to other jobs.* Transferability is most probable and meaningful among jobs in which—

(i) The same or a lesser degree of skill is required;

(ii) The same or similar tools and machines are used; and

(iii) The same or similar raw materials, products, processes, or services are involved.

(3) *Degrees of transferability.* There are degrees of transferability of skills ranging from very close similarities to remote and incidental similarities among jobs. A complete similarity of all three factors is not necessary for transferability. However, when skills are so specialized or have been acquired in such an isolated vocational setting that (like mining, agriculture, or fishing) they are not readily usable in other industries, jobs, and work settings, we consider that they are not transferable.

§ 404.1569 Listing of Medical-Vocational Guidelines in Appendix 2.

In light of information that is available about jobs (classified by their exertional and skill requirements) that exist in the national economy, Appendix 2 provides rules reflecting the major functional and vocational patterns which are seen in cases where a person is not doing substantial gainful activity and is prevented by a severe medically determinable impairment from doing his or her vocationally relevant past work. The rules in Appendix 2 do not cover all possible variations of factors. Also, as we explain in § 200.00 of Appendix 2, we do not apply these rules if one of the findings of fact about the person's vocational factors and residual functional capacity is not the same as the corresponding criterion of a rule. In these instances, we give full consideration to all relevant facts in accordance with the definitions and discussions under vocational considerations. However, if the findings of fact made about all factors are the same as the rule, we use that rule to decide whether a person is disabled.

Substantial Gainful Activity**§ 404.1571 General.**

The work that you do during any period in which you believe you are disabled may show that you are able to do work at the substantial gainful activity level. If you are able to engage in substantial gainful activity, we will find you are not disabled. (We explain the rules for persons who are statutorily blind in § 404.1584.) Even if the work you are doing is not substantial gainful activity, it may show that you are able to do more work than you are actually doing. We will consider all of the medical and vocational evidence in your file to decide whether or not you have the ability to engage in substantial gainful activity.

§ 404.1572 What we mean by substantial gainful activity.

Substantial gainful activity is work activity that is both substantial and gainful:

(a) *Substantial work activity.* This is work activity that involves doing significant physical or mental activities. Your work may be substantial even if it is done on a part-time basis or if you do less, get paid less, or have less responsibility, than the work you did before.

(b) *Gainful work activity.* This is work activity that you do for pay or profit. Work activity is gainful if it is the kind of work usually done for wages or profit, whether or not a profit is realized.

(c) *Some other activities.* Generally, we do not consider activities like taking care of yourself, household tasks, hobbies, therapy, school attendance, club activities, or social programs to be substantial gainful activity.

§ 404.1573 Evaluation guides for work activity.

(a) *The nature of your work.* If your duties require use of your experience, skills, supervision and responsibilities, or contribute substantially to the operation of a business, this tends to show that you have the ability to work at the substantial gainful activity level.

(b) *How well you perform.* We consider how well you do your work when we determine whether or not you are doing substantial gainful activity. If you do your work satisfactorily, this may show that you are working at the substantial gainful activity level. If you are unable, because of your impairments, to do ordinary or simple tasks satisfactorily without more supervision or assistance than is usually given other people doing similar work, this may show that you are not working

at the substantial gainful activity level. If you are doing work that involves minimal duties that make little or no demands on you and that are of little or no use to your employer, or to the operation of a business if you are self-employed, this does not show that you are working at the substantial gainful activity level.

(c) *If your work is done under special conditions.* Even though the work you are doing takes into account your impairment, such as work done in a sheltered workshop or as a patient in a hospital, it may still show that you have the necessary skills and ability to work at the substantial gainful activity level.

(d) *If you are self-employed.* Supervisory, managerial, advisory or other significant personal services that you perform as a self-employed individual may show that you are able to do substantial gainful activity.

(e) *Time spent in work.* While the time you spend in work is important, we will not decide whether or not you are doing substantial gainful activity only on that basis. We will still evaluate the work to decide whether it is substantial and gainful regardless of whether you spend more time or less time at the job than workers who are not impaired who are doing similar work as a regular means of their livelihood.

§ 404.1574 Evaluation guides if you are an employee.

(a) *General.* We use several guides to decide whether you are doing substantial gainful activity.

(1) *Your earnings may show you are able to work.* The amount of your earnings from work you are doing may show that you are able to do substantial gainful activity. Generally, if you work for substantial earnings, this will show that you are able to do substantial gainful activity. However, the fact that your earnings are not substantial will not necessarily show that you are not able to do substantial gainful activity. However, earnings from work that you were forced to stop after a short time because of your impairment will not show that you are able to work.

(2) *We consider only the amounts you earn.* We do not consider any earnings not directly related to your productivity when we decide whether you are doing substantial gainful activity. If your earnings are being subsidized, the amount of the subsidy is not counted when we determine whether or not your work is substantial gainful activity. Thus, where work is done under special conditions, we only consider the part of your wages which you actually "earn". For example, where a mentally

handicapped person does simple tasks under close and continuous supervision, we would not determine that the person worked at the substantial gainful activity level only on the basis of the amount of wages. An employer may set a specific amount as a subsidy after figuring the reasonable value of the employee's services. If your work is subsidized and your employer does not set the amount of the subsidy or does not adequately explain how the subsidy was figured, we will investigate to see how much your work is worth.

(3) *If you are working in a sheltered or special environment.* If you are working in a sheltered workshop, you may or may not be earning the amounts you are being paid. The fact that the sheltered workshop or similar facility is operating at a loss or is receiving some charitable contributions or governmental aid does not establish that you are not earning all you are being paid. Since persons in military service being treated for severe impairments usually continue to receive full pay, we evaluate work activity in a therapy program, or while on limited duty by comparing it with similar work in the civilian work force or on the basis of reasonable worth of the work, rather than on the actual amount of the earnings.

(4) *If you have special work-related expenses.* If you have out-of-the-ordinary expenses in connection with your work and because of your impairment (for example, you may require special transportation), we will deduct these from your earnings if they exceeded the normal work-related expenses you would have if you were not impaired. When we decide if your work is substantial gainful activity, however, we do not deduct expenses for medication or equipment if you need these things even when you are not working.

(b) *Earnings guidelines.* If you are an employee we first consider the criteria in paragraph (a) of this section, and then the guides in paragraphs (b)(1), (2), and (3) below.

(1) *Earnings that ordinarily will show that you have engaged in substantial gainful activity.* We will consider that your earnings from your work activities as an employee show that you have engaged in substantial gainful activity if—

(i) Your earnings averaged more than \$200 a month in calendar years prior to 1976;

(ii) Your earnings averaged more than \$230 a month in calendar year 1976;

(iii) Your earnings averaged more than \$240 a month in calendar year 1977;

(iv) Your earnings averaged more than \$260 a month in calendar year 1978; or

(v) Your earnings averaged more than \$280 a month in calendar years after 1978.

(2) *Earnings that will ordinarily show that you have not engaged in substantial gainful activity.* We will generally consider that the earnings from your work as an employee will show that you have not engaged in substantial gainful activity if—

(i) Your earnings averaged less than \$130 a month in calendar years before 1976;

(ii) Your earnings averaged less than \$150 a month in calendar year 1976;

(iii) Your earnings averaged less than \$160 a month in calendar year 1977;

(iv) Your earnings averaged less than \$170 a month in calendar year 1978; or

(v) Your earnings averaged less than \$180 a month in calendar years after 1978.

However, if there is evidence showing that you may be doing substantial gainful activity, we will apply the criteria in paragraph (b)(3) of this section regarding comparability and value of services.

(3) *Earnings that are not high or low enough to show whether you engaged in substantial gainful activity.* If your earnings, on the average, are between the amounts shown in paragraphs (b) (1) and (2) of this section, we will generally consider that your earnings as an employee show that you have not done substantial gainful activity unless—

(i) Your work is comparable to that of unimpaired people in your community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work, or

(ii) Your work, although significantly less than that done by unimpaired people, is clearly worth the amounts shown in paragraph (b)(1) of this section.

However, if you are working in a sheltered workshop or a comparable facility especially set up for severely impaired persons, your earnings and activities will ordinarily establish that you have not done substantial gainful activity if your average earnings are not greater than \$200 a month in calendar years prior to 1976, \$230 a month in calendar year 1976, \$240 a month in calendar year 1977, \$260 a month in calendar year 1978, \$280 a month in calendar years after 1978.

§ 404.1575 *Evaluation guides if you are self-employed.*

(a) *If you are a self-employed person.* We will consider your activities and their effect on your business to decide whether you are doing substantial gainful activity if you are self-employed. We realize that we cannot use income alone since the amount of income you actually receive may depend upon a number of different factors like capital investment, profit sharing agreements, etc. We will evaluate your work activity on the economic effect of your services regardless of whether you receive an immediate income for your services. We consider that you are doing substantial gainful activity if—

(1) Your work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired individuals in your community who are in the same or similar businesses as their means of livelihood;

(2) Your work activity, although not comparable to that of unimpaired individuals, is reasonably worth the amount shown in paragraph (b)(1) of this section when considered in terms of its effect on the business, or when compared to the salary that an owner would pay to an employee to do the work you are doing; or

(3) You give services that are significant to the operation of the business and receive a substantial income from the business.

(b) *What we mean by significant services.* (1) If you operate a business entirely by yourself, any services that you render are significant to the business. If your business involves the services of more than one person, we will consider you to be giving significant services if you contribute more than half the total time required for the management of the business, or you give management services for more than 45 hours a month regardless of the total management time required by the business.

(2) If you are a farm landlord, that is, you rent farm land to another, we will consider you to be giving significant services if you materially participate in the production or the management of the production of the things raised on the rented farm. (See § 404.1053 for an explanation of "material participation"). If you were given social security earnings credits because you materially participated in the activities of the farm and you continue these same activities, we will consider you to be giving significant services.

(c) *What we mean by substantial income.* We will consider the income you receive from a business, after deducting the reasonable value of any significant amount of unpaid help and soil bank payments as well as normal business expenses, to be substantial if—

(1) Your net income from the business averages more than the amounts described in § 404.1574; or

(2) Your net income from the business averages less than the amounts described in § 404.1574 but the livelihood which you get from the business is either comparable to what it was before you became disabled or is comparable to that of unimpaired self-employed persons in your community who are in the same or similar businesses as their means of livelihood.

Widows, Widowers, and Surviving Divorced Wives

§ 404.1577 *Disability defined for widows, widowers, and surviving divorced wives.*

If you are a widow, widower, or surviving divorced wife, the law provides that you must have a medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months. The impairments must be of a level of severity to prevent a person from doing any gainful activity. To determine whether you are disabled, we consider only your physical or mental impairment. We do not consider your age, education and work experience.

§ 404.1578 *How we determine disability for widows, widowers, and surviving divorced wives.*

We will find that you are disabled and pay you benefits as a widow, widower, or surviving divorced wife if—

(a) Your impairment(s) has specific clinical findings that are the same as those for any impairment in the Listing of Impairments in Appendix 1 or are medically equivalent to those for any impairment shown there;

(b) Your impairment(s) meets the duration requirement; and

(c) You are not doing any gainful activity.

§ 404.1579 *Why and when we will stop your cash benefits.*

If you are entitled to disability benefits as a disabled widow, widower, or surviving divorced wife, we shall find that your disability stopped in the earlier of—

(a) The month your impairment, as shown by current medical evidence, is

not an impairment listed in Appendix 1 or is not equal to a listed impairment; or

(b) The month you do substantial gainful activity.

§ 404.1580 You are not eligible for a trial work period.

When you are receiving benefits because you are a disabled widow, widower, or surviving divorced wife, you are not entitled to a trial work period.

Blindness

§ 404.1581 Meaning of blindness as defined in the law.

We will consider you blind under the law for a period of disability and for payment of disability insurance benefits if we determine that you are statutorily blind. Statutory blindness is defined in the law as central visual acuity of 20/200 or less in the better eye with the use of correcting lens. An eye which has a limitation in the field of vision so that the widest diameter of the visual field subtends an angle no greater than 20 degrees is considered to have a central visual acuity of 20/200 or less. Your blindness must meet the duration requirement in § 404.1509.

§ 404.1582 A period of disability based on blindness.

If we find that you are blind and you meet the earnings requirement, we may establish a period of disability for you regardless of whether you can do substantial gainful activity. A period of disability protects your earnings record under Social Security so that the time you are disabled will not count against you in determining whether you will have worked long enough to qualify for benefits and the amount of your benefits. However, you will not necessarily be entitled to receive disability insurance cash benefits even though you are blind. If you are a blind person under age 55, you must be unable to do any substantial gainful activity in order to be paid disability insurance cash benefits.

§ 404.1583 How we determine disability for blind persons who are age 55 or older.

We will find that you are eligible for disability insurance benefits even though you are still engaging in substantial gainful activity, if—

(a) You are blind;

(b) You are age 55 or older; and

(c) You are unable to use the skills or abilities like the ones you used in any substantial gainful activity which you did regularly and for a substantial period of time. (However, you will not be paid any cash benefits for any month

in which you are doing substantial gainful activity.)

§ 404.1584 Evaluation of work activity of blind people.

(a) *General.* If you are blind (as explained in § 404.1581), we will consider the earnings from the work you are doing to determine whether or not you should be paid cash benefits.

(b) *Under Age 55.* If you are under age 55, we will evaluate the work you are doing using the guides in paragraph (d) of this section to determine whether or not your work shows that you are doing substantial gainful activity. If you are not doing substantial gainful activity, we will pay you cash benefits. If you are doing substantial gainful activity, we will not pay you cash benefits. However, you will be given a period of disability as described in Subpart D of this Part.

(c) *Age 55 or older.* If you are age 55 or older, we will evaluate your work using the guides in paragraph (d) of this section to determine whether or not your work shows that you are doing substantial gainful activity. If you have not shown this ability, we will pay you cash benefits. If you have shown an ability to do substantial gainful activity, we will evaluate your work activity to find out how your work compares with the work you did before. If the skills and abilities of your new work are about the same as those you used in the work you did before, we will not pay you cash benefits. However, if your new work requires skills and abilities which are less than or different than those you used in the work you did before, we will pay you cash benefits, but not for any month in which you actually perform substantial gainful activity.

(d) *Evaluation of earnings.* The law provides a different earnings test for substantial gainful activity of people who are blind. We will not consider that you are able to engage in substantial gainful activity on the basis of earnings unless your earnings average more than \$333.33 in 1978; \$375.00 in 1979; \$416.66 in 1980; \$458.33 in 1981; and \$500.00 in 1982. Thereafter, an increase in the substantial gainful activity amount will depend on increases in the cost of living. For work activity performed in taxable years before 1978, the earnings considered enough to show an ability to do substantial gainful activity are the same for blind people as for others.

§ 404.1585 Trial work period for persons age 55 or older who are blind.

If you become eligible for disability benefits even though you were doing substantial gainful activity because you

are blind and age 55 or older, you are entitled to a trial work period if—

(a) You later return to substantial gainful activity that requires skills or abilities comparable to those required in the work you regularly did before you become blind or became 55 years old, whichever is later; or

(b) Your last previous work ended because of an impairment and the current work requires a significant vocational adjustment.

§ 404.1586 Why and when we will stop your cash benefits.

(a) If you become entitled to disability cash benefits as a statutorily blind person, we will find that you are no longer entitled to benefits beginning with the earliest of—

(1) The month your vision, as shown by current medical evidence, does not meet the definition of blindness; or

(2) If you are under age 55, the month in which you demonstrated your ability to engage in substantial gainful activity (following completion of a trial work period); or

(3) If you are age 55 or older, the month (following completion of a trial work period) when your work activity shows you are able to use, in substantial gainful activity, skills and abilities comparable to those of some gainful activity which you did with some regularity and over a substantial period of time. The skills and abilities are compared to the activity you did prior to age 55 or blindness, whichever is earlier.

(b) If we find that you are not entitled to disability cash benefits on the basis of your work activity but your visual impairment is sufficiently severe to meet the definition of blindness, the period of disability that we established for you will continue.

§ 404.1587 Circumstances under which we may suspend your benefits before we make a determination.

We will suspend your benefits if all of the information we have leaves no doubt that you are not disabled and we will be unable to complete a determination soon enough to prevent us from paying you more monthly benefits than you are entitled to. This may occur when you are blind as defined in the law and age 55 or older and you have returned to work similar to work you previously performed.

Continuing or Stopping disability

§ 404.1588 Your responsibility to tell us of events that may change in your disability status.

If you are entitled to cash benefits or to a period of disability because you are

disabled, you should promptly tell us if—

- (a) Your condition improves;
- (b) You return to work;
- (c) You increase the amount of your work; or
- (d) Your earnings increase.

§ 404.1589 We may investigate to find out whether you continue to be disabled.

After we find that you are disabled, we must determine from time to time if you are still eligible for disability cash benefits. We may begin an investigation for this purpose for any number of reasons, including your failure to follow the provisions of the Social Security Act or these regulations. If our investigation shows that we should suspend your benefits, we will notify you in writing and give you an opportunity to reply. In § 404.1590 we describe those events that may prompt us to investigate whether you continue to be disabled.

§ 404.1590 When we will investigate whether your disability continues.

(a) *General.* We investigate to determine whether or not you continue to meet the disability requirements of the law. Payment of cash benefits or a period of disability ends if the medical or other evidence shows that you are not disabled.

(b) An investigation will be started if—

(1) We need a current medical report to see if your medical condition has improved so that you can do substantial gainful activity;

(2) You return to work and successfully complete a period of trial work;

(3) Substantial earnings are reported to your wage record;

(4) You tell us that you have recovered from your disability or that you have returned to work; or

(5) Your State Vocational Rehabilitation Agency tells us that—

- (i) You have completed your training,
- (ii) You have returned to work, or
- (iii) You are able to return to work.

§ 404.1591 If your medical recovery was expected and you returned to work.

If your impairment was expected to improve and you returned to full-time work with no significant medical limitations, we may find that your disability ended in the month you returned to work. Unless there is evidence showing that your disability has not ended, we will use the medical and other evidence already in your file and your return to full-time work without significant limitations to determine that you are able to engage in substantial gainful activity. (If your

condition is not expected to improve, we will not ordinarily review your claim until the end of the trial work period, § 404.1592).

Example: Evidence obtained during the processing of your claim showed that you had an impairment that was expected to improve about 18 months after your disability began. We, therefore, told you that your claim would be reviewed again at that time. However, before the time arrived for your scheduled medical re-examination, you told us that you had returned to work. We investigated immediately and found that, in the 16th month after your disability began, you returned to full-time work without any significant medical restrictions. Therefore, we would find that your disability ended in the first month you returned to full-time work.

§ 404.1592 The trial work period.

(a) *Definition of the trial work period.* The trial work period is a period during which you may test your ability to work and still receive your disability cash benefits. It begins and ends as described in paragraph (e) of this section. During this period, you may perform "services" (see paragraph (b)) in as many as 9 months, but these months do not have to be consecutive. We will not consider those services as showing that your disability has ended until you have performed services in at least 9 months. However, after the trial work period has ended we will consider the work you did during the trial work period in determining whether your disability ended at any time after the trial work period.

(b) *What we mean by services.* When used in this section, "services" means any activity, even though it is not substantial gainful activity, which is done by a person in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. If you are an employee, we will consider your work "services" if you earn more than \$75 a month. If you are self-employed, we will consider your activities "services" if your net earnings are more than \$75 a month, or you work more than 15 hours a month in the business. We generally do not consider work done merely as therapy, training, or work usually done in a daily routine around the house as "services".

(c) *Limitations on the number of trial work periods.* You may have only one trial work period during a period of entitlement to cash benefits.

(d) *Who is and is not entitled to a trial work period.* (1) Those who are receiving disability insurance benefits or child's insurance benefits based on disability generally are entitled to a trial work period.

(2) You are not entitled to a trial work period if—(i) You are receiving benefits because you are a disabled widow, widower, or surviving divorced wife;

(ii) You are entitled to a period of disability but not to disability insurance cash benefits; or

(iii) You are receiving benefits in a second period of disability for which you did not have to complete a waiting period.

(e) *When the trial work period begins and ends.* The trial work period begins with the month you become entitled to disability insurance cash benefits or to child's cash benefits based on disability. It cannot begin before the month in which you file your application for benefits. It ends with the close of whichever of the following calendar months is the earlier.

(1) The 9th month (whether or not the months have been consecutive) in which you perform services; or

(2) The month in which new evidence, other than evidence relating to any work you did during the trial work period, shows that you are not disabled, even though you have not worked a full 9 months. We may find that your disability has ended at any time during the trial work period if the medical or other evidence shows that you are able to do substantial gainful activity.

§ 404.1593 We may ask you to help us determine if you are still disabled.

If you are entitled to cash benefits or if a period of disability has been established for you because you are disabled, you must, upon our request and reasonable notice, undergo consultative examinations and tests to help us find out if you are still disabled. You must also give us reports from your doctor or others who have treated you, as well as any other evidence that will help us make a disability determination.

§ 404.1594 Why and when we will stop your cash benefits.

(a) *General.* When the medical or other evidence in your file show that your disability has ended, we will contact you and tell you that the evidence in your file show that you are able to do substantial gainful activity and that your eligibility for benefits or for a period of disability will end. Before we stop your benefits or a period of disability, we will give you a chance to give us your reasons why we should not stop your benefits or your period of disability. Section 404.1595 describes your rights and the procedures we will follow. We may also stop your benefits if you have not cooperated with us in getting information about your disability

or if we cannot find you (see paragraph (c) below).

(b) *Disabled workers and persons disabled since childhood.* If you are entitled to disability cash benefits as a disabled worker or to child's insurance benefits, we will find that your disability ended in the earliest of the following—

(1) The month your impairment, as shown by current medical or other evidence, is such that you are able to do substantial gainful activity;

(2) The month in which the work you did after you became disabled shows that you can do substantial gainful activity; or

(3) The month you actually do substantial gainful activity.

(c) *If you do not cooperate with us.* If you are asked to give us medical or other evidence or to go for a physical or mental examination by a certain date, we will find that your disability ended if you fail to do what we ask without a good reason. The month your disability will be found to have ended will be the month in which you fail to do what we ask.

(d) *If we are unable to find you.* If there is a question about whether you continue to be disabled and we are unable to find you to resolve the question, we will find that your disability has ended. The month it ends will be the first month in which the question arose and we could not find you.

§ 404.1595 When we determine that you are not now disabled.

(a) *When we will give you advance notice.* Except in those circumstances described in paragraph (d) of this section, we will give you advance notice when we have determined that you are not now disabled because the information we have conflicts with what you have told us about your disability. If your dependents are receiving benefits on your account and do not live with you, we will also give them advance notice. To give you advance notice, we will contact you by mail, telephone or in person.

(b) *What the advance notice will tell you.* We will give you a summary of the information we have. We will also tell you why we have determined that you are not now disabled, and will give you a chance to reply. If it is because of—

(1) *Medical reasons.* The advance notice will tell you what the medical information in your file shows;

(2) *Your work activity.* The advance notice will tell you what information we have about the work you are doing or have done, and why this work shows that you are not disabled; or

(3) *Your failure to give us information we need or do what we ask.* The advance notice will tell you what information we need and why we need it or what you have to do and why.

(c) *What you should do if you receive an advance notice.* If you agree with the advance notice, you do not need to take any action. If you desire further information or disagree with what we have told you, you should immediately write or telephone the State agency or the social security office that gave you the advance notice or you may visit any social security office. If you believe you are now disabled, you should tell us why. You may give us any additional or new information, including reports from your doctors, hospitals, employers or others, that you believe we should have. You should send these as soon as possible to the local social security office or to the office that gave you the advance notice. We consider 10 days to be enough time for you to tell us, although we will allow you more time if need it. You will have to ask for additional time beyond 10 days if you need it.

(d) *When we will not give you advance notice.* We will not give you advance notice when we determine that you are not disabled if—

(1) We recently told you that the information we have shows that you are not now disabled, that we were gathering more information, and that your benefits will stop; or

(2) We are stopping your benefits because you told us you are not now disabled; or

(3) We recently told you that continuing your benefits would probably cause us to overpay you and you asked us to stop your benefit.

§ 404.1596 Circumstances under which we may suspend your benefits before we make a determination.

(a) *General.* Under some circumstances, we may stop your benefits before we make a determination. Generally, we do this when the information we have clearly shows you are not now disabled but we cannot determine when your disability ended. These situations are described in paragraph (b)(1) and other reasons are given in paragraph (b)(2). We refer to this as a suspension of benefits. Your benefits, as well as those of your dependents (regardless of where they receive their benefits), may be suspended. When we do this we will give you advance notice. (See § 404.1595.) We will contact your wife and children if they are receiving benefits on your Social Security number,

and the benefits are being mailed to an address different from your own.

(b) *When we will suspend your benefits.* (1) *You are not now disabled.* We will suspend your benefits if all of the information we have leaves no doubt that you are not disabled and we will be unable to complete a determination soon enough to prevent us from paying you more monthly benefits than you are entitled to. This may occur when—(i) New medical or other information clearly shows that you are able to do substantial gainful activity and your benefits should have stopped more than 2 months ago;

(ii) You completed a 9-month period of trial work more than 2 months ago and you are still working;

(iii) At the time you filed for benefits your condition was expected to improve and you were expected to be able to return to work. You subsequently did return to work more than 2 months ago with no significant medical restrictions; or

(iv) You are not entitled to a trial work period and you are working.

(2) *Other reasons.* We will also suspend your benefits if—(i) You have failed to respond to our request for additional medical or other evidence and we are satisfied that you received our request and our records show that you should be able to respond.

(ii) We are unable to locate you and your checks have been returned by the Post Office as undeliverable; or

(iii) You refuse to accept vocational rehabilitation services without a good reason. Section 404.422 gives you examples of good reasons for refusing to accept vocational rehabilitation services.

(c) *When we will not suspend your cash benefits.* We will not suspend your cash benefits if—(1) the evidence in your file does not clearly show that you are not disabled;

(2) We have asked you to furnish additional information; or

(3) You have become disabled by another impairment.

§ 404.1597 After we make a determination that you are not now disabled.

If we make a determination that you are not now disabled, your benefits will stop. You will receive a formal written notice telling you why you are not disabled and the month your benefits should stop. If your spouse and children are receiving benefits on your account, we will also stop their benefits and tell them why. The notices will also explain your right to reconsideration if you disagree with our determination.

§ 404.1598 If you become disabled by another impairment.

If a new, severe impairment begins in or before the month in which your last impairment ends, we will find that your disability is continuing. The new impairment need not be expected to last 12 months or to result in death, but it must be severe enough to keep you from doing substantial gainful activity.

Appendix 1—Listing of Impairments

(For the text of Part A of this appendix see 44 FR 18170, March 27, 1979. For the text of Part B of this appendix see Appendix 1 following 20 CFR § 416.985, edition of April 1, 1978).

Appendix 2—Medical-Vocational Guidelines

(For the text of this appendix see 43 FR 55349, November 28, 1978.)

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED

2. Subpart I of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is revised to read as follows:

Subpart I—Determining Disability and Blindness**General***Sec.*

- 416.901 Scope of subpart.
416.902 General definition and terms for this subpart.

Determinations

- 416.903 Who makes disability and blindness determinations.
416.904 Determinations by other organizations and agencies.

Definition of Disability

- 416.905 Basic definition of disability.
416.906 Disability for children under age 18.
416.907 Disability under a State plan.
416.908 What is needed to show an impairment.
416.909 How long the impairment must last.
416.910 Meaning of substantial gainful activity.

Evidence

- 416.912 Your responsibility to submit evidence.
416.913 Medical evidence of your impairment.
416.914 When we will purchase existing evidence.
416.915 Where and how to submit evidence.
416.916 If you fail to submit medical and other evidence.
416.917 Consultative examination at our expense.
416.918 If you do not appear at a consultative examination.

Evaluation of Disability*Sec.*

- 416.920 Evaluation of disability in general.
416.921 What we mean by an impairment that is not severe.
416.922 Where you have two or more unrelated impairments—initial claims.
416.923 How we determine disability for a child under age 18.

Medical Considerations

- 416.925 Listing of impairments in Appendix 1 of subpart P of Part 404 of this chapter.
416.926 Medical equivalence.
416.927 Conclusion by physicians concerning your disability or blindness.
416.928 Symptoms, signs and laboratory findings.
416.929 How we evaluate symptoms, including pain.
416.930 Need to follow prescribed treatment.

Presumptive Disability and Blindness

- 416.931 The meaning of presumptive disability or presumptive blindness.
416.932 When presumptive payments begin and end.
416.933 How we make a finding of presumptive disability or presumptive blindness.
416.934 Impairments which may warrant a finding of presumptive disability or presumptive blindness.

Drug Addiction and Alcoholism

- 416.935 Medically determined drug addicts and alcoholics.
416.936 Treatment required for medically determined drug addicts and alcoholics.
416.937 What we mean by appropriate treatment.
416.938 What we mean by approved institutions or facilities.
416.939 How we consider whether treatment is available.

Residual Functional Capacity

- 416.945 Your residual functional capacity.
416.946 Responsibility for assessing and determining residual functional capacity.

Vocational Considerations

- 416.960 When your vocational background will be considered.
416.961 Your ability to do work depends upon your residual functional capacity.
416.962 If you have done only arduous unskilled physical labor.
416.963 Your age as a vocational factor.
416.964 Your education as a vocational factor.
416.965 Your work experience as a vocational factor.
416.966 Work which exists in the national economy.
416.967 Physical exertion requirements.
416.968 Skill requirements.
416.969 Listing of Medical—Vocational Guidelines in Appendix 2 of subpart P of Part 404 of this chapter.

Substantial Gainful Activity

- 416.971 General.
416.972 What we mean by substantial gainful activity.
416.973 Evaluation guides for work activity.

Sec.

- 416.974 Evaluation guides if you are an employee.
416.975 Evaluation guides if you are self-employed.

Blindness

- 416.981 Meaning of blindness as defined in the law.
416.982 Blindness under a State plan.
416.983 How we evaluate statutory blindness.
416.984 If you are statutorily blind and still working.
416.985 How we evaluate other visual impairments.

Continuing or Stopping Disability or Blindness

- 416.989 Your responsibility to tell us of events that may cause a change in your disability or blindness status.
416.990 We may investigate to find out whether you continue to be disabled or blind.
416.991 When we will investigate whether your disability or blindness continues.
416.992 If your medical recovery was expected and you returned to work.
416.993 The trial work period.
416.994 We may ask you to help us determine if you are still disabled or blind.
416.995 Why and when we will stop your cash benefits.
416.996 If you become disabled by another impairment.

Subpart I—Determining Disability and Blindness**General****§ 416.901** Scope of subpart.

In order for you to become entitled to any benefits based upon disability or blindness you must be disabled or blind as defined in title XVI of the Social Security Act. This Subpart explains how we determine whether you are disabled or blind. We have organized the rules in the following way.

(a) We define general terms, then discuss who makes our disability or blindness determinations and state that disability and blindness determinations made under other programs have no effect on our determinations.

(b) We explain the term "disability" and note some of the major factors that are considered in determining whether you are disabled in §§ 416.905–416.910.

(c) Our general rules on evaluating disability are stated in §§ 416.920–416.923. We describe the steps that we go through and the order in which they are considered.

(d) Sections 416.912–416.918 contain our rules on evidence. We explain your responsibilities for submitting evidence of your impairment, state what we consider to be acceptable sources of medical evidence, and describe what

information should be included in medical reports.

(e) Our rules on medical considerations are found in §§ 416.925-416.930. We explain in these rules—

(1) The purpose and use of the Listing of Impairments found in Appendix 1 of subpart P of Part 404 of this chapter;

(2) What we mean by the term "medical equivalence" and how we determine medical equivalence;

(3) The effect of a conclusion by your physician that you are disabled;

(4) What we mean by symptoms, signs, and laboratory findings;

(5) How we evaluate pain and other symptoms; and

(6) The effect on your benefits if you fail to follow treatment that is expected to restore your ability to work, and how we apply the rule.

(f) In §§ 416.931-416.934 we explain that we may make payments on the basis of presumptive disability or presumptive blindness.

(g) In §§ 416.935-416.939 we explain the rules which apply in cases of drug addiction and alcoholism.

(h) In §§ 416.945-416.946 we explain what we mean by the term "residual functional capacity," state when an assessment of residual functional capacity is required, and who may make it.

(i) Our rules on vocational considerations are found in §§ 416.960-416.969. We explain when vocational factors must be considered along with the medical evidence, discuss the role of residual functional capacity in evaluating your ability to work, discuss the vocational factors of age, education, and work experience, describe what we mean by work which exists in the national economy, discuss the amount of exertion and the type of skill required for work, and describe how the Guidelines in Appendix 2 of subpart P of Part 404 of this chapter apply to claims under Part 416.

(j) Our rules on substantial gainful activity are found in §§ 416.971-416.974. These explain what we mean by substantial gainful activity and how we evaluate your work activity.

(k) In §§ 416.981-416.985 we discuss blindness.

(l) Our rules on when disability and blindness continues and stops are contained in §§ 416.988-416.998. We explain what your responsibilities are in telling us of any events that may cause a change in your disability or blindness status, when you may have a trial work period, and when we will investigate to see if you are still disabled.

§ 416.902 General definitions and terms for this subpart.

As used in this subpart—"Secretary" means the Secretary of Health, Education, and Welfare.

"State agency" means an agency of a State which enters into an agreement with the Secretary to make determinations of disability or blindness for the Secretary.

"We" or "us" refers to either the Social Security Administration or the State agency making the disability or blindness determination.

"You" refers to the person who has applied for or is receiving benefits based on disability or blindness.

Determinations

§ 416.903 Who makes disability and blindness determinations.

(a) *State agencies.* When there is an agreement between the State and the Secretary, the State agency designated in the agreement makes disability and blindness determinations for the Secretary for—

(1) Any person living in that State; and

(2) Any group of people named in the agreement.

(b) *Social Security Administration.* The Social Security Administration will make disability and blindness determinations for the Secretary for—

(1) Any people in any State that has not entered into an agreement with the Secretary;

(2) Any group of people not covered by an agreement with any State.

(c) *What determinations are authorized.* The Secretary has authorized the State agencies and the Social Security Administration to make determinations about—

(1) Whether you are disabled or blind;

(2) The date your disability or blindness began; and

(3) The date your disability or blindness stopped.

(d) *Review of State Agency determinations.* On review of a State agency determination or redetermination of disability or blindness we may find that—

(1) You are, or are not, disabled or blind, regardless of what the State agency found;

(2) Your disability or blindness began earlier or later than found by the State agency; and

(3) Your disability or blindness stopped earlier or later than the date found by the State agency.

§ 416.904 Determinations by other organizations and agencies.

A decision by any nongovernmental agency or any other Governmental agency about whether you are disabled or blind is based on their rules and is not our decision about whether you are disabled or blind. We must make a disability and blindness determinations based on social security law.

Definition of Disability

§ 416.905 Basic definition of disability.

(a) The law defines disability as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. To meet this definition, you must have a severe impairment, which makes you unable to do your previous work or any other substantial gainful activity which exists in the national economy. To determine whether you are able to do any other work, we consider your residual functional capacity and your age, education, and work experience.

(b) There are different rules for determining disability for individuals who are statutorily blind. We discuss these in §§ 416.981 through 416.985.

§ 416.906 Disability for children under age 18.

If you are under age 18, we will consider you disabled if you are suffering from any medically determinable physical or mental impairment which compares in severity to an impairment that would make an adult (a person over age 18) disabled.

§ 416.907 Disability under a State plan.

You shall also be considered disabled for payment of supplemental security income benefits if—

(a) You were found to be permanently and totally disabled as defined under a State plan approved under titles XIV or XVI of the Social Security Act, as in effect for October 1972;

(b) You received aid under the State plan because of your disability for the month of December 1973 and for at least one month before July 1973; and

(c) You continue to be disabled as defined under the State plan.

§ 416.908 What is needed to show an impairment.

If you are not doing substantial gainful activity, we always look first at your physical or mental impairment(s) to determine whether you are disabled or blind. Your impairment must result from

anatomical, physiological, or psychological abnormalities which can be shown by medically acceptable clinical and laboratory diagnostic techniques. A physical or mental impairment must be established by medical findings consisting of signs, symptoms, and laboratory findings, not only by your statement of symptoms.

§ 416.909 How long the impairment must last.

Unless your impairment is expected to result in death, it must have lasted or must be expected to last for a continuous period of at least 12 months. We call this the duration requirement.

§ 416.910 Meaning of substantial gainful activity.

Substantial gainful activity means work that—(a) Involves doing significant and productive physical or mental duties; and

(b) Is done (or intended) for wages or profit.

(See § 416.972 for further details about what we mean by substantial gainful activity.)

Evidence

§ 416.912 Your responsibility to submit evidence.

(a) *General.* In general, you have to prove to us that you are blind or disabled. Therefore, you must bring to our attention everything which shows that you are blind or disabled. In making a decision we will consider all information we get from you and others about your impairments.

(b) *Kind of evidence.* You must provide medical evidence showing that you have an impairment and how severe it is during the time you say that you are disabled. We will consider only impairments you say you have or about which you give us evidence. If we ask, you must also provide evidence about your—

- (1) Age;
- (2) Education and training;
- (3) Work experience;
- (4) Daily activities both before and after you say that you became disabled;
- (5) Efforts to work; and
- (6) Any other evidence showing how your impairment(s) affects your ability to work. (We discuss in more detail the evidence we need when we consider vocational factors in §§ 416.960 through 416.969.)

§ 416.913 Medical evidence of your impairment.

(a) *Acceptable sources.* We need reports about your impairments from

acceptable medical sources. Acceptable medical sources are—

- (1) Licensed physicians;
- (2) Licensed osteopaths;
- (3) Licensed or certified psychologists;

and

(4) Persons authorized to certify a copy or summary of the medical records of a hospital, clinic, sanatorium, medical institution, or health care facility. The copy or summary must be certified as accurate by the custodian or by any authorized employee of the Social Security Administration, Veterans' Administration, or State agency.

(b) *Medical reports* should include—

- (1) Medical history;
- (2) Clinical findings (such as the results of physical or mental status examinations);
- (3) Laboratory findings (such as blood pressure, x-rays);
- (4) Diagnosis (statement of disease or injury based on its signs and symptoms);
- (5) Treatment prescribed with response, and prognosis; and
- (6) Medical assessment (except in statutory blindness claims).

(c) *Medical assessment.* This should describe—

- (1) Your ability to do work-related activities such as sit, stand, move about, lift, carry, handle objects, hear or speak, and travel and
- (2) In cases of mental impairment, your ability to reason or make occupational, personal, or social adjustments.

(d) *Completeness.* The medical evidence, including the clinical and laboratory findings, must be complete and detailed enough to allow us to make a determination about whether you are disabled or blind. It must allow us to determine—

- (1) The nature and limiting effects of your impairment(s) for any period in question;
- (2) The probable duration of your impairment; and
- (3) Your residual functional capacity to do work-related physical and mental activities.

(e) *Information from other sources.* Information from other sources may also help us to understand how your impairment affects your ability to work. Other sources include—

- (1) Public and private social welfare agencies;
- (2) Observations of non-medical sources; and
- (3) Practitioners not medically licensed (for example, naturopaths, optometrists, chiropractors audiologists, etc.).

(f) *Evidence we need to establish statutory blindness.* If you are applying

for benefits on the basis of statutory blindness, we shall require an examination by a physician skilled in diseases of the eye or by an optometrist, whichever you may select.

§ 416.914 When we will purchase existing evidence.

We need specific medical evidence to determine whether you are disabled or blind. We will pay for the medical evidence we request, if there is a charge. We will also be responsible for the cost of medical evidence we ask you to get. If we receive evidence from you or your physician or other sources which we did not request ourselves, but which is used in making a determination on your claim, we will pay any reasonable fees. We may also pay the fees for evidence we receive even if it is not needed as long as you or your medical source believed that the evidence was needed.

§ 416.915 Where and how to submit evidence.

You may give us evidence about your impairment at any of our offices or at the office of any State agency authorized to make disability or blindness determinations. You may also give evidence to one of our employees authorized to accept evidence at another place. For more information about this, see Subpart C of this Part.

§ 416.916 If you fail to submit medical and other evidence.

You must cooperate in furnishing us with available medical evidence about your impairment(s). We will pay for this evidence if we find it is needed to evaluate your claim. When you fail to cooperate with us in obtaining evidence, we will determine that you are not disabled or statutorily blind.

§ 416.917 Consultative examination at our expense.

(a) *Notice of the examination.* If your medical sources cannot give us sufficient medical evidence about your impairment for us to determine whether you are disabled or blind, we may ask you to take part in physical or mental examinations or tests. We will pay for these examinations. We will give you reasonable notice of the date, time, and place of the examination or test, and the name of the person who will do it. We will also give the examiner any necessary background information about your condition when your own physician will not be doing the examination or test.

(b) *Reasons why we may need evidence.* We may need more medical evidence—

(1) To obtain more detailed medical findings about your impairment(s);

(2) To obtain technical or specialized medical information;

(3) To resolve conflicts or differences in medical findings or assessments in the evidence we already have.

§ 416.918 If you do not appear at a consultative examination.

(a) *General.* If you are applying for benefits and do not have a good reason for failing or refusing to take part in a consultative examination or test which we arrange for you to get information we need to determine your disability or blindness, we may find that you are not disabled or blind. If you are already receiving benefits and do not have a good reason for failing or refusing to take part in a consultative examination or test which we arranged for you, we may determine that your disability or blindness may have stopped because of your failure or refusal. Therefore, if you have any reason why you cannot go for the scheduled appointment, you should tell us about this as soon as possible before the examination date. If you have a good reason, we will schedule another examination.

(b) *Examples of good reasons for failure to appear.* Some examples of what we consider good reasons for not going to a scheduled examination include—

(1) Illness on the date of the scheduled examination or test;

(2) Not receiving timely notice of the scheduled examination or test, or receiving no notice at all;

(3) Being furnished incorrect or incomplete information, or being given incorrect information about the physician involved or the time or place of the examination or test;

(4) Having had death or serious illness occur in your immediate family; or

(5) Having had professional or personal contact with the scheduled examiner and believing that the examiner could not be objective.

(c) *Objections by your physician.* If any of your treating physicians tell you that you should not take the examination or test, you should tell us at once. In many cases, we may be able to get the information we need in another way. Your physician may agree to another type of examination for the same purpose.

Evaluation of Disability

§ 416.920 Evaluation of disability in general.

(a) *Steps in evaluating disability.* We consider all material facts to determine whether you are disabled. If you are

doing substantial gainful activity, we will determine that you are not disabled. If you are not doing substantial gainful activity, we will first consider your physical or mental impairment(s). Your impairment must be severe and meet the duration requirement before we can find you to be disabled. We follow a set order to determine whether you are disabled. We review any current work activity, the severity of your impairment(s), your residual functional capacity and your age, education, and work experience. If we can find that you are disabled or not disabled at any point in the review, we do not review further.

(b) *If you are working.* If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled without considering your medical condition or your age, education, and work experience.

(c) *You must have a severe impairment.* If you do not have any impairment(s) which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience.

(d) *When your impairment meets or equals a listed impairment in Appendix 1.* If you have an impairment which meets the duration requirement and is listed in Appendix 1 of subpart P of Part 404 of this chapter, or is equal to a listed impairment, we will find you disabled without considering your age, education, and work experience.

(e) *Your impairment must prevent past relevant work.* If we cannot make a decision based on your current work activity or on medical facts alone, and you have a severe impairment, we then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled.

(f) *Your impairment must prevent you from doing any other work.* (1) If you cannot do any work you have done in the past because you have a severe impairment, we will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled.

(2) If you have only a marginal education, and long work experience (e.g., 35 years or more) where you only did arduous unskilled physical labor, and you can no longer do this kind of work, we use a different rule (see § 416.962.)

§ 416.921 What we mean by an impairment that is not severe.

(a) An impairment is not severe if it does not significantly limit your physical or mental abilities to do basic work activities.

(b) *Basic work activities.* When we talk about basic work activities, we mean the abilities and aptitude necessary to do most jobs. Examples of these include—

(1) Physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling;

(2) Capacities for seeing, hearing, and speaking;

(3) Understanding, carrying out, and remembering simple instructions;

(4) Use of judgment;

(5) Responding appropriately to supervision, co-workers and usual work situation; and

(6) Dealing with changes in a routine work setting.

§ 416.922 When you have two or more unrelated impairments—initial claims.

We cannot combine two or more unrelated severe impairments to meet the 12-month duration test. If you have a severe impairment(s) and then develop another unrelated severe impairment(s) but neither one is expected to last for 12 months, we cannot find you disabled. However, we can combine unrelated impairments to see if together they are severe enough to keep you from doing substantial gainful activity. We will consider the combined effects of unrelated impairments only if all are severe and expected to last 12 months.

§ 416.923 How we determine disability for a child under age 18.

We will find that a child under age 18 is disabled if he or she—(a) Is not doing any substantial gainful activity; and

(b) Has a medically determinable physical or mental impairment(s) which compares in severity to any impairment(s) which would make an adult (a person age 18 or over) disabled. This requirement will be met when the impairment(s)—

(1) Meets the duration requirement; and

(2) Is listed in Appendix 1 of subpart P of Part 404 of this chapter; or

(3) Is determined by us to be medically equal to an impairment listed in Appendix 1 of subpart P of Part 404 of this chapter.

Medical Considerations

§ 416.925 Listing of impairments in Appendix 1 of subpart P of Part 404 of this chapter.

(a) *Purpose of the Listing of Impairments.* The Listing of Impairments describes, for each of the major body systems, impairments which are considered severe enough to prevent a person from doing any gainful activity. Most of the listed impairments are permanent or expected to result in death, or a specific statement of duration is made. For all others, the evidence must show that the impairment is expected to last for a continuous period of at least 12 months.

(b) *Adult and childhood diseases.* The Listing of Impairments consists of two parts:

(1) *Part A* contains medical criteria that apply to adult persons age 18 and over. The medical criteria in Part A may also be applied in evaluating impairments in persons under age 18 if the disease processes have a similar impairment impact on adults and younger persons.

(2) *Part B* contains additional medical criteria that apply only to the evaluation of impairments of persons under age 18. Certain criteria in Part A do not give appropriate consideration to the particular effects of the disease processes in childhood; i.e., when the disease process is generally found only in children or when the disease process differs in its effect on children than on adults. Additional criteria are included in Part B, and the impairment categories are, to the extent possible, numbered to maintain a relationship with their counterparts in Part A. In evaluating disability for a person under age 18, Part B will be used first. If the medical criteria in Part B do not apply, then the medical criteria in Part A will be used.

(c) *How to use the Listing of Impairments.* Each section of the Listing of Impairments has a general introduction containing definitions of key concepts used in that section. Certain specific medical findings, some of which are required in establishing a diagnosis or in confirming the existence of an impairment for the purpose of this Listing, are also given in the narrative introduction. If the medical findings needed to support a diagnosis are not given in the introduction or elsewhere in the listing, the diagnosis must still be established on the basis of medically acceptable clinical and laboratory diagnostic techniques. Following the introduction in each section, the required level of severity of impairment is shown under "Category of

Impairments" by one or more sets of medical findings. The medical findings consist of symptoms, signs, and laboratory findings.

(d) *Diagnoses of impairments.* We will not consider your impairment to be one listed in Appendix 1 of subpart P of Part 404 of this chapter solely because it has the diagnosis of a listed impairment. It must also have the findings shown in the Listing for that impairment.

(e) *Addiction to alcohol or drugs.* If you have a condition diagnosed as addiction to alcohol or drugs, this will not, by itself, be a basis for determining whether you are, or are not, disabled. As with any other medical condition, we will decide whether you are disabled based on symptoms, signs, and laboratory findings.

§ 416.926 Medical equivalence.

(a) *How medical equivalence is determined.* We will decide that your impairment(s) is medically equivalent to a listed impairment in Appendix 1 of Subpart P of Part 404 of this chapter if the medical findings are at least equal in severity and duration to the listed findings. We will compare the symptoms, signs, and laboratory findings about your impairment(s), as shown in the medical evidence we have about your claim, with the medical criteria shown with the listed impairment. If your impairment is not listed, we will consider the one most like a listed impairment to decide whether your impairment is medically equal. If you have more than one impairment, and none of them meets or equals a listed impairment, we will review the symptoms, signs, and laboratory findings about your impairments against the one most like the listed impairments to determine whether the combination of your impairments is medically equal to any listed impairment.

(b) *Medical equivalence must be based on medical findings.* We will always base our decision about whether your impairment(s) is medically equal to a listed impairment on medical evidence only. Any medical findings in the evidence must be supported by medically acceptable clinical and laboratory diagnostic techniques. We will also consider the medical opinion given by one or more physicians designated by the Secretary in deciding medical equivalence.

(c) *Who is a designated physician.* A physician designated by the Secretary includes any physician employed or engaged to make medical judgments by the Social Security Administration, the Railroad Retirement board, or a State

agency authorized to make disability determinations.

§ 416.927 Conclusion by physicians concerning your disability or blindness.

We are responsible for determining whether you are disabled or blind. Therefore, a statement by your physician that you are "disabled" or "blind" or "unable to work" does not mean that we will determine that you are disabled or blind. We have to review the medical findings and other evidence that support a physician's statement that you are "disabled" or "blind".

§ 416.928 Symptoms, signs, and laboratory findings.

Medical findings consist of symptoms, signs, and laboratory findings:

(a) *Symptoms* are your own description of your physical or mental impairment. Your statements alone are not enough to establish that there is a physical or mental impairment.

(b) *Signs* are anatomical, physiological, or psychological abnormalities which can be observed, apart from your statements (symptoms). Signs must be shown by medically acceptable clinical diagnostic techniques. Psychiatric signs are medically demonstrable phenomena which indicate specific abnormalities of behavior, affect, thought, memory, orientation and contact with reality. They must also be shown by observable facts that can be medically described and evaluated.

(c) *Laboratory findings* are anatomical, physiological, or psychological phenomena which can be shown by the use of a medically acceptable laboratory diagnostic techniques. Some of these diagnostic techniques include chemical tests, electrophysiological studies (electrocardiogram, electroencephalogram etc.), roentgenological studies (X-rays), and psychological tests.

§ 416.929 How we evaluate symptoms, including pain.

If you have a physical or mental impairment, you may have symptoms (like pain, shortness of breath, weakness or nervousness). We consider all your symptoms, including pain, and the extent to which objective signs and laboratory findings confirm these symptoms. The effects of all symptoms, including severe and prolonged pain, must be evaluated on the basis of a medically determinable impairment which can be shown to be the cause of the symptom. We will never find that

you are disabled based on your symptoms, including pain, alone.

§ 416.930 Need to follow prescribed treatment.

(a) What treatment you must follow.

(1) In order to get benefits, you must follow treatment which can restore your ability to work.

(2) In most cases, this treatment will be prescribed by your physician. However, if your physician has not prescribed treatment or if we believe there is need for another opinion about treatment, we may send you to a physician at our expense for a medical opinion. In making a decision on whether there is treatment that would enable you to work, we will consider all medical findings and recommendations.

(b) When you do not follow prescribed treatment. If you do not follow the prescribed treatment without a good reason, we will not find you disabled or blind or, if you are already receiving benefits, we will stop paying you benefits.

(c) Acceptable reasons for failure to follow prescribed treatment. The following are examples of a good reason for not following treatment:

(1) The specific medical treatment is contrary to the established teaching and tenets of your religion.

(2) The prescribed treatment would be cataract surgery for one eye, when there is an impairment of the other eye which meets, or is equivalent in severity to one that is in, the Listing of Impairments and is not subject to improvement through treatment.

(3) Surgery was previously performed with unsuccessful results and the same surgery is again being recommended for the same impairment.

(4) The treatment because of its enormity (e.g. open heart surgery), unusual nature (e.g., organ transplant), or other reason is very risky for you; or

(5) The treatment involves amputation of an extremity, or a major part of an extremity.

Presumptive Disability and Blindness

§ 416.931 The meaning of presumptive disability or presumptive blindness.

If you are applying for supplemental security income benefits on the basis of disability or blindness, we may pay you benefits before we make a formal finding of whether or not you are disabled or blind. In order to receive these payments, we must find that you are presumptively disabled or presumptively blind. You must also meet all other eligibility requirements for supplemental security income benefits. We may make these payments to you

for a period not longer than 3 months. These payments will not be considered overpayments if we later find that you are not disabled or blind.

§ 416.932 When presumptive payments begin and end.

We may make payments to you on the basis of presumptive disability or presumptive blindness before we make a formal determination about your disability or blindness. The payments can not be made for more than 3 months. They start for a period of not more than 3 months beginning in the month we make the presumptive disability or presumptive blindness finding. The payments end the earliest of—

(a) The month in which we make a formal finding on whether or not you are disabled or blind;

(b) The month in which we make the third monthly payment based on presumptive disability or presumptive blindness to you; or

(c) The month in which you no longer meet one of the other eligibility requirements (e.g., your income exceeds the limits).

§ 416.933 How we make a finding of presumptive disability or presumptive blindness.

We may make a finding of presumptive disability or presumptive blindness if the evidence available at the time of the presumptive disability or presumptive blindness decision, reflects a high degree of probability that you are disabled or blind. In the case of readily observable severe impairments (e.g., amputation of extremities, total blindness), we will find that you are disabled or blind without medical evidence. In all other cases, a finding of disability or blindness must be based on medical evidence or other information which, though not sufficient for a formal determination of disability or blindness, is sufficient for disability evaluators to find that there is a high degree of probability that you are disabled or blind.

§ 416.934 Impairments which may warrant a finding of presumptive disability or presumptive blindness.

We may make findings of presumptive disability and presumptive blindness in 10 specific impairment categories without obtaining any medical evidence. These specific impairment categories are—

- (a) Amputation of two limbs;
- (b) Amputation of a leg at the hip;
- (c) Allegation of total deafness;
- (d) Allegation of total blindness;

(e) Allegation of bed confinement or immobility without a wheelchair, walker, or crutches, due to a longstanding condition, excluding recent accident and recent surgery;

(f) Allegation of a stroke (cerebral vascular accident) more than 4 months in the past and continued marked difficulty in walking or using a hand or arm;

(g) Allegation of cerebral palsy, muscular dystrophy or muscle atrophy and marked difficulty in walking (e.g., use of braces), speaking or coordination of the hands or arms.

(h) Allegation of diabetes with amputation of a foot;

(i) Allegation of Down's syndrome (Mongolism); and

(j) Allegation of severe mental deficiency made by another individual filing on behalf of a claimant who is at least 7 years of age. For example, a mother filing for benefits for her child states that the child attends (or attended) a special school, or special classes in school, because of mental deficiency or is unable to attend any type of school (or if beyond school age, was unable to attend), and requires care and supervision of routine daily activities.

Drug Addiction and Alcoholism

§ 416.935 Medically determined drug addicts and alcoholics.

(a) We will find that you are a medically determined drug addict or alcoholic if we determine you are disabled and we find that your drug addiction or alcoholism is a contributing factor to your disability.

(b) You will not be medically determined to be a drug addict or alcoholic if—

(1) We find that you are disabled independent of drug addiction or alcoholism; or

(2) We find that you are eligible for benefits because of your age or blindness.

§ 416.936 Treatment required for medically determined drug addicts and alcoholics.

If you are medically determined by us to be a drug addict or alcoholic you must take appropriate treatment for your condition as a drug addict or alcoholic at an approved institution or facility, when this treatment is available. You are not expected to pay for this treatment. You will not be eligible for benefits if—

(a) You do not comply with the terms, conditions and requirements of the treatment; or

(b) You do not take the treatment when available to you.

§ 416.937 What we mean by appropriate treatment.

By appropriate treatment, we mean recognized medical or other professional procedures for treatment of drug addiction or alcoholism which is carried out at or under the supervision of, an approved institution or facility (or facilities). This treatment may include—

- (a) Medical examination and treatment;
- (b) Psychiatric, psychological and vocational counselling; or
- (c) Other appropriate services for drug addiction or alcoholism.

§ 416.938 What we mean by approved institutions or facilities.

Institutions or facilities that may be approved by the Secretary include—

- (a) An institution or facility that furnishes medically recognized treatment for drug addiction or alcoholism in conformity with applicable Federal and State laws and regulations;
- (b) An institution or facility accepted by a State for treatment of drug addicts or alcoholics when treatment was a requirement for eligibility for aid under the State plan in effect before the supplemental security income program; or
- (c) An institution or facility used by or licensed by an appropriate State agency which is authorized to refer persons for treatment of drug addiction or alcoholism.

§ 416.939 How we consider whether treatment is available.

Our determination about whether treatment is available to you for your drug addiction or your alcoholism will depend upon—

- (a) The existence of an obtainable treatment vacancy for you in an approved institution or facility;
- (b) The location of the approved institution or facility, or the place where treatment, services or resources will provide to you;
- (c) The availability and cost of transportation for you to the place of treatment;
- (d) Your general health, including your ability to travel and capacity to understand and follow the prescribed treatment;
- (e) Your particular condition and circumstances; and
- (f) The treatment that is required for your drug addiction or alcoholism.

Residual Functional Capacity

§ 416.945 Your residual functional capacity.

(a) *General.* Your impairment(s) may cause physical and mental limitations. We need to know how these limitations apply to work requirements and how your impairment affects what you can do in a work setting. We call what you can do with these limitations your residual functional capacity. We consider your capacity for various functions as described in the following paragraphs (b) physical abilities and (c) mental impairments. If you have more than one impairment, we consider all your impairments. We may base our assessment of your residual functional capacity solely on medical evidence when it is enough to permit and support the necessary judgments about your physical and mental abilities. If we cannot make a decision based on all reasonably obtainable medical findings, we may consider other factors along with the medical findings. These other factors may include your description of your impairment(s), recorded observations about your limitations, or any other evidence we have.

(b) *Physical abilities.* When we assess your physical abilities, (e.g., strength) we assess the severity of your impairment(s) and determine your residual functional capacity for work activity on a regular and continuing basis. We consider your ability to do physical activities such as walking, standing, lifting, carrying, pushing, pulling, reaching, handling and the evaluation of other physical functions and sensory characteristics. A limited ability to do these things may reduce your ability to do work.

(c) *Mental impairments.* When we assess your impairment because of mental disorders we consider factors such as your ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, co-workers and work pressures in a work setting.

(d) *Other impairments.* Some medically determinable impairments, such as skin impairments and epilepsy, do not limit physical exertion. If you have this type of impairment, in addition to one that affects physical exertion, we consider both in deciding your residual functional capacity.

§ 416.946 Responsibility for assessing and determining residual functional capacity.

Treating or examining physicians, consultative physicians, State agency physicians, or any other physicians

designated by the Secretary may make this assessment. If it is made by someone who has not examined or treated you, it must be based on all of the evidence we have. The responsibility for assuring that the agency makes a decision about your residual functional capacity is with the State agency staff physicians or other physicians designated by the Secretary. For cases at the hearing or Appeals Council level, responsibility for assuring that the assessment of residual functional capacity is supported by the evidence in file rests with the administrative law judges or members of the Appeals Council.

Vocational Considerations

§ 416.960 When your vocational background will be considered.

(a) *General.* We may consider vocational factors when you are applying for benefits based upon disability. We will never consider vocational factors in determining whether you are eligible for benefits based upon blindness.

(b) *Disability determinations in which vocational factors must be considered along with the medical evidence.* When we cannot decide whether you are disabled on medical evidence alone, we must use other evidence.

(1) We will use information from you about your age, education and work experience.

(2) We will consider your doctors' reports and hospital records as well as your statements and other evidence to determine your residual functional capacity and how it affects the work you can do. Sometimes, to do this, we will need to ask you to have special examinations or tests. (See § 404.1517).

(3) If we find that you can no longer do the work you have done in the past, we will determine whether you can do other work (jobs) which exists in significant numbers in the nation's economy.

§ 416.961 Your ability to do work depends upon your residual functional capacity.

If you can do your previous work (your usual work or other applicable past work), we will determine that you are not disabled. However, if your residual functional capacity is not enough to enable you to do any of your previous work, we must still decide if you can do any other work. To do this, we consider your residual functional capacity, and your age, education, and work experience. Any work (jobs) that you can do must exist in significant numbers in the national economy (either in the region where you live or in

several regions of the country). Sections 416.963-416.965 explain how we evaluate your age, education, and work experience when we are deciding whether or not you are able to do other work.

§ 416.962 If you have done only arduous unskilled physical labor.

If you have only a marginal education and long work experience of 35 years or more where you did arduous unskilled physical labor, and you are not working and are no longer able to do this kind of work because of a severe impairment(s), we will consider you unable to do lighter work, and therefore, disabled. However, if you are working or have worked despite your impairment(s) (except where the work is sporadic or is not medically advisable), we will review all the facts in your case, and we may find that you are not disabled. In addition, we will consider that you are not disabled if the evidence shows that you have training or past work experience which enables you to do substantial gainful activity in another occupation with your impairment, either on a full-time or a reasonably regular part-time basis.

Example.—B is a 60-year-old miner with a fourth grade education who has a life-long history of arduous physical labor. B says that he is disabled because of arthritis of the spine, hips, and knees, and other impairments. Medical evidence shows a combination of impairments and establishes that these impairments prevent B from performing his usual work or any other type of arduous physical labor. His vocational background does not show that he has skills or capabilities needed to do lighter work which would be readily transferable to another work setting. Under these circumstances, we will find that B is disabled.

§ 416.963 Your age as a vocational factor.

(a) *General.* "Age" refers to how old you are (your chronological age) and the extent to which your age affects your ability to adapt to a new work situation and to do work in competition with others. However, we do not determine disability on your age alone. We must also consider your residual functional capacity, education, and work experience. If you are unemployed because of your age and you can still do a significant number of jobs which exist in the national economy, we will find that you are not disabled. We explain age as a vocational factor in Appendix 2 of subpart P of Part 404 of this chapter.

(b) *Younger person.* If you are under age 50, we generally do not consider that your age will seriously affect your ability to adapt to a new work situation. In some circumstances, however, we

consider age 45 a handicap in adapting to a new work setting (see Rule 201.17 in Appendix 2 of subpart P of Part 404 of this chapter).

(c) *Person approaching advanced age.* If you are closely approaching advanced age (50-54), we will consider that your age, along with a severe impairment and limited work experience, may seriously affect your ability to adjust to a significant number of jobs in the national economy.

(d) *Person of advanced age.* We consider that advanced age (55 or over) is the point where age significantly affects a person's ability to do substantial gainful activity. If you are severely impaired and of advanced age and you cannot do medium work (see § 416.967(d)), you may not be able to work unless you have skills that can be used in (transferred to) less demanding jobs which exist in significant numbers in the national economy. If you are close to retirement age (60-64) and have a severe impairment, we will not consider you able to adjust to sedentary or light work unless you have skills which are highly marketable.

(e) *Information about your age.* We will usually not ask you to prove your age. However, if we need to know your exact age to determine whether you get disability benefits, we will ask you for evidence of your age.

§ 416.964 Your education as a vocational factor.

(a) *General.* "Education" is primarily used to mean formal schooling or other training which contributes to your ability to meet vocational requirements, for example, reasoning ability, communication skills, and arithmetical ability. However, if you do not have formal schooling, this does not necessarily mean that you are uneducated or lack these abilities. Past work experience and the kinds of responsibilities you had when you were working may show that you have intellectual abilities, although you may have little formal education. Your daily activities, hobbies, or the results of testing may also show that you have significant intellectual ability that can be used to work.

(b) *How we evaluate your education.* The importance of your educational background may depend upon how much time has passed between the completion of your formal education and the beginning of your physical or mental impairment(s) and by what you have done with your education in a work or other setting. Formal education that you completed many years before your impairment began, or unused skills and

knowledge that were a part of your formal education, may no longer be useful or meaningful in terms of your ability to work. Therefore, the numerical grade level that you completed in school may not represent your actual educational abilities. These may be higher or lower. However, if there is no other evidence to contradict it, we will use your numerical grade level to determine your mental abilities. The term "education" also includes how well you are able to communicate in English since this ability is often acquired or improved by education. In evaluating your educational level, we use the following categories:

(1) *Illiteracy.* Illiteracy means the inability to read or write. We consider someone illiterate if the person cannot read or write a simple message such as instructions or inventory lists even though the person can sign his or her name. Generally, an illiterate person has had little or no formal schooling.

(2) *Marginal education.* Marginal education means ability in reasoning, arithmetic, and language skills which are needed to do simple, unskilled types of jobs. We generally consider that formal schooling at a 6th grade level or less is a marginal education.

(3) *Limited education.* Limited education means ability in reasoning, arithmetic, and language skills, but not enough to allow a person with these educational qualifications to do most of the more complex job duties needed in semi-skilled or skilled jobs. We generally consider that a 7th grade through the 11th grade level of formal education is a limited education.

(4) *High school education and above.* High school education and above means abilities in reasoning, arithmetic, and language skills acquired through formal schooling at a 12th grade level or above. We generally consider that someone with these educational abilities can do semi-skilled through skilled work.

(5) *Inability to communicate in English.* Since the ability to speak, read and understand English is generally learned or increased at school, we may consider this an educational factor. Because English is the dominant language of the country, it may be difficult for someone who doesn't speak and understand English to do a job, regardless of the amount of education the person may have in another language. Therefore, we consider a person's ability to communicate in English when we evaluate what work, if any, he or she can do. It generally doesn't matter what other language a person may be fluent in.

(6) *Information about your education.* We will ask you how long you attended school and whether you are able to speak, understand, read and write in English and do at least simple calculations in arithmetic. We will also consider other information about how much formal or informal education you may have had through your previous work, community projects, hobbies, and any other activities which might help you to work.

§ 416.965 Your work experience as a vocational factor.

(a) *General.* "Work experience" means skills and abilities you have acquired through work you have done which show the type of work you may be expected to do. Work you have already been able to do shows the kind of work that you may be expected to do. We consider that your work experience applies when it was done within the last 15 years, lasted long enough (usually 6 months to a year) for you to learn to do it, and was substantially gainful activity. We do not usually consider that work you did 15 years or more before the time we are deciding whether you are disabled (or when the earnings requirement was last met, if earlier) applies. A gradual change occurs in most jobs so that after 15 years it is no longer realistic to expect that skills and abilities acquired in a job done then continue to apply. The 15-year guide is intended to insure that remote work experience is not currently applied. If you have no work experience or worked only "off-and-on" or for brief periods of time during the 15-year period, we generally consider that these do not apply. If you have acquired skills through your past work, we consider you to have these work skills unless you cannot use them in other skilled or semi-skilled work that you can now do. If you cannot use your skills in other skilled or semi-skilled work, we will consider your work background the same as unskilled. However, even if you have no work experience, we may consider that you are able to do unskilled work because it requires little or no judgment and can be learned in a short period of time.

(b) *Information about your work.* Under certain circumstances, we will ask you about the work you have done in the past. If you cannot give us all of the information we need, we will try, with your permission, to get it from your employer or other person who knows about your work, such as a member of your family or a co-worker. When we need to consider your work experience to decide whether you are able to do work that is different from what you

have done in the past, we will ask you to tell us about all of the jobs you have had in the last 15 years. You must tell us the dates you worked, all of the duties you did, and any tools, machinery, and equipment you used. We will need to know about the amount of walking, standing, sitting, lifting and carrying you did during the work day, as well as any other physical or mental duties of your job. If all of your work in the past 15 years has been arduous and unskilled, and you have very little education, we will ask you to tell us about all of your work from the time you first began working. This information could help you to get disability benefits.

§ 416.966 Work which exists in the national economy.

(a) *General.* We consider that work exists in the national economy when it exists in significant numbers either in the region where you live or in several other regions of the country. It does not matter whether—

- (1) Work exists in the immediate area in which you live;
- (2) A specific job vacancy exists for you; or
- (3) You would be hired if you applied for work.

(b) *How we determine the existence of work.* Work exists in the national economy when there is a significant number of jobs (in one or more occupations) having the requirements which you are able to do with your physical or mental abilities and vocational qualifications. Isolated jobs that exist only in very limited numbers in relatively few locations outside of the region where you live are not considered "work which exists in the national economy". We will not deny you disability benefits on the basis of the existence of these kinds of jobs. If work that you can do does not exist in the national economy, we will determine that you are disabled. However, if work that you can do does exist in the national economy, we will determine that you are not disabled.

(c) *Inability to obtain work.* We will determine that you are not disabled if your residual functional capacity and vocational abilities make it possible for you to do work which exists in the national economy, but you remain unemployed because of—

- (1) Your inability to get work;
- (2) Lack of work in your local area;
- (3) The hiring practices of employers;
- (4) Technological changes in the industry in which you have worked;
- (5) Cyclical economic conditions;
- (6) No job openings for you; or

(7) You would not actually be hired to do work you could otherwise do.

(d) *Administrative notice of job data.* When we determine that unskilled, sedentary, light, and medium jobs exist in the national economy (in significant numbers either in the region where you live or in several regions of the country), we will take administrative notice of reliable job information available from various governmental and other publications. For example, we will take notice of—

- (1) *Dictionary of Occupational Titles*, published by the Department of Labor;
- (2) *County Business Patterns*, published by the Bureau of the Census;
- (3) *Census Reports*, also published by the Bureau of the Census;
- (4) *Occupational Analyses* prepared for the Social Security Administration by various State employment agencies; and
- (5) *Occupational Outlook Handbook*, published by the Bureau of Labor Statistics.

(e) *Use of vocational experts and other specialists.* If the issue in determining whether you are disabled is whether your work skills can be used in other work and the specific occupations in which they can be used, or there is a similarly complex issue, we may use the services of a vocational expert or other specialist.

§ 416.967 Physical exertion requirements.

To determine the physical exertion requirements of work in the national economy, we classify jobs as "sedentary," "light," "medium," "heavy," and "very heavy." These terms have the same meaning as they have in the *Dictionary of Occupational Titles*, published by the Department of Labor. In making disability determinations under this subpart, we use the following definitions:

(a) *Sedentary work.* Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

(b) *Light work.* Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting

most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

(c) *Medium work.* Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. If someone can do medium work we determine that he or she can also do sedentary and light work.

(d) *Heavy work.* Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. If someone can do heavy work, we determine that he or she can also do medium, light, and sedentary work.

(e) *Very heavy work.* Very heavy work involves lifting objects weighing 100 pounds or more at a time with frequent lifting or carrying of objects weighing 50 pounds or more. If someone can do very heavy work, we determine that he or she can also do heavy, medium, light, and sedentary work.

§ 416.968 Skill requirements.

In order to evaluate your skills and to help determine the existence in the national economy of work you are able to do, occupations are classified as unskilled, semi-skilled, and skilled. In classifying these occupations, we use materials published by the Department of Labor. When we make disability determinations under this subpart, we use the following definitions:

(a) *Unskilled work.* Unskilled work is work which needs little or no judgment to do simple duties that can be learned on the job in a short period of time. The job may or may not require considerable strength. For example, we consider jobs unskilled if the primary work duties are handling, feeding and offbearing (that is, placing or removing materials from machines which are automatic or operated by others), or machine tending, and a person can usually learn to do the job in 30 days, and little specific vocational preparation and judgment are needed. A person does not gain work skills by doing unskilled jobs.

(b) *Semi-skilled work.* Semi-skilled work is work which needs some skills but does not require doing the more complex work duties. Semi-skilled jobs may require alertness and close attention to watching machine processes; or inspecting, testing or

otherwise looking for irregularities; or tending or guarding equipment, property, materials, or persons against loss, damage or injury; or other types of activities which are similarly less complex than skilled work, but more complex than unskilled work. A job may be classified as semi-skilled where coordination and dexterity are necessary, as when hands or feet must be moved quickly to do repetitive tasks.

(c) *Skilled work.* Skilled work requires qualifications in which a person uses judgment to determine the machine and manual operations to be performed in order to obtain the proper form, quality, or quantity of material to be produced. Skilled work may require laying out work, estimating quality, determining the suitability and needed quantities of materials, making precise measurements, reading blueprints or other specifications, or making necessary computations or mechanical adjustments to control or regulate the work. Other skilled jobs may require dealing with people, facts, or figures or abstract ideas at a high level of complexity.

(d) *Skills that can be used in other work (transferability).* (1) *What we mean by transferable skills.* We consider you to have skills that can be used in other jobs, when the skilled or semi-skilled work activities you did in past work can be used to meet the requirements of skilled or semi-skilled work activities of other jobs or kinds of work. This depends largely on the similarity of occupationally significant work activities among different jobs.

(2) *How we determine skills that can be transferred to other jobs.* Transferability is most probable and meaningful among jobs in which—

(i) The same or a lesser degree of skill is required;

(ii) The same or similar tools and machines are used; and

(iii) The same or similar raw materials, products, processes, or services are involved.

(3) *Degrees of transferability.* There are degrees of transferability of skills ranging from very close similarities to remote and incidental similarities among jobs. A complete similarity of all three factors is not necessary for transferability. However, when skills are so specialized or have been acquired in such an isolated vocational setting that (like mining, agriculture, or fishing) they are not readily usable in other industries, jobs, and work settings, we consider that they are not transferable.

§ 416.969 Listing of Medical-Vocational Guidelines in Appendix 2 of subpart P of Part 404 of this chapter.

In light of information that is available about jobs (classified by their exertional and skill requirements) that exist in the national economy, Appendix 2 of subpart P of Part 404 of this chapter provides rules reflecting the major functional and vocational patterns which are seen in cases where a person is not doing substantial gainful activity and is prevented by a severe medically determinable impairment from doing his or her vocationally relevant past work. The rules in Appendix 2 do not cover all possible variations of factors. Also, as we explain in § 200.00 of Appendix 2, we do not apply these rules if one of the findings of fact about the person's vocational factors and residual functional capacity is not the same as the corresponding criterion of a rule. In these instances, we give full consideration to all relevant facts in accordance with the definitions and discussions under vocational considerations. However, if the findings of fact made about all factors are the same as the rule, we use that rule to decide whether a person is disabled.

Substantial Gainful Activity

§ 416.971 General.

The work that you do during any period in which you believe you are disabled may show that you are able to do work at the substantial gainful activity level. If you are able to engage in substantial gainful activity, we will find you are not disabled. (We explain the rules for persons who are statutorily blind in § 416.984.) Even if the work you are doing is not substantial gainful activity, it may show that you are able to do more work than you are actually doing. We will consider all of the medical and vocational evidence in your file to decide whether or not you have the ability to engage in substantial gainful activity.

§ 416.972 What we mean by substantial gainful activity.

Substantial gainful activity is work activity that is both substantial and gainful:

(a) *Substantial work activity.* This is work activity that involves doing significant physical or mental activities. Your work may be substantial even if it is done on a part-time basis or if you do less, get paid less, or have less responsibility, than the work you did before.

(b) *Gainful work activity.* This is work activity that you do for pay or profit. Work activity is gainful if it is the kind

of work usually done for wages or profit, whether or not a profit is realized.

(c) *Some other activities.* Generally, we do not consider activities like taking care of yourself, household tasks, hobbies, therapy, school attendance, club activities, or social programs to be substantial gainful activity.

§ 416.973 Evaluation guides for work activity.

(a) *The nature of your work.* If your duties require use of your experience, skills, supervision and responsibilities, or contribute substantially to the operation of a business, this tends to show that you have the ability to work at the substantial gainful activity level.

(b) *How well you perform.* We consider how well you do your work when we determine whether or not you are doing substantial gainful activity. If you do your work satisfactorily, this may show that you are working at the substantial gainful activity level. If you are unable, because of your impairments, to do ordinary or simple tasks satisfactorily without more supervision or assistance than is usually given other people doing similar work, this may show that you are not working at the substantial gainful activity level. If you are doing work that involves minimal duties that make little or no demands on you and that are of little or no use to your employer, or to the operation of a business if you are self-employed, this does not show that you are working at the substantial gainful activity level.

(c) *If your work is done under special conditions.* Even though the work you are doing takes into account your impairment, such as work done in a sheltered workshop or as a patient in a hospital, it may still show that you have the necessary skills and ability to work at the substantial gainful activity level.

(d) *If you are self-employed.* Supervisory, managerial, advisory or other significant personal services that you perform as a self-employed individual may show that you are able to do substantial gainful activity.

(e) *Time spent in work.* While the time you spend in work is important, we will not decide whether or not you are doing substantial gainful activity only on that basis. We will still evaluate the work to decide whether it is substantial and gainful regardless of whether you spend more time or less time at the job than workers who are not impaired who are doing similar work as a regular means of their livelihood.

(f) *Possible affect on income and resource levels.* Your earnings including earnings from work done during a trial

work period, will be considered under the income and resource provisions to determine whether or not your earnings cause you to exceed the limitations on income or resources under the Supplemental Security Income Program.

§ 416.974 Evaluation guides if you are an employee.

(a) *General.* We use several guides to decide whether you are doing substantial gainful activity.

(1) *Your earnings may show you are able to work.* The amount of your earnings from work you are doing may show that you are able to do substantial gainful activity. Generally, if you work for substantial earnings, this will show that you are able to do substantial gainful activity. However, the fact that your earnings are not substantial will not necessarily show that you are not able to do substantial gainful activity. However, earnings from work that you were forced to stop after a short time because of your impairment will not show that you are able to work.

(2) *We consider only the amounts you earn.* We do not consider any earnings not directly related to your productivity when we decide whether you are doing substantial activity. If your earnings are being subsidized, the amount of the subsidy is not counted when we determine whether or not your work is substantial gainful activity. Thus, where work is done under special conditions, we only consider the part of your wages which you actually "earn". For example, where a mentally handicapped person does simple tasks under close and continuous supervision, we would not determine that the person worked at the substantial gainful activity level only on the basis of the amount of wages. An employer may set a specific amount as a subsidy after figuring the reasonable value of the employee's services. If your work is subsidized and your employer does not set the amount of the subsidy or does not adequately explain how the subsidy was figured, we will investigate to see how much your work is worth.

(3) *If you are working in a sheltered or special environment.* If you are working in a sheltered workshop, you may or may not be earning the amounts you are being paid. The fact that the sheltered workshop or similar facility is operating at a loss or is receiving some charitable contributions or governmental aid does not establish that you are not earning all you are being paid. Since persons in military service being treated for severe impairments usually continue to receive full pay, we evaluate work activity in a therapy program, or while on limited duty by

comparing it with similar work in the civilian work force or on the basis of reasonable worth of the work, rather than on the actual amount of the earnings.

(4) *If you have special work-related expenses.* If you have out-of-the-ordinary expenses in connection with your work and because of your impairment (for example, you may require special transportation), we will deduct these from your earnings if they exceeded the normal work-related expenses you would have if you were not impaired. When we decide if your work is substantial gainful activity, however, we do not deduct expenses for medication or equipment if you need these things even when you are not working.

(b) *Earnings guidelines.* If you are an employee we first consider the criteria in paragraph (a) of this section, and then the guides in paragraphs (a), (1), (2), and (3) below.

(1) *Earnings that ordinarily will show that you have engaged in substantial gainful activity.* We will consider that your earnings from your work activities as an employee show that you have engaged in substantial gainful activity if—

(i) Your earnings averaged more than \$200 a month in calendar years prior to 1976;

(ii) Your earnings averaged more than \$230 a month in calendar year 1976;

(iii) Your earnings averaged more than \$240 a month in calendar year 1977;

(iv) Your earnings averaged more than \$260 a month in calendar year 1978; or

(v) Your earnings averaged more than \$280 a month in calendar years after 1978.

(2) *Earnings that will ordinarily show that you have not engaged in substantial gainful activity.* We will generally consider that the earnings from your work as an employee will show that you have not engaged in substantial gainful activity if—

(i) Your earnings averaged less than \$130 a month in calendar years before 1976;

(ii) Your earnings averaged less than \$150 a month in calendar year 1976;

(iii) Your earnings averaged less than \$160 a month in calendar year 1977;

(iv) Your earnings averaged less than \$170 a month in calendar year 1978; or

(v) Your earnings averaged less than \$180 a month in calendar years after 1978.

However, if there is evidence showing that you may be doing substantial gainful activity, we will apply the criteria in paragraph (b)(3) of this

section regarding comparability and value of services.

(3) *Earnings that are not high or low enough to show whether you engaged in substantial gainful activity.* If your earnings, on the average, are between the amounts shown in paragraphs (b)(1) and (2) of this section, we will generally consider that your earnings as an employee show that you have not done substantial gainful activity unless—

(i) Your work is comparable to that of unimpaired people in your community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work, or

(ii) Your work, although significantly less than that done by unimpaired people, is clearly worth the amounts shown in paragraph (b)(1) of this section.

However, if you are working in a sheltered workshop or a comparable facility especially set up for severely impaired persons, your earnings and activities will ordinarily establish that you have not done substantial gainful activity if your average earnings are not greater than \$200 a month in calendar years prior to 1976, \$230 a month in calendar year 1976, \$240 a month in calendar year 1977, \$260 a month in calendar year 1978, \$280 a month in calendar years after 1978.

§ 416.975 Evaluation guides if you are self-employed.

(a) *If you are a self-employed person.* We will consider your activities and their effect on your business to decide whether you are doing substantial gainful activity if you are self-employed. We realize that we cannot use income alone since the amount of income you actually receive may depend upon a number of different factors like capital investment, profit sharing agreements, etc. We will evaluate your work activity on the economic effect of your services regardless of whether you receive an immediate income for your services. We consider that you are doing substantial gainful activity if—

(1) Your work activity, in terms of factors such as hours, skills, energy output, efficiency, duties, and responsibilities, is comparable to that of unimpaired individuals in your community who are in the same or similar businesses as their means of livelihood;

(2) Your work activity, although not comparable to that of unimpaired individuals, is reasonably worth the amount shown in paragraph (b)(1) of this section when considered in terms of

its effect on the business, or when compared to the salary that an owner would pay to an employee to do the work you are doing; or

(3) You give services that are significant to the operation of the business and receive a substantial income from the business.

(b) *What we mean by significant services.* (1) If you operate a business entirely by yourself, any services that you render are significant to the business. If your business involves the services of more than one person, we will consider you to be giving significant services if you contribute more than half the total time required for the management of the business, or you give management services for more than 45 hours a month regardless of the total management time required by the business.

(2) If you are a farm landlord, that is, you rent farm land to another, we will consider you to be giving significant services if you materially participate in the production or the management of the production of the things raised on the rented farm. (See § 404.1053 for an explanation of "material participation"). If you were given social security earnings credits because you materially participated in the activities of the farm and you continue these same activities, we will consider you to be giving significant services.

(c) *What we mean by substantial income.* We will consider the income you receive from a business, after deducting the reasonable value of any significant amount of unpaid help and soil bank payments as well as normal business expenses, to be substantial if—

(1) Your net income from the business averages more than the amounts described in § 416.974; or

(2) Your net income from the business averages less than the amounts described in § 416.974 but the livelihood which you get from the business is either comparable to what it was before you became disabled or is comparable to that of unimpaired self-employed persons in your community who are in the same or similar businesses as their means of livelihood.

Blindness

§ 416.981 Meaning of blindness as defined in the law.

We will consider you blind under the law for payment of supplemental security income benefits if we determine that you are statutorily blind. Statutory blindness is central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which has a

limitation in the field of vision so that the widest diameter of the visual field subtends an angle no greater than 20 degrees is considered to have a central visual acuity of 20/200 or less.

§ 416.982 Blindness under a State plan.

We shall also consider you blind for payment of supplemental security income benefits if—

(a) You were found to be blind as defined under a State plan approved under title X or XVI of the Social Security Act, as in effect for October 1972;

(b) You received aid under the State plan because of your blindness for the month of December 1973; and

(c) You continue to be blind as defined under the State plan.

§ 416.983 How we evaluate statutory blindness.

We will find that you are blind if you are statutorily blind within the meaning of the law. For us to find that you are statutorily blind, it is not necessary—

(a) That your blindness meet the duration requirement; or

(b) That you be unable to do any substantial gainful activity.

§ 416.984 If you are statutorily blind and still working.

There is no requirement that you be unable to work in order for us to find that you are blind. However, if you are working, your earnings will be considered under the income and resources rules in Subparts K and L. This means that if your income or resources exceed the limitations, you will not be eligible for benefits, even though you are blind.

§ 416.985 How we evaluate other visual impairments.

If you are not blind as defined in the law, we will evaluate a visual impairment the same as we evaluate other impairments in determining disability. Although you will not qualify for benefits on the basis of blindness, you may still be eligible for benefits if we find that you are disabled as defined in §§ 416.905–416.907.

Continuing or Stopping Disability or Blindness

§ 416.988 Your responsibility to tell us of events that may change your disability or blindness status.

If you are entitled to cash benefits because you are disabled or blind, you should promptly tell us if—

(a) Your condition improves;

(b) Your return to work;

(c) You increase the amount of your work; or

(d) Your earnings increase.

§ 416.989 We may investigate to find out whether you continue to be disabled or blind.

After we find that you are disabled or blind, we must determine from time to time if you are still eligible for cash benefits. We may begin an investigation for this purpose for any number of reasons, including your failure to follow the provisions of the Social Security Act or these regulations. If our investigation shows that we should suspend your benefits, we will notify you in writing and give you an opportunity to reply. In § 416.990 we describe those events that may prompt us to investigate whether you continue to be disabled or blind.

§ 416.990 When we will investigate whether your disability or blindness continues.

(a) *General.* We investigate to determine whether or not you continue to meet the disability requirements of the law. Payment of cash benefits ends if the medical or other evidence shows that you are not disabled or blind.

(b) An investigation will be started if—

(1) We need a current medical report to see if your medical condition has improved so that you can do substantial gainful activity;

(2) You return to work and successfully complete a period of trial work;

(3) Substantial earnings are reported to your wage record;

(4) You tell us that you have recovered from your disability or that you have returned to work; or

(5) Your State Vocational Rehabilitation Agency tells us that—

(i) You have completed your training,

(ii) You have returned to work, or

(iii) You are able to return to work.

§ 416.991 If your medical recovery was expected and you returned to work.

If your impairment was expected to improve and you returned to full-time work with no significant medical limitations, we may find that your disability ended in the month you returned to work. Unless there is evidence showing that your disability or blindness has not ended, we will use the medical and other evidence already in your file and you return to full-time work without significant limitations to determine that you are able to engage in substantial gainful activity. (If your condition is not expected to improve, we will not ordinarily review your claim until the end of the trial work period, § 416.992).

Example: Evidence obtained during the processing of your claim showed that you had an impairment that was expected to improve about 18 months after your disability began. We, therefore, told you that your claim would be reviewed again at that time. However, before the time arrived for your scheduled medical re-examination, you told us that you had returned to work. We investigated immediately and found that, in the 16th month after your disability began, you returned to full-time work without any significant medical restrictions. Therefore, we would find that your disability ended in the first month you returned to full-time work.

§ 416.992 The trial work period.

(a) *Definition of the trial work period.* The trial work period is a period during which you may test your ability to work and still receive your disability cash benefits. It begins and ends as described in paragraph (e) of this section. During this period, you may perform "services" (see paragraph (b)) in as many as 9 months, but these months do not have to be consecutive. We will not consider those services as showing that your disability has ended until you have performed services in at least 9 months. However, after the trial work period has ended we will consider the work you did during the trial work period in determining whether your disability ended at any time after the trial work period.

(b) *What we mean by services.* When used in this section, "services" means any activity, even though it is not substantial gainful activity, which is done by a person in employment or self-employment for wages or profit, or is the kind normally done for wages or profit, or is the kind normally done for wages or profit. If you are an employee, we will consider your work "services" if you earn more than \$75 a month. If you are self-employed, we will consider your activities "services" if your net earnings are more than \$75 a month, or you work more than 15 hours a month in the business. We generally do not consider work done merely as therapy, training, or work usually done in a daily routine around the house as "services".

(c) *Limitations on the number of trial work periods.* You may have only one trial work period during a period of entitlement to cash benefits.

(d) *When the trial work period begins and ends.* The trial work period begins with the month you become entitled to benefits. It cannot begin before the month in which you file your application for benefits. It ends with the close of whichever of the following calendar months is the earlier.

(1) The 9th month (whether or not the months have been consecutive) in which you perform services; or

(2) The month in which new evidence, other than evidence relating to any work you did during the trial work period, shows that you are not disabled, even though you have not worked a full 9 months. We may find that your disability has ended at any time during the trial work period if the medical or other evidence shows that you are able to do substantial gainful activity.

(e) *If you fail to meet other eligibility factors.* We will count the services you do while disabled towards your period of trial work even though you may be ineligible for cash benefits for other reasons. The months in which you are eligible for benefits will be evaluated for trial work purposes upon reestablishment of your eligibility for cash benefits under this part as though your eligibility had not been interrupted.

§ 416.993 We may ask you to help us determine if you are still disabled or blind.

If you are entitled to cash benefits because you are disabled or blind, you must, upon our request and reasonable notice, undergo consultative examinations and tests to help us find out if you are still disabled or blind. You must also give us reports from your doctor or others who have treated you, as well as any other evidence that will help us make a determination.

§ 416.994 Why and when we will stop your cash benefits.

(a) *General.* When the medical or other evidence in your file shows that your disability or blindness has ended, we will contact you and tell you that the evidence in your file shows that you are able to do substantial gainful activity and that your eligibility for benefits will end. Before we stop your benefits, we will give you a chance to give us your reasons why we should not stop your benefits. Subpart N of these regulations describes your rights and the procedures we will follow. We may also stop your benefits if you have not cooperated with us in getting information about your disability or if we cannot find you.

(b) *Disabled persons age 18 or over.* We will find that your disability ended in the earliest of the following—

(1) The month your impairment, as shown by current medical or other evidence, is such that you are able to do substantial gainful activity; or

(2) The month in which the work you did after you became disabled shows that you can do substantial gainful activity; or

(3) The month you actually do substantial gainful activity.

(c) *Disabled persons under age 18.* We will find that your disability ended in the earliest of the following—

(1) The month your impairment, as established by current medical evidence is not an impairment listed in Appendix 1 to this part of the regulation or is not equal to a listed impairment;

(2) The month in which the work you did after you became disabled shows that you can do substantial gainful activity; or

(3) The month you actually do substantial gainful activity.

(d) *If you do not cooperate with us.* If you are asked to give us medical or other evidence or to go for a physical or mental examination by a certain date, we will find that your disability ended if you fail to do what we ask without a good reason. The month your disability will be found to have ended will be the month in which you fail to do what we ask.

(e) *Persons who were found disabled under a State plan.* If you became entitled to benefits because you were disabled under a State plan, we will find that your disability ended in the later of—

(1) The month in which your disability, as shown by current medical or other evidence does not meet the criteria of the appropriate State plan; or

(2) The month in which your disability stopped under the provisions of paragraphs (b), (c) or (d) of this section.

§ 416.998 If you become disabled by another impairment.

If a new, severe impairment begins in or before the month in which your last impairment ends, we will find that your disability is continuing. The new impairment need not be expected to last 12 months or to result in death, but it must be severe enough to keep you from doing substantial gainful activity.

[FR Doc. 79-20415 Filed 7-2-79; 8:45 am]

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DEPARTMENT OF LABOR

Wage and Hour Division

[29 CFR Parts 524 and 525]

Special Minimum Wages for Handicapped Workers in Competitive Employment and Employment of Handicapped Clients in Sheltered Workshops—Hearing on Petition

AGENCY: Wage and Hour Division, Labor.

ACTION: Notice of extension of time period for submitting comments.

SUMMARY: The Wage and Hour Division of the Department of Labor pursuant to the Federal Register Notice of Friday, May 4, 1979 (44 FR 26127) conducted a hearing (June 5 through June 7, 1979) to determine the appropriate action on a petition filed with the Department of Labor by the National Federation of the Blind to have the Department revise Regulations, 29 CFR Parts 524 and 525 so that no certificates authorizing wages lower than the applicable minimum wage under the Fair Labor Standards Act could be issued for blind or otherwise visually handicapped workers.

During the course of the hearing, Administrative Law Judge Eric Feirtag provided an additional two week period until June 19, 1979 to file additional hearing documents. A subsequent request for an additional 30 day extension for inclusion of such documents has been granted by Judge Feirtag. Therefore, this notice extends the period for submission of pertinent documents to July 19, 1979.

DATES: Concerning the public hearings held on June 5, 1979 through June 7, 1979, interested persons desiring to comment should submit their comments to the Administrator on or before July 19, 1979.

ADDRESS: Parties desiring to submit additional comments should submit their requests or comments to the Administrator, Wage and Hour Division, U.S. Department of Labor, NDOL, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Arthur H. Korn, Director, Division of Special Minimum Wages, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room C-4316, Washington, D.C. 20210, (202) 523-8727.

SUPPLEMENTARY INFORMATION: Section 14(c) of the Fair Labor Standards Act provides that the Secretary of Labor, to the extent necessary to prevent the curtailment of opportunities for employment, shall by order or regulation provide for the employment under special certificates of individuals whose earning or productive capacity is impaired by age or physical or mental disability at wages which are lower than the minimum wage applicable under section 6 of the Act. The minimum wage under section 6 is \$2.90 an hour and will be increased to \$3.10 an hour beginning January 1, 1980, and to \$3.35 an hour beginning January 1, 1981. Title 29 of the Code of Federal Regulations Parts 524

and 525, the regulations the petition proposes to amend, were issued pursuant to section 14(c). Part 524 established the terms and conditions for authorizing lower minimum wages for handicapped workers employed in competitive industry and Part 525 established the terms and conditions for authorizing lower minimum wages for handicapped workers employed in sheltered workshops.

The hearing was held to obtain information which will be helpful in determining whether the petition of the National Federation of the Blind shall be granted. The issues to be decided are whether the discontinuance of lower minimum wages for the blind and otherwise visually impaired individuals (1) will curtail their employment opportunities or (2) is not justified in light of their earning or productive capacity. The comments should be directed to presenting factual information on these issues. If, as a result of the hearing, it is determined that the present regulations should be amended, a specific proposal will be published in the Federal Register.

Copies of the petition, the Fair Labor Standards Act and Regulations Part 524 and 525 may be obtained by contacting Arthur H. Korn at the address in this notice.

This document was prepared under the direction and control of Herbert J. Cohen, Assistant Administrator, Office of Fair Labor Standards, Wage and Hour Division, U.S. Department of Labor.

Signed at Washington, D.C., this 20th day of June, 1979.

Loren E. Gilbert,

Acting Deputy Administrator, Wage and Hour Division.

[FR Doc. 79-20547 Filed 7-2-79; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Navy

[32 CFR Part 701]

Privacy Act of 1974; Proposed Rulemaking Amendments

AGENCY: Department of the Navy.

ACTION: Notice of proposed Rulemaking Amendment.

SUMMARY: The Department of the Navy is proposing to amend its regulations relating to personal privacy and rights of individuals regarding their personal records. The amendments update an obsolete reference to a superseded

Executive order and reidentify several exempted records systems.

DATES: Comments must be received by August 2, 1979.

ADDRESS: Send comments to the Privacy Act Coordinator, Department of the Navy, OP-09B1P, Washington, D.C. 20350.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn Rhoads at the above address, telephone: 202-694-2004.

SUPPLEMENTARY INFORMATION: The following specific amendments are proposed:

a. So much of § 701.121 making reference to "Executive Order 11652" is deleted as it was superseded by Executive Order 12065 and amended accordingly.

b. So much of § 701.123(e) pertaining to the identification "N63285" is amended by adding the suffix "-01" so this exemption rule identification agrees with the system of records notice. Also, an additional specific exemption is claimed under the provisions of 5 U.S.C. 552a(k)(6) to the *Exemption* (2) portion along with the reason therefore. Any reference to E.O. 11652 is also amended.

c. So much of § 701.123(1) wherein the ID reflects N 31693.WHSP is amended to correctly read N 31698.WHSP so this exemption rule identification agrees with the system of records notice. Any reference to E.O. 11652 is also amended.

Dated: June 28, 1979.

H. E. Lofdahl,

*Director, Correspondence and Directives,
Washington Headquarters Services,
Department of Defense.*

32 CFR Part 701 is amended by revising §§ 701.121 and 701.123(e) and (f) as follows:

§ 701.121 Exemption for classified records.

All systems of records maintained by the Department of the Navy and its components shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1), to the extent that the system contains any information properly classified under Executive Order 12065 and predecessor orders and that is required to be safeguarded in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain records systems not otherwise specifically designated for exemptions herein may contain isolated items of information that have been properly classified.

§ 701.123 Exemptions for specific Navy record systems.

(e) Naval Investigative Service.

ID—N63285-01

Sysname:

NIS Investigative Files System

Exemption:

(1) Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(2) and (3), (e)(4), (G) through (I), (e)(5), (e)(8), (f) and (g).

Authority: (1) 5 U.S.C. 552a(j)(2).

Reasons:

(1) Granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to his records, and the reasons therefore, necessitate the exemption of this system of records from the requirements of the other cited provisions.

Exemption:

(2) Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

Authority: (2) 5 U.S.C. 552a(k) (1) through (6).

Reasons:

(2) The release of disclosure accountings would permit the subject of an investigation to obtain valuable information concerning the nature of that investigation, and the information contained, or the identity of witnesses or informants, and would therefore present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record. Access to the records contained

in this system would inform the subject of the existence of material compiled for law enforcement purposes, the premature release of which could prevent the successful completion of investigation and lead to the improper influencing of witnesses, the destruction of records, or the fabrication of testimony.

Exempt portions of this system also contain information that has been properly classified under Executive Order 12065, and that is required to be kept secret in the interest of national defense or foreign policy.

Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal civilian employment, military service, Federal contracts, or access to classified information, and was obtained by providing an express or implied assurance to the source that his identity would not be revealed to the subject of the record. The notice for this system of records published in the Federal Register sets forth the basic statutory or related authority for maintenance of the system. However, in the course of criminal investigations, cases, and matters, the Naval Investigative Service will occasionally obtain information concerning actual or potential violations of law that are not strictly within its statutory or other authority or may compile information in the course of an investigation that may not be relevant to a specific prosecution. In the interest of effective law enforcement, it is necessary to retain such information in this system of records, since it can aid in establishing patterns of criminal activity and can provide valuable leads for Federal and other law enforcement agencies.

The categories of sources of records in this system have been published in the Federal Register in broad generic terms. The identity of specific sources, however, must be withheld in order to protect the confidentiality of the source of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

This system is exempted from procedures for notice to an individual as to the existence of records pertaining to him dealing with an actual or potential civil or regulatory investigation, because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation, pending or future. Mere notice of the fact of an investigation could inform the

subject or others that their activities are under, or may become the subject of an investigation. This could enable the subjects to avoid detection, to influence witnesses improperly, to destroy records, or to fabricate testimony.

Exempt portions of this system contain screening board reports. Screening board reports set forth the results of oral examination of applicants for a position as a special agent with the Naval Investigative Service. Disclosure of these records would reveal the areas pursued in the course of the examination and thus adversely affect the result of the selection process. Equally important, the records contain the candid views of the members composing the board. Release of the records could affect the willingness of the members to provide candid opinions and thus diminish the effectiveness of a program which is essential to maintaining the high standard of the Special Agent Corps, i.e., those records constituting examination material used solely to determine individual qualifications for appointment in the Federal Service.

- * * * * *
- (1) Office of the Secretary.
(1) ID-N 31698.WHSP.

Sysname:

White House Support Program.

Exemption:

Portions of this system of records of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

Authority: 5 U.S.C. 552a(k) (1), (2), (3), and (5).

Reasons:

Exempted portions of this system may contain information which has been properly classified under Executive Order 12065 and predecessor orders which is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system may also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for access to classified information, and which was obtained by providing an express or implied promise to the source that his identity would not be revealed to the subject of the record. Exempted portions of this system may also contain information collected and maintained in connection with providing protective services to the President and other individuals protected pursuant to 18 U.S.C. 3056. Exempted portions of his system may also contain investigative records compiled for law enforcement purposes, the disclosure of which could

reveal the identity of sources who provided information under an express or implied promise of confidentiality, compromise investigative techniques and procedures, jeopardize the life or physical safety of law enforcement personnel, or otherwise interfere with enforcement proceedings or adjudications.

[FR Doc. 79-20507 Filed 7-2-79; 6:45 am]

BILLING CODE 3910-71-M

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1262-6]

Approval and Promulgation of Implementation Plans; California Plan Revision: Administrative Chapter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: On March 16, 1979, the California Air Resources Board (ARB) submitted a revision to the State Implementation Plan (SIP) to the EPA. This revision consists of an administrative chapter which addresses the legal authorities of the ARB and the Air Pollution Control Districts. The intended effect of this revision is to address certain requirements of § 110 of the Clean Air Act (CAA), as amended, and 40 CFR Part 51, to update the SIP, and to inform the public on these matters. The EPA invites public comments on this revision, especially as to its consistency with the CAA.

DATES: Comments may be submitted up to August 2, 1979.

ADDRESSES: Comments may be sent to: Regional Administrator, Attn: Air & Hazardous Materials Division, Air Technical Branch, Regulatory Section (A-4-2), Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco CA 94105.

Copies of the revision and the evaluation report are available for public inspection during normal business hours at the EPA Region IX Library at the above address and at the following locations:

California Air Resources Board, 1102 "Q" Street, P.O. Box 2815, Sacramento, CA 95814.

Public Information Reference Unit, Room 2922 (EPA Library), 401 "M" Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Douglas Grano, Chief, Regulatory Section, Air Technical Branch, Air & Hazardous Materials Division,

Environmental Protection Agency, Region IX, (415) 558-2938.

SUPPLEMENTARY INFORMATION:

Background

The CAA was enacted by Congress in 1963 and amended several times thereafter. Under the CAA, the EPA established National Ambient Air Quality Standards (NAAQS) for certain pollutants. Each State was required to adopt a plan (the SIP) to attain and maintain the NAAQS throughout the State.

The State of California adopted a SIP and submitted it to the EPA in 1972. That plan was partly approved and partly disapproved. Since 1972, the SIP has been amended in part many times, becoming somewhat fragmented in the process. For this reason, the ARB is in the process of revising and updating its overall plan. The chapter now being considered in this notice is part of that task.

Description

Chapter 3 addresses the legal authorities of the ARB and the Air Pollution Control Districts. The ARB is the designated State agency charged with coordinating state, regional and local efforts in implementing the SIP. Chapter 3 addresses issues on the enforcement of the SIP, right of entry, public information, emergency episodes, new source review, vehicular controls, transportation and land use, air quality standards and hazardous pollutants.

Discussion

As a revision to the SIP, Chapter 3 appears to be approvable because it constitutes an updating and clarification of the 1972 SIP. It is also consistent with the requirements of 40 CFR 51.11 *Legal authority*. The EPA now proposes to approve the chapter and incorporate it into the SIP.

The subject of this notice is considered to be "nonsignificant", because it is informational and administrative in nature. No new requirements would be imposed, nor would any requirements be withdrawn. For these reasons, a 30-day public comment period is deemed sufficient.

Public Comments

Under section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove revisions to the SIP submitted by the State. The Regional Administrator hereby issues this notice setting forth the above described revision as proposed rulemaking and advises the public that interested

persons may participate by submitting written comments to the Region IX Office during the specified comment period. Comments received will be available for public inspection at the EPA Region IX Library, the EPA Public Information Reference Unit, and the ARB Office in Sacramento.

The Administrator's decision to approve or disapprove the proposed revisions will be based on the comments received and on a determination whether the revision meets the requirements of section 110(a)(2) of the Clean Air Act, as amended, and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." EPA has reviewed the revision being acted upon in this notice and determined that it is a specialized revision not subject to the procedural requirements of Executive Order 12044.

[Sections 110 and 301(a) of the Clean Air Act, as amended [42 U.S.C. 7410 and 7601(a)].]

Dated: June 25, 1979.

Sheila M. Prindivilla,
Acting Regional Administrator.

[FR Doc. 79-20574 Filed 7-2-79; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL MARITIME COMMISSION

[46 CFR Part 536]

[General Order No. 13; Docket No. 79-63]

Publishing and Filing Tariffs by Common Carriers in the Foreign Commerce of the United States

AGENCY: Federal Maritime Commission

ACTION: Proposed Rule

SUMMARY: This proposed rule amends the 46 CFR 536.1(a)(5) tariff filing exemption by clarifying its language and expanding its scope to include port-to-port movements of cargo carried in rail cars between specified port areas.

DATES: Comments (original and fifteen copies) on or before July 27, 1979.

ADDRESS: Send comments to: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney (202) 523-5725.

SUPPLEMENTARY INFORMATION: The Commission has previously exempted from the tariff filing requirements of

section 18(b) of the Shipping Act, 1916 (46 U.S.C. 817(b)) the intermodal carriage of cargo in rail cars moving under joint through rates. 46 CFR 536.1(a)(5); 42 FR 62372. Foss Launch & Tug Co. has filed an application requesting a further exemption for the movement of rail cars containing bulk-type cargo loaded into such cars without mark or count and carried by Foss barges on a port-to-port basis between North Vancouver, British Columbia and Seattle or Tacoma, Washington.

Foss contends that a literal reading of the present exemption (46 CFR 536.1(a)(5)) would cover port-to-port transportation on the same route, but deems it prudent to request a more specific and therefore clearer exemption for such port-to-port movements. We disagree with Foss' interpretation of the present exemption. Our clear intention was to exempt only intermodal carriage moving under joint through rates. Any further expansion of the particular exemption would necessitate a rulemaking proceeding amending the present exemption or adopting an additional exemption.

There are indications, however, that the intermodal carriage of cargo between these ports constitutes the vast majority of movements and that strict port-to-port movements are very limited. It would therefore appear to follow that the further exemption of port-to-port movements will not substantially impair our effective regulation, be unjustly discriminatory, or be detrimental to commerce. See 46 U.S.C. 833a.

We are unaware of any reason to specifically limit this exemption to Foss and are accordingly proposing to apply it to all carriers in this trade.

Accordingly, pursuant to section 18(b)(4), 35 and 43 of the Shipping Act, 1916, 46 U.S.C. 817(b)(4), 833a, and 841a, the Commission proposes to amend 46 C.F.R. 536.1(a)(5) to read as follows:

§ 536.1 Exemptions and exclusions.

(a) * * *

(5) Transportation by water of cargo moving in rail cars between ports in British Columbia, Canada and United States ports on Puget Sound, or ports or points in Alaska. *Provided*, that for any such cargo moving under joint through rates: (i) The through rates are filed with the Interstate Commerce Commission and/or the Canadian Transport Commission; and (ii) certified true copies of the rate divisions and of all agreements, arrangements or concurrences entered into in connection with the transportation of such cargo are filed with the Federal Maritime Commission within 30 days of the

effectiveness of such rate divisions, agreements, arrangements or concurrences; *And provided further*, that this exemption is inapplicable to cargo originating in or destined to foreign countries other than Canada.

Therefore, it is ordered, that notice of this Order and proposed rule be published in the Federal Register; and

It is further ordered, That all interested persons may participate in this rulemaking proceeding by filing with the Secretary, Federal Maritime Commission, 1100 L Street, N.W., Washington, D.C. 20573, on or before July 27, 1979, an original and 15 copies of their views pertaining to the proposed rule. All suggestions for changes in the text of the proposed rule should be accompanied by the reasons for such changes and recommended language.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 79-20574 Filed 7-2-79; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 1]

[Gen. Docket No. 79-163; FCC 79-388]

Amending Environmental Rules in Response to New Rules Issued by the Council on Environmental Quality

AGENCY: Federal Communications Commission.

ACTION: Proposed Rulemaking.

SUMMARY: The FCC is proposing to amend its environmental regulations to assure that they are consistent with newly issued rules of the Council on Environmental Quality. The changes relate to terminology and procedure and include references to pertinent provisions of the CEQ rules.

DATE: Comments must be received on or before August 2, 1979.

ADDRESSES: Send comments to: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Upton Guthery, Office of General Counsel (202-254-6530).

In the matter of amendment of environmental rules in response to new rules issued by the Council on Environmental Quality; Notice of Proposed Rule Making.

Adopted: June 21, 1979.

Released: June 29, 1979.

By the Commission: Commissioner Lee absent; Commissioner Washburn dissenting and issuing a statement.

1. The Council on Environmental Quality (CEQ) has issued new regulations implementing the National Environmental Policy Act. 43 FR 55978, November 29, 1978, 40 CFR Parts 1500-1508. This Notice proposes amendments to our regulations necessary to conform them with procedures and terminology of the CEQ rules. The proposed rules are not at all identical to the CEQ rules in coverage or in length. That is not the intent of either the Commission or the CEQ. They are consistent with the CEQ rules and are directed specifically to the Commission's business. They have been discussed with and reviewed by CEQ.

2. Proposed § 1.1302 contains a cross-reference to the CEQ rules, which provide guidance on environmental matters not dealt with in the Commission's rules. Our rules have proved adequate to deal with matters that ordinarily come before the Commission for consideration. The CEQ rules are available as a guide to the staff if other matters should come up in the future.

3. Section 1.1303 would be amended by adding a cross-reference to CEQ rules dealing with the preparation of environmental impact statements on rule making or legislative actions.

4. Section 1.1305 would be amended to accommodate the terms "environmental assessment", "finding of no significant impact", and "categorical exclusion" used in the CEQ rules and to reference CEQ rules which define those terms. Briefly, the CEQ rules call on agencies to identify actions which normally do not have a significant effect on the quality of the human environment and to "categorically exclude" such actions from environmental processing requirements. In the case of other actions, the CEQ rules call for an environmental assessment, which is a "concise public document" that "[b]riefly provides sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a "finding of no significant impact." If there is no significant impact, the finding to that effect is issued with the assessment. If there is significant effect, the environmental impact statement is prepared later. An environmental assessment is prepared prior to action on any application involving construction in those environmentally sensitive areas listed in § 1.1305 and if construction involves extensive change of surface features (see § 1.1305(a)), and may be prepared in connection with other actions if the

staff finds that there is a basis for environmental concern.

5. Section 1.1305 (b), (c), and (d) preserve present procedures for classes of actions other than those listed in § 1.1305(a). In § 1.1311, the term "Safety and Special Radio Services" is replaced by "Private Radio Services", and information is provided on obtaining information and assistance concerning environmental information to be furnished to the Commission in the narrative statement filed by the applicant. In § 1.1313(b), terminology and references to § 1.1305 would be amended in accordance with § 1.1305. Section 1.1313(c) would be deleted. It is based on Section 309(f) of the Communications Act (emergency authorizations), but an environmental finding would be made before authorizing the emergency operation and the provision is not needed. Section 1.1315 (c) and (d) allow for the fact that copies of environmental impact statements are now to be sent to the Environmental Protection Agency (EPA) rather than to CEQ and that EPA rather than the Commission will publish notice of their availability. At CEQ's request, a definition of a certificate of service has been added to § 1.1315(e). The requirement of an original and six copies and reply comments and the requirement that five additional sets of comments be sent to CEQ have been deleted. Comments are sent to EPA by the Commission with the final environmental impact statement. The same changes have been made, where appropriate, in § 1.1317.

6. Authority for issuance of this Notice is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and in the National Environmental Policy Act of 1969, 42 U.S.C. 4321-4347. Pursuant to procedures set out in § 1.415 of the Rules and Regulations, 47 CFR 1.415, interested persons may file comments in this proceeding on or before August 2, 1979. Reply comments are not requested. Comments will be available for inspection in the Commission's Dockets Reference Room at its headquarters in Washington, D.C. All relevant and timely comments will be considered by the Commission prior to final action in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided the nature and source of such information, and the fact of the Commission's reliance on it, are noted in the Docket. Formal participants shall file an original and 5 copies of their comments and other materials.

Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted.

Federal Communications Commission *

• William J. Tricarico,
Secretary.

Part 1 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 1.1302 is added to read as follows:

§ 1.1302 Cross-reference; Rules of the Council on Environmental Quality.

Further guidance concerning implementation of the National Environmental Policy Act is provided by the rules of the Council on Environmental Quality, 40 CFR Parts 1500-1508.

2. The following sentence is added at the end of § 1.1303:

§ 1.1303 Scope.

***See 40 CFR 1502.5(d) and 1506.8.

3. Section 1.1305 is revised to read as follows:

§ 1.1305 Environmental classification of Commission actions.

(a) Before action is taken authorizing the categories of facilities listed in paragraphs (a)(1)-(6) of this section, the staff will prepare an environmental assessment (see 40 CFR 1508.9). If the staff finds that the facilities will not have significant environmental effect, or if the proposal is revised to avoid such effect, the staff will issue a finding of no significant impact (see 40 CFR 1508.13). If the staff finds that the facilities will, or may, have significant environmental effect, the staff will prepare an environmental impact statement (see § 1.1313).

(1) Facilities that are to be located in an officially designated wilderness area or in an area whose designation as a wilderness area is pending consideration.

(2) Facilities that are to be located in an officially designated wildlife preserve or in an area whose designation as a wildlife preserve is pending consideration.

(3) Facilities that will affect districts, sites, buildings, structures or objects, significant in American history, architecture, archeology or culture, that are listed in the National Register of

* See Statement of Commissioner Washburn below.

Historic Places or are eligible for listing (see 36 CFR 800.2(d) and (f) and 800.10).

(4) Facilities to be located in areas that are recognized either nationally or locally for their special scenic or recreational value.

(5) Facilities to be located in a floodplain (see Executive Order 11988).

(6) Facilities whose construction will involve extensive change in surface features (e.g., wetland fill, deforestation or water diversion). In the case of wetlands on Federal property, see Executive Order 11990.

(b) Actions taken by the Commission with respect to facilities other than those listed in paragraph (a) of this section usually do not involve preparation of an environmental assessment, a finding of no significant effect, or an environmental impact statement and are classified as categorical exclusions (see 40 CFR 1508.4). However, the facilities listed in paragraphs (b)(1)-(4) of this section are more likely than other lesser facilities authorized by the Commission to have significant environmental effect. The applicant for these facilities, as well as those listed in paragraph (a) of this section, is required to submit with this application the narrative statement described in § 1.1311. If it appears from the narrative statement, opposition pleadings, or from staff analysis and inquiry that there is no basis for environmental concern, the application will thereafter be processed without further consideration of environmental consequences. If it appears from the narrative statement, opposition pleadings, or from staff analysis and inquiry that there is a basis for environmental concern, the staff will prepare an environmental assessment and either a finding of no significant effect or an environmental impact statement. See § 1.1313.

(1) Underground cable and wave guide routes and aerial transmission lines.

(2) Antenna towers or supporting structures exceeding 300 feet in height.

(3) AM directional arrays without regard to height.

(4) Satellite earth stations having an antenna exceeding 30 feet in diameter.

Note.—The provisions of this paragraph do not encompass the installation of additional cable over existing underground cable routes or the mounting of microwave, FM, or television antennas or other antennas comparable thereto in size on an existing building or antenna tower. The use of existing routes, buildings, and towers is an environmentally desirable alternative and is encouraged. The provisions of this paragraph also do not apply to facilities located in areas

devoted to heavy industry or to agricultural that are operated in support of the industrial or agricultural enterprises with which they are associated.

Note.—Authorizations of the facilities listed in paragraphs (a) and (b) of this section are hereinafter referred to as "major Commission actions." The facilities are referred to as "major facilities."

(c) In the circumstances recited in paragraphs (c)(1)-(4) of this section. Commission actions authorizing construction of the categories of communications facilities listed in paragraph (b) of this section are extremely unlikely to have environmental consequences and are classified as categorical exclusions from environmental processing requirements. Neither a narrative statement nor an environmental assessment is normally required.

(1) The construction of an antenna tower or supporting structure in an established "antenna farm" (i.e., an area in which similar antennas are clustered, whether or not such area has been officially designated as an antenna farm).

(2) The modification of existing or authorized facilities, provided such modification does not involve a site change or a substantial increase in tower height.

(3) The construction of an antenna structure which is to remain in place for a temporary period (as for the conduct of experimental or developmental operations, for the duration of emergency conditions, or for maintenance of service pending repair of a permanent structure) and then be removed, providing there will be no lasting effects of environmental significance.

(4) The replacement of an existing structure with a structure of the same kind of the same site.

(d) Commission actions authorizing the construction of communications facilities not listed in paragraph (a) or (b) of this section are also categorically excluded from routine environmental processing requirements: *Provided, however*, that the Commission, in its own motion or on motion of any interested person, may determine that the environmental consequences of a particular action are such as to warrant submission of a narrative statement (§ 1.1311), preparation of an environmental assessment, and preparation of either a finding of no significant impact or an environmental impact statement.

4. In Section 1.1311, paragraph (c) is amended by deleting the term "Safety and Special Radio Services" and by

substituting there for the term "Private Radio Services"; and paragraph (f) is added, to read as follows:

§ 1.1311 Environmental information to be submitted with applications for authority to construct major communications facilities.

(f) For general information and assistance in complying with the requirements of this section, prospective applicants may consult Upton Guthery, Office of General Counsel, 202-254-6530. For more specific information, prospective applicants may consult the staff of the Bureau or Office responsible for processing the particular application.

5. In Section 1.1313, paragraph (b) is revised to read as follows, and paragraph (c) is deleted:

§ 1.1313 Commission consideration of environmental information.

(b) When the application is reached for processing, the processing staff will review the statement required by § 1.1311 and information obtained from the public and other agencies and will determine whether a grant of the application will (or may) have a significant effect on the quality of the human environment. In connection with this review, the staff may require the applicant to furnish additional information bearing on the effect of a grant.

(1) If the application is for facilities listed in § 1.1305(b), does not involve the circumstances listed in § 1.1350(a), and if the narrative statement, opposition pleadings, and staff analysis and inquiry demonstrate that there is no basis for environmental concern, the application will thereafter be processed without further consideration of environment effect.

(2) If the application is for facilities listed in § 1.1305(a), or if the narrative statement, opposition pleadings, or staff analysis and inquiry indicate that there is a basis for environmental concern, the staff will prepare and publish an environmental assessment. If it is determined that a grant will have no significant environmental effect, a finding of no significant impact will accompany the environmental assessment.

(3) If it is determined that a grant will or may have significant environmental effect, the staff may, before deciding to prepare a draft environmental impact statement, discuss matters of environmental concern with the applicant, concerned individuals and experts in an effort to identify measures that could be taken to minimize the

adverse effect and alternatives to the proposed facilities that are not, or are less, objectionable. (The Advisory Council on Historic Preservation has adopted formal procedures for such consultation. See 39 FR 3366, January 25, 1974, 36 CFR Pt. 800.) The staff may direct that technical studies be made by the applicant or that he obtain expert opinion concerning the effect of a grant and the environmental, communications and cost effects of measures or alternatives that could reduce, minimize or eliminate an environmental problem. The staff may also request that a person objecting to grant of an application on environmental grounds raise his objections with appropriate local, State or Federal land use authorities (if their views have not previously been sought) and, if he declines, may itself request the views of such authorities. The applicant may amend his application to reduce, minimize or eliminate such a problem. If such measures as are taken fail to eliminate the environmental problem, the staff will prepare a draft environmental impact statement. When a decision to prepare a statement is made, a public notice to that effect will be published in the Federal Register. The public notice will state the nature and location of the facilities and will advise interested persons that they may obtain a copy of the statement by submitting a written request to the Commission prior to the date on which the statement is duplicated for circulation to agencies.

6. In § 1.1315, the last sentence of paragraph (a) is revised to read as follows; and paragraphs (c), (d), (e) and (f) are revised to read as follows:

§ 1.1315 The draft environmental impact statements; comments.

(a) * * * Guidance concerning the format of the statement is set out at 40 CFR 1502.10 and 1502.11.

(c) When a draft statement is prepared, the Commission will send 5 copies to the Office of Federal Affairs, Environmental Protection Agency. An additional 5 copies will be sent to the appropriate regional office of the Environmental Protection Agency. (A list of these offices and their addresses is appended to these rules.) Public notice of the availability of the statement will be published in the Federal Register by the Environmental Protection Agency on Friday of the week following their submission to that agency.

(d) When copies of the draft statement

are sent to the Environmental Protection Agency, copies will be mailed, with a request for comment, to Federal agencies having jurisdiction by law or special expertise, to the applicant, to individuals, groups and State and local agencies known to have an interest in the environmental consequences of a grant, and to any other person who has requested a copy pursuant to § 1.1313(b)(3).

(e) Any person or agency may comment on the environmental effect of the facilities within 45 days after public notice of the availability of the statement is published in the Federal Register. Comments shall be mailed to the applicant by the person who files them and shall be accompanied by a certificate of service. (A certificate of service is a statement that the comments were mailed to the applicant on or before the date on which they were filed with the Commission; it need not be notarized.) An original and one copy shall be filed with the Commission. If a person submitting comments is specially qualified in any way to comment on the environmental impact of the facilities, a statement of his qualifications shall be set out in the comments. Statements submitted by an agency shall, in addition, specify the identity of the person(s) who prepared them.

(f) The applicant may file reply comments within 21 days after the time for filing comments has expired. Reply comments shall be filed with the Commission in the same manner as comments, and shall be served by the applicant on persons or agencies which filed comments.

7. In § 1.1317, the last sentence of paragraph (a) is revised to read as follows; the last sentence of paragraph (b) is deleted; and three sentences are added at the end of revised paragraph (b), to read as follows:

§ 1.1317 The final environmental impact statement.

(a) * * * Guidance concerning the format of the statement is set out at 40 CFR 1502.10 and 1502.11.

(b) * * * Five copies of the final statement will be submitted to the Office of Federal Affairs, Environmental Protection Agency. An additional 5 copies will be sent to the appropriate regional office of the Environmental Protection Agency. (A list of those

offices is appended to these rules.)

* * * * *

8. An Appendix is added after § 1.1319, to read as follows:

§ 1.1319 Consideration of the final environmental impact statement during the hearing and decision-making process.

* * * * *

Appendix—Regional Offices of the Environmental Protection Agency

- Region I—John F. Kennedy Federal Building, Room 2203, Boston, Massachusetts 02203.
- Region II—26 Federal Plaza, Room 1009, New York, New York 10007.
- Region III—Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19108.
- Region IV—345 Courtland Street NE., Atlanta, Georgia 30308.
- Region V—230 South Dearborn Street, Chicago, Illinois 60604.
- Region VI—First International Building, 1201 Elm Street, Dallas, Texas 75270.
- Region VII—324 East 11th Street, Kansas City, Missouri 64106.
- Region VIII—1860 Lincoln Street, Denver, Colorado 80203.
- Region IX—215 Fremont Street, San Francisco, California 94105.
- Region X—1200 6th Avenue, Seattle, Washington 98101.

Dissenting Statement of Commissioner Abbott Washburn

Re: Environmental Rules

The preparation of written environmental assessments is far afield from the business of this Commission. None of us here knows anything about environmental protection. The rule changes in this Notice of Proposed Rule Making unquestionably will result in increased workload for our already overburdened staff. Time and effort spent in unfamiliar areas by personnel faced with heavy backlogs in processing applications detracts from the Commission's major mission: ". . . to make available, so far as possible, to all the people of the United States a rapid, efficient, nationwide, and world-wide wire and radio communication service . . ."

I would hope that parties commenting on this Notice will consider seriously the impact of these proposed additional requirements on the timely execution of our primary duties to the public.

We are not compelled by law to take on this additional burden. Nor do communications facilities impact on the environment to any appreciable extent. Where they do, it is largely in the esthetics area.

Precious FCC person-hours ought not be diverted to this.

[47 CFR Part 76]**[Docket No. 21002; RM-2695; RM-2723]****Applications for Certificates of Compliance and Federal-State/Local Regulatory Relationships; Order Extending Time for Filing Comments and Reply Comments****AGENCY:** Federal Communications Commission.**ACTION:** Comment and Reply dates extended in Docket 21002.

SUMMARY: In response to a request by American Television and Communications Corporation the Commission extended the comment dates in this proceeding two weeks but refused to grant the six months extension requested.

DATES: Comments due July 16, 1979 and reply comments due August 6, 1979.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mark Hayes, Cable Television Bureau, (202) 632-6468.

SUPPLEMENTARY INFORMATION: *Order.*

Adopted: June 25, 1979.

Released: June 26, 1979.

In the matter amendment of Subparts B and C of Part 76 of the Commission's rules pertaining to applications for certificates of compliance and Federal-State/Local Regulatory Relationships, Docket No. 21002, RM-2695, RM-2723, see 44 FR 37014, June 25, 1979.

1. On June 11, 1979, American Television and Communications Corporation requested a six months extension of time for the filing of comments in this proceeding in order to have a study of certain economic issues completed by National Economic Research Associates, Inc., an independent economic consulting firm. On June 15, 1979, the comment date was extended to July 2, 1979, with consideration of a longer extension deferred pending a more detailed analysis of the study proposal.

2. That review is now complete. In weighing whether to grant an extension of this magnitude we must weigh the delay created against the likelihood that additional evidence likely to be of decisional significance will be received. While six months is not an unduly long time period for completion of a study of the type proposed, we are not persuaded that the proposed study will sufficiently advance our state of knowledge so as to justify such a long delay. In particular,

given the present state of preparations for the study, we are concerned that the information gathered will have limited utility for policy making purposes. The extension requested will accordingly, be denied. If, however, American Television and Communications wishes to proceed with the study in any case, we of course would consider motions to accept late filed pleadings during the pendency of this proceeding.

3. Finally, in view of the uncertainty caused by this request and the additional time occupied in analyzing it, the existing comment schedule will be extended for an additional short period.

Accordingly, *It is ordered*, That the petition for an extension of time filed June 11, 1979 by American Television and Communications Corporation is denied.

It is further ordered, That the dates for filing comments and reply comments in this proceeding are extended to July 16, 1979 and August 6, 1979 respectively.

This action is taken by the Chief, Cable Television Bureau pursuant to authority delegated by § 0.288 of the Commission's rules.

Willard R. Nichols,

Acting Chief, Cable Television Bureau

[FR Doc. 79-20593 Filed 7-2-79; 8:45 am]

BILLING CODE 6712-01-M

[47 CFR Part 73]**[BC Docket No. 79-165; RM-3355]****FM Broadcast Station in Homosassa Springs, Fla.; Proposed Changes in Table of Assignments****AGENCY:** Federal Communications Commission.**ACTION:** Notice of proposed rule making.

SUMMARY: Action taken herein proposes the assignment of a first Class A FM channel to Homosassa Springs, Florida, in response to a petition filed by West Wind Broadcasting, Inc. The proposed channel could bring a first local aural broadcast service to Homosassa Springs.

DATES: Comments must be filed on or before August 21, 1979, and reply comments must be filed on or before September 10, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792.

Adopted: June 22, 1979.

Released: June 28, 1979.

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Homosassa Springs, Florida),

BC Docket No. 79-165, RM-3355.

1. *Petitioner, Proposal, Comments.* (a) A petition for rule making¹ was filed by West Wind Broadcasting, Inc. ("petitioner"), proposing the assignment of FM Channel 237A to Homosassa Springs, Florida, as its first FM assignment. No responses were filed to the petition.

(b) The channel can be assigned in conformity with the minimum spacing requirements, provided the transmitter site is located approximately 5 miles (8 kilometers) north of Homosassa Springs.

(c) Petitioner states that it will apply for the channel, if assigned.

2. *Community Data*—(a) *Location.* Homosassa Springs, in Citrus County, is located on the west coast of central Florida, approximately 111 kilometers (69 miles) north of Tampa, and 106 kilometers (66 miles) south of Gainesville, Florida.

(b) *Population.* Homosassa Springs—7,757²; Citrus County—19,176.³

(c) *Local Aural Broadcast Service.* There is no local aural broadcast service in Homosassa Springs, Florida.

3. *Economic Considerations.* Petitioner claims that Homosassa Springs' population has grown by 310% and is estimated presently at 7,757. It states that the community has a diversified economy with the chief industries consisting of tourism, seafood and boat building. Petitioner points out that Homosassa Springs has a public library, churches, service and social clubs, civic theater, private school and post office.

4. An initial review of the petition suggests that there may be a need for a first local aural service in Homosassa Springs. The proposal is being advanced for the purpose of determining whether such an assignment is warranted. Before the Commission can conclude that the assignment is warranted, certain additional information is required. Petitioner is requested to furnish pertinent extracts from the sources referred to in footnote 2 so that a conclusion can be drawn regarding the size of the permanent population of the unincorporated area in which petitioner claims Homosassa Springs is situated.

5. In view of the foregoing, the Commission proposes to amend the FM

¹Public Notice of the petition was given on April 18, 1979, Report No. 1172.

²There is no Census figure listed for Homosassa Springs, Florida. Thus, its population must be under 1,000 as all communities over 1,000 are listed even if unincorporated. However, petitioner claims that according to the Citrus Chamber of Commerce, University of Florida and the United States Postal Service, the population of Homosassa Springs is presently estimated at 7,757.

³Population figure taken from the 1970 U.S. Census.

Table of Assignments, § 73.202(b) of the Commission's rules, with respect to the community listed below:

City	Channel No.	
	Present	Proposed
Homosassa Springs, Florida.....		237A

6. Authority to institute rule making proceedings, showings required, cut-off procedures and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before August 21, 1979, and reply comments on or before September 10, 1979.

8. For further information concerning this proceeding, contact Mildred B. Nesterak, Broadcast Bureau, (202) 632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

Federal Communications Commission.
Richard J. Shibben,
Chief, Broadcast Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's rules and regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 79-20592 Filed 7-2-79; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1056]

[Ex Parte No. MC-19 (Sub-No. 23)]

Practices of Motor Common Carriers of Household Goods (Investigation into Estimating Practices)

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time for filing public comments in this proceeding.

SUMMARY: This proceeding was renoticed by notice of proposed rulemaking published in the Federal Register on June 18, 1979, at 44 FR 34994. Comments of interested persons were

scheduled as due 30 days from the date of publication of the notice (or by July 18, 1979).

The American Movers Conference (AMC) has requested a 120-day extension of the time for filing comments, stating that the extension is necessitated by the complexity of this proceeding, the advent of the summer moving season, the need for the AMC to convene a well-attended meeting of its members, and problems of fuel availability. While an extension of the time for filing comments appears warranted, the requested 120-day period is excessive. To ensure full participation by the public in this proceeding, the time for filing comments will be extended 40 days.

DATES: Comments in this proceeding are due on or before August 27, 1979.

FOR FURTHER INFORMATION CONTACT: Bruce W. Boyarko or David Gaynor, 202-275-7901, 7904.

By the Commission, J. Patterson King,
Acting Director, Office of Proceedings.
H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-20555 Filed 7-2-79; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register

Vol. 44, No. 129

Tuesday, July 3, 1979

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COMMITTEE ON INFORMATION NETWORK STRUCTURE AND FUNCTIONS Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Office of Administration announces the following meeting:

Name: Advisory Committee on Information Network Structure and Functions.

Date: Thursday, July 19, 1979.

Time: 9 a.m. to 1 p.m.

Place: Room 3104 New Executive Office Building, 17th and Pennsylvania Avenue N.W., Washington, D.C.

Type of meeting: Open, subject to space limitations. Those wishing to attend must call the contact person below at least 48 hours in advance of the meeting.

Contact person: Edward K. Zimmerman, Advisory Committee Executive Secretary, Office of Administration, Executive Office of the President, Washington, D.C. 20500; Telephone 202-456-2244.

Purpose of Advisory Committee: The Committee will advise the Director, Office of Administration (OA), on matters pertinent to OA's plans for the establishment of a communications network to serve the executive Office of the President (EOP). The Committee will outline a structural and functional plan for the EOP network. This plan will be developed on the basis of current and expected technological developments and will strive for immediate implementation and a minimum useful life of ten years. The plan will address such issues as network hardware and protocol structure, expected structure of servers, gateways and other connections to the network, expected feasible functions, and privacy and authentication mechanisms.

A final report containing the plan is envisaged, and it should provide answers to three questions:

1. What kind of network should the EOP have?
2. What is it likely to cost?
3. How long is it likely to take to implement?

Agenda: 9 a.m. to 1 p.m.—This first (organizational) panel meeting will include

presentations on history and background of EOP information network needs by EOP staff members; and panel discussions of these presentations, possible issues and alternatives, definition of study agenda and priorities, and future meeting agenda.

William Pollak,
General Counsel.

[FR Doc. 79-20683 Filed 7-2-79; 8:45 am]

BILLING CODE 3195-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

Implementation of NEPA Procedures; Invitation to the Public to Comment on a Draft of the APHIS Supplemental NEPA Procedures

AGENCY: Animal and Plant Health Inspection Service.

ACTION: This notice publishes the proposed APHIS Guidelines Concerning Implementation of NEPA Procedures and invites comment from the public.

SUMMARY: The proposed APHIS Guidelines Concerning Implementation of NEPA Procedures was written to comply with the regulations of the Council on Environmental Quality (CEQ). The CEQ regulations (40 CFR 1500-1508) were published in the Federal Register on November 19, 1978, (43 FR 55978-56007) to implement the procedural provisions of the National Environmental Policy Act (NEPA). The purpose of this notice is to give the public the opportunity to comment on the procedures APHIS proposes to use to implement the provisions of NEPA.

ADDRESS: Comments should be addressed to the Administrator, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250.

DATE: Comments by July 24, 1979.

FOR FURTHER INFORMATION CONTACT: N. E. Bedessem, 202-447-2290.

SUPPLEMENTARY INFORMATION: On November 13, 1974, APHIS published "Guidelines for the Preparation of Environmental Impact Statements" in the Federal Register (39 FR 40048). Recently-published regulations of CEQ (43 FR 55978-56007, November 29, 1978) and proposed regulations of the Department of Agriculture (USDA) (44 FR 25606-25608, May 1, 1979) require

USDA agencies to adopt implementation procedures for NEPA. Therefore, this notice presents the proposed "APHIS Guidelines Concerning Implementation of NEPA Procedures," which, if adopted, would supersede the present Agency guidelines.

The proposed APHIS issuance outlines only those Agency-specific actions needed for compliance with the NEPA process and must be read in conjunction with the CEQ regulations and the USDA regulations.

This notice proposes procedures for use by APHIS decisionmakers which should lead to decisions in which environmental concerns are fully reviewed and which ensure timely public involvement in the NEPA process. The proposal designates major decision points for Agency actions affecting the environment which are not categorically excluded by CEQ or USDA regulations. The proposal provides procedures for Agency preparation of the EIS and supplemental statements, and includes procedures for use in emergency situations. It outlines a proposed plan for public involvement in the decisionmaking process. It provides a comprehensive list of reference sources for use in preparing EIS's.

The Department is required by the CEQ NEPA regulations to have implementation procedures in place by July 31, 1979. In order to accomplish this, comments must be received by July 24, 1979.

APHIS Guidelines Concerning Implementation of NEPA Procedures.

I. Purpose

These procedures comply with the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA) (43 FR 55978-56007, 40 CFR Parts 1500-1508) and applicable Departmental regulations (7 CFR 3100). The procedures outline those Agency-specific actions needed for compliance with the NEPA process. These procedures include requirements, guidance, and references for developing environmental impact statements (EIS's) and also designate responsible officials as required by the CEQ NEPA Regulations, unless otherwise identified, all parenthetical numerical references are to the CEQ NEPA Regulations.

II. Terminology

Terms used in these APHIS procedures will have the same meaning as in the CEQ NEPA regulations. (1508.1-1508.28)

III. Agency Decisionmaking Procedures

APHIS officials shall ensure that proposals for new or changes to old projects, plans, and programs not categorically excluded from the NEPA process under the Department's regulations (7 CFR 3100) have designated major decision points. All environmental documents will accompany proposals as they are reviewed by appropriate APHIS decisionmakers at each of the decision points.

Those decision points are:

1. When new proposals or substantive changes in old programs are being considered which may cause significant adverse effects;
2. Upon completion of assessments;
3. At the finding of no significant impact;
4. Before preparation of an EIS is begun;
5. upon completion of a draft EIS;
6. upon evaluation of comments and completion of final EIS.

The decisionmaking process will not be concluded until a record of decision is prepared and made available to the public (1505.2).

All environmental documents, including supplements, will be made part of the Administrative Actions File (APHIS Directive 131.2), which is the APHIS formal administrative record. This file will be available for public evaluation of the alternatives considered. Appendix I is a flow chart which graphically portrays the decisionmaking process.

IV. EIS Preparation

A. Requirement. The NEPA requires an EIS with every proposal for legislation of other major Federal action which significantly affects the quality of the human environment. Executive Order 12114, January 4, 1979, extends these requirements to environmental effects abroad of major Federal actions.

B. Preparation of EIS for APHIS Actions.

1. APHIS will use no categorical exclusions from the NEPA process other than those listed in the USDA regulations (7 CFR 3100.22). (1508.4)

2. Because APHIS projects, plans and programs do not lend themselves to the kind of classification that would be necessary to designate categories of actions for which EIS's will always be

performed, no such designations will be made. (1507.3)

3. APHIS officials will make an environmental assessment for legislative proposals originating in APHIS, for each proposed new action and for each proposed change to ongoing programs and projects. The assessment will be the basis for the Agency's determination to prepare an EIS or to publish a finding of no significant impact. (1501.3, 1501.4)

C. Tiering. When appropriate, a broad EIS would be prepared for repetitive program action. (1502.20)

D. Supplemental Statements:

1. APHIS officials will prepare supplements to an EIS if the program for which it was prepared and approved undergoes significant changes. (7 CFR 3100.28)
2. Supplemental EIS's, when required, will be prepared according to CEQ NEPA Regulations. (1502.9(c))

V. Format

APHIS officials will follow the format recommended in the CEQ NEPA Regulations (1502.10). The cover sheet will conform to the format in Appendix II (1502.11).

VI. Emergency Procedures

Where circumstances require immediate action to prevent spread of exotic or domestic animal or plant diseases or pests, and that action has significant environmental impact, the provisions of section 1506.11 of the CEQ NEPA Regulations will take effect.

APHIS officials will notify the Department Coordinator for Environmental Quality Activities in consulting with CEQ about alternate arrangements.

VII. Public Involvement

A. APHIS officials shall inform and involve the public when (1506.6):

1. substantive changes in programs have significant adverse effects on the human environment;
2. they intend to prepare an EIS and request participation in the scoping process; (1501.7)
3. a draft EIS, final EIS, or finding of no significant impact is available; and
4. the record of decision is available. (1505.2, 1508.1)

B. APHIS officials will maintain distribution lists of interested persons (e.g., Federal, State, and local agencies, interested industry representatives, national and local organizations, and private citizens, etc.). The lists will be amended as additional interested persons are identified. Mailings to those on the distribution list will be made early and at critical states in the NEPA

process where public input is appropriate. (7 CFR 3100.29)

C. Whenever APHIS officials inform the public in compliance with paragraph A of this section, a specific address where additional material and information may be obtained will be published in whatever informational media is used. General inquiries concerning APHIS environmental activities may be addressed to the Administrator, Animal and Plant Health Inspection Service, USDA, Washington, D.C. 20250.

VIII. Responsibilities

A. The Deputy Administrators are responsible for preparation of EIS's within their respective functional areas.

B. APHIS officials conducting field operations are responsible for reporting any unusual environmental conditions to their respective regional directors. If necessary, regional directors will obtain guidance from the responsible APHIS staff officer. Except for emergency situations, the field official should report the unusual condition before taking any action.

IX. Reference Sources for EIS Preparation

Actions taken under these supplemental procedures are subject the provisions of applicable laws and authorities. The following authorities, directives, and regulations have been published and are the principal reference sources for preparing and processing EIS's:

- A. Section 102(2), National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321-4347).
- B. Executive Order 11514, dated March 5, 1970, as amended by Executive Order 11541, dated July 1, 1970, and as further amended by Executive Order 11991, dated May 24, 1977.
- C. Executive Order 11752, December 17, 1973, Prevention, Control, and Abatement of Environmental Pollution at Federal Facilities.
- D. Environmental Protection Agency Regulations on the Preparation of Environmental Impact Statements (40 CFR 6).
- E. CEQ Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR 1500-1508).
- F. Clean Air Act (42 U.S.C. 1857 *et seq.*).
- G. Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*).
- H. Solid Waste Disposal Act of 1970 (42 U.S.C. 3251 *et seq.*).
- I. Noise Control Act of 1972 (42 U.S.C. 4901 *et seq.*).
- J. Federal Insecticide, Fungicide, and Rodenticide Act as amended by the Federal Environmental Pesticide Control Act of 1972 (7 U.S.C. 135 *et seq.*).

- K. Secretary's Memorandum No. 1662, Supplement 8, June 28, 1976.
- L. Secretary's Memorandum, No. 1695, May 24, 1970 and Supplements.
- M. Safe Drinking Act (42 U.S.C. 300f).
- N. National Historic Preservation Act (16 U.S.C. 470470t).
- O. Executive Order 12044, "Improving Government Regulations"; Secretary's Memorandum No. 1955.
- P. Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1543).
- Q. Executive Order 12114, "Environmental Effects Abroad of Major Federal Actions," January 4, 1979.

This notice has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations." A determination has been made that this notice should not be classified "significant" under those criteria. A Draft Impact Analysis has been prepared and is available from the Office of the Administrator, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250.

Done at Washington, D.C., this 28th day of June 1979.

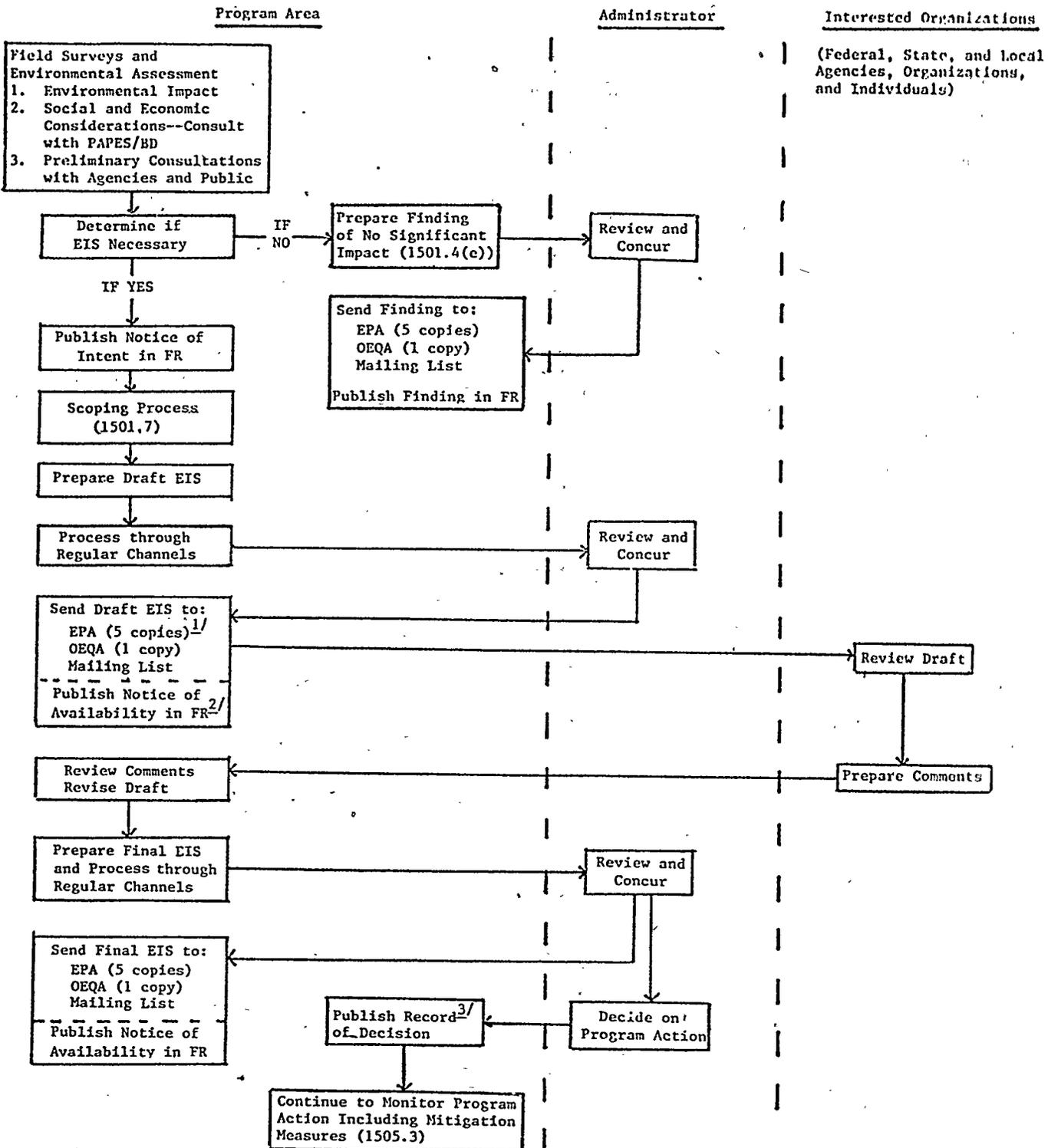
F. J. Mulhern,

*Administrator, Animal and Plant Health
Inspection Service.*

BILLING CODE 3410-34-M

APPENDIX I

Processing EIS Initiated and Prepared by AMIIS



Notes: (1506.10 (c))

1/90-day minimum before taking action.
 2/45-day minimum for comment, E. O. 12044 requires 60 days unless emergency situation.
 3/No action may be taken for 30 days after decision is published.

APPENDIX II

Cover Sheet for Environmental Impact Statement Prepared by APHIS

(Final) (Draft) (Final or Draft Supplement)

Environmental Impact Statement

TITLE

Prepared By Animal and Plant Health Inspection Service

Cooperating Agencies

Agency Contract:

Geographic Areas Affected:

Name:

Address:

Telephone:

ABSTRACT

(One Paragraph)

Comments on this Draft must be received by

[FR Doc. 79-20520 Filed 7-2-79; 8:45 am]

BILLING CODE 3410-34-M

Office of the Secretary

National Advisory Committee on Meat and Poultry Inspection; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting on the National Advisory Committee on Meat and Poultry Inspection will be held on July 18, 1979, beginning at 9 a.m., in Room 330, Group Health Insurance Building, 500 12th Street, U.S. Department of Agriculture, Washington, D.C.

The purpose of this Committee is to advise the Secretary of Agriculture regarding issues pertaining to the meat and poultry inspection program, pursuant to sections 7(c), 24, 205, and 301 of the Federal Meat Inspection Act and sections 5, 8(b), and 11(e) of the Poultry Products Inspection Act. The meeting will include a review of the Federal Meat and Poultry Inspection Program and the organizational structure of FSQS. The Committee's advice will be sought with respect to the designation of the State of New Hampshire for compliance activities; a standard for turkey ham; adjustment of the ratio of beef and pork contained in

meat food products; and a final rule regarding certain meat food products prepared without nitrites.

This meeting is open to the public, but space and facilities are limited. Comments of interested persons may be filed with the Committee before or after the meeting.

Information pertaining to this meeting may be obtained from Nancy F. Moody, Acting Director, Executive Secretariat, Room 335-E, Administration Building, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, D.C. 20250, (202) 447-3002.

Dated: June 29, 1979.

Donald L. Houston,

Vice Chairman.

[FR Doc. 79-20533 Filed 7-2-79; 8:45 am]

BILLING CODE 3410-37-M

Rural Electrification Administration

Central Iowa Power Cooperative (Cedar Rapids, Iowa); Proposed Loan Guarantee

Under the authority of Pub. L. 93-32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20-22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider (a) providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of \$6,683,000 to Central Iowa Power Cooperative of Cedar Rapids, Iowa, and (b) supplementing such a loan with an insured REA loan at 5 percent interest in the approximate amount of \$1,542,000 to this cooperative. These loans will be used to finance a construction program consisting of approximately 72 miles of 69 kV and 13 miles of 34.5 kV transmission lines and related facilities; generating funds for an Opacity Monitoring System; supplemental transmission funds to complete previously authorized projects and general system improvements.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed program, including the engineering and economic feasibility studies and the proposed schedule for the advances to the borrower of the guaranteed loan funds from Mr. Edward H. Williams, Manager, Central Iowa Power Cooperative, P.O. Box 2517, Cedar Rapids, Iowa 52408.

In order to be considered, proposals must be submitted on or before August 2, 1979 to Mr. Williams. The right is reserved to give such consideration and make such evaluation or other disposition of all proposals received, as Central Iowa Power Cooperative and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20-22 are available from the Director, Information Services Division, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

Dated at Washington, D.C., this 26th day of June 1979.

Robert W. Feragen,

Administrator, Rural Electrification Administration.

[FR Doc. 79-20443 Filed 7-2-79; 8:45 am]

BILLING CODE 3510-15-M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Notice is hereby given that, during the week ended June 22, 1979 CAB has received the applications listed below, which request the issuance, amendment, or renewal of certificates of public convenience and necessity or foreign air carrier permits under Subpart Q of 14 CFR 302.

Answers to foreign permit applications are due 28 days after the application is filed. Answers to certificate applications requesting restriction removal are due within 14 days of the filing of the application. Answers to conforming applications in a restriction removal proceeding are due 28 days after the filing of the original application. Answers to certificate applications (other than restriction removals) are due 28 days after the filing of the application. Answers to conforming applications or those filed in conjunction with a motion to modify scope are due within 42 days after the original application was filed. If you are in doubt as to the type of application which has been filed, contact the applicant, the Bureau of Pricing and Domestic Aviation (in interstate and overseas cases) or the Bureau of International Aviation (in foreign air transportation cases).

Subpart Q Applications

Date filed	Docket No.	Description
June 20, 1979	35919	National Airlines, Inc., P.O. Box 592055, Airport Mail Facility, Miami, Florida 33195. Application of National Airlines, Inc. requests the Board pursuant to Section 401 of the Act and the Regulations, for a certificate of public convenience and necessity authorizing it to engage in nonstop scheduled air transportation of persons, property, and mail on a permissive basis in the following market: "Between the terminal point Houston, Texas, and the terminal point Brownsville, Texas." Answers and Conforming Applications are due on July 18, 1979.
June 21, 1979	35929	Continental Air Lines, Inc., Los Angeles International Airport, Los Angeles, California 90009. Application of Continental Air Lines, Inc. requests the Board pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations, for issuance of a certificate of public convenience and necessity authorizing it to engage in scheduled foreign air transportation of persons, property, and mail over the following route: "Between the coterminal points Los Angeles, Calif., and Houston, Texas; the intermediate points Belize, British Honduras; Tegucigalpa and San Pedro Sula, Honduras; Managua, Nicaragua; Guatemala City, Guatemala; San Salvador, El Salvador; San Jose, Costa Rica; Panama City, Panama; Cali and Bogota, Colombia; Maracaibo and Caracas, Venezuela; Quito, Ecuador; Lima, Peru; LaPaz, Bolivia; Asuncion, Paraguay; Montevideo, Uruguay; Rio de Janeiro and Sao Paulo, Brazil; Santiago, Chile; and the terminal point Buenos Aires, Argentina." Answers and Conforming Applications are due on July 19, 1979.
June 21, 1979	35933	Trans World Airlines, Inc., 605 Third Avenue, New York, New York 10016. Application of Trans World Airlines, Inc. requests the Board for a certificate of public convenience and necessity for Route 2 be amended by adding a new segment which would authorize service between the alternate terminal points of Columbus, Ohio, and Kansas City, Missouri, on the one hand, and the terminal point of Miami, Florida, on the other hand. Answers and Conforming Applications are due on July 19, 1979.
June 21, 1979	35934	Trans World Airlines, Inc., 605 Third Avenue, New York, New York 10016. Application of Trans World Airlines, Inc. requests the Board for a certificate of public convenience and necessity for Route 2 be amended by adding a new segment which would authorize service between the terminal point New York, New York, and the terminal point San Diego. Answers and Conforming Applications are due on July 19, 1979.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 79-20514 Filed 7-2-79; 8:45 am]
BILLING CODE 6320-01-M

[Order 79-6-190; Docket 35797]

Application of National Airlines, Inc. for an emergency; Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 28th day of June, 1979.

On June 8, National Airlines filed an emergency application by letter, which it supplemented on June 11 and June 15 with formal written pleadings, for exemption from the requirements of section 401(j) of the Act so as to permit it to suspend scheduled service indefinitely at Norfolk, Va., Charleston, S.C., Savannah, Ga., Paris, France, Amsterdam, NL, and Frankfurt, W. Ger.

In support of its emergency request, National states that because of the grounding of DC-10 aircraft by the FAA, it has withdrawn B-727 services in order to place that aircraft in much larger markets previously served by DC-10's; approximately one-half of its system capacity, and all transatlantic capacity, was provided by DC-10 aircraft;¹ and it

will compensate passengers under the denied boarding rules in markets where the B-727's have been withdrawn.

No formal answers to National's emergency request have been filed. However, the Norfolk Port and Industrial Authority (NPIA) sent a letter to us confirming telephone conversations with the staff on June 8 in which it alleged that National had withdrawn its Norfolk services after June 6 without notice. The NPIA requests us to investigate the matter with a view to enforcing the notice provisions of the Act and our regulations.

In Order 79-6-78, June 11, 1979, we recognized the existence of an air transportation emergency caused by the grounding of DC-10 aircraft. We granted delegated authority to the Directors of the Bureaus of Domestic and International Aviation, or their designees, to act for us on requests for emergency exemption from the provisions of sections 401(j) and 405 of the Act and underlying regulations. We expressly stated, however, that if an application were filed which required careful scrutiny by us, we would expect the matter to be forwarded to us for final disposition. National's application

falls in this special category and is now before us.

General Considerations

A. International Services.—Section 323.14 of our Procedural Regulations provides that any carrier may temporarily suspend service without filing a notice for any interruption that the carrier cannot be reasonably expected to foresee or control. The DC-10 grounding emergency is clearly such a situation. We will therefore dismiss National's application as it applies to Frankfurt,² Amsterdam, and Paris.

B. Domestic Services.—Unlike exemption requests by air carriers for limited relief from the timeliness-of-filing requirements of the Act and our regulations for notices to reduce or eliminate service, the application before us involves a much broader request. National seeks relief from filing the notice itself, and has in fact effected suspensions at the three domestic points without authority from us. The Bureau of Consumer Protection is reviewing these matters, and we wish to emphasize that whatever action we take in this order is without prejudice to any subsequent enforcement action which may be instituted. Unlike the case of United Air Lines' elimination of nonstop services in seven markets (Order 79-6-78), National seeks to withdraw totally from three points without notice, in order to utilize the aircraft in other markets. We must therefore carefully analyze the public interest aspects of this request with a view toward balancing several important factors.

Our evaluation of National's application involves three key questions—(1) whether the flights to be suspended affect essential air service at any point; (2) whether the flights are important to the overall air transportation pattern at any city, even if they do not affect essential air service; and (3) whether the aircraft used on such flights could be utilized more productively in other markets where the grounding of DC-10 aircraft has inconvenienced a large number of passengers.

Our review of service at the three points indicates that elimination of the

²In its June 15 supplemental filing, National indicates that there is a possibility it might be able to resume service at Frankfurt with the aircraft being leased for the Miami-London route. It therefore requests us specifically to provide for such resumption of service in our order acting on its application. Since it does not need the authority to terminate service at its international points without prior notice, it also needs no special authority to resume such service if aircraft become available. Even if it did need the exemption authority sought, it would still be free to re-enter any affected markets or points at will, since such exemption authority is by its nature permissive.

¹National indicates that it has arranged for the lease of a long-range aircraft to resume Miami-London services on June 9, 1979.

flights involved does not reasonably appear to affect essential air service at any of them. At Charleston and Norfolk only one round trip is being eliminated, and at Savannah only one flight in one direction is being withdrawn. All three points receive multiple services by other carriers.

Based on findings more fully discussed below, we have decided that even though essential air service is not affected, the suspension of National's Norfolk services without due notice would be contrary to the public interest, and therefore we will deny that portion of its application. We will grant the application as it applies to Charleston and Savannah, since we have concluded that, on balance, the aircraft used at those points can be better utilized in other markets where a larger number of passengers would be benefited.

Norfolk

On June 1, 1979, National offered one daily round trip over a Newark-Norfolk-Jacksonville-Miami routing. Data on file with us indicate that during March 1979 the Norfolk-Jacksonville segment averaged 80 percent load factors while the Jacksonville-Miami segment factor averaged nearly 90 percent. The Newark-Norfolk portion of the flight averaged 45 percent; however, Piedmont Aviation's load factors on its nonstop flights between Norfolk and New York were 67 percent (Newark) and 83 percent (Kennedy Airport).

In the year ended September 30, 1978, National carried over 95 percent of the single-carrier traffic in the Norfolk-Jacksonville and Norfolk-Miami markets, and, with the exception of a northbound two-stop flight in the Miami market, there currently are no alternative direct services in these markets which totalled 55,000 O&D plus connecting passengers. On these facts, we cannot find that the transfer of the B-727 aircraft which had been used for the Norfolk round trip to other markets would result in more productive use of that aircraft, and we conclude that it is contrary to the public interest to permit National to suspend its Norfolk services on an emergency basis without giving notice as required by the Act.

We therefore deny National's application to suspend service at Norfolk without filing a notice under section 401(j)(1) of the Act and section 323.3 of our Regulations, and we order National to reinstate the services it offered at Norfolk on June 4, 1979, within 5 days of the date of service of this order.³ As noted above, the carrier

suspended such services on June 6 without our authority.

Savannah

National was providing one flight five days per week in one direction at Savannah on June 1, over a Savannah-Jacksonville-Orlando-Houston-Las Vegas routing. Such a pattern of service was already contrary to the carrier's certificate obligations at Savannah since it was not round-trip service and since, at the time the new Act became law, it was providing multiple round-trip services at the point. The Bureau of Consumer Protection is also reviewing this matter to determine what action it will take.

National's March load factors on the Savannah-Jacksonville segment of the flight were less than one percent. Total O&D plus connecting traffic in that market only amounted to 2,550 passengers, while total traffic for all four Savannah markets served on the flight was only 17,000 passengers. Although no alternative direct services exist for these markets, connections over Atlanta are frequent and the passengers inconvenienced are small in number when compared to the passengers displaced by the grounding of the carrier's DC-10 aircraft. We note in this connection that 41.5 percent of its domestic system available seat-miles were operated with DC-10 aircraft during the first quarter of 1979. Thus, its operations were affected more by the groundings than those of any other carrier.

Under all of these circumstances, we find that it is consistent with the public interest to grant National's request to suspend service at Savannah effective upon the date of adoption of this order. However, we emphasize that the exemption we are granting is temporary; as soon as the grounding emergency is over, the carrier will be required to reinstate round-trip service at the point. If it wishes to suspend service at any time thereafter, it must comply with the notice filing requirements of the act and our regulations.

Charleston

National provided one daily trip between Charleston and Washington which served Newark in one direction. It carried 78 percent of the single-carrier traffic in the market for the year ended September 30, 1978; the total O&D plus connecting traffic amounted to 80,000 passengers, or 219 per day. Its load factor during March 1979 averaged 41.6 percent. There is alternative service

available in the Charleston-Washington market—Eastern Air Lines offers one and one-half round trips with one intermediate stop, and Piedmont offers one two-stop round trip.

These facts present a dilemma because of the apparent contradiction between National's historic participation in traffic between Charleston and Washington and its most recent moderate load factors which are well below its system average and would tend to indicate that the aircraft could be better utilized elsewhere. We have decided that, in view of the alternative direct service available and the fact that Eastern already has the certificate authority to operate nonstop in the market if it chooses, it is consistent with the public interest to allow National to suspend service at Charleston. As in the case of the authority at Savannah, this exemption only entitles National to remain suspended at Charleston for the duration of the DC-10 grounding emergency. If it desires to suspend service beyond that term or at some time afterwards, it must file the requisite notice. The date of adoption of this order is the effective date of National's exemption authority at Charleston.

Other Considerations

Our concern about the Charleston-Washington market has prompted us to grant exemptions, on our own motion, to those carriers whose authority in the market is restricted, *i.e.*, Piedmont, Delta Air Lines, and Southern Airways (to be merged with North Central Airlines). Piedmont, for example, would be able to convert its current two-stop service to nonstop service, without the necessity of obtaining an amendment to its certificates. We find that these exemptions are consistent with the public interest, and we will make them effective for the duration of the DC-10 grounding emergency. We recognize that there is currently a limited supply of fuel and that aircraft availability is particularly critical. For these reasons, it may not be feasible for any of the named carriers to implement the exemption authority we are granting. Nevertheless, we want to encourage improved service between Charleston and Washington in the absence of National's nonstop service, in the event a sufficient demand for such service exists.

We also invite each of the above-named carriers, as well as any other interested carrier, to apply for certificate authority in the market, and to accompany the application with a petition for an order to show cause. We

³By this action we are not granting to National immunity for the 5-day period from possible

enforcement action for having suspended service at Norfolk.

will handle any such requests expeditiously.

Other Matters

Two further matters warrant comment. Although National did not request it, exemption from section 405 of the Act and section 231.5(b) of our Regulations is required in order to implement the proposed suspensions without notice. Therefore, we find that it is consistent with the public interest to exempt it from those sections as to Savannah and Charleston. Of course, this action does not render moot any violation of those sections that may have resulted from its implementing schedule changes on less than 10 days notice without our authority.

Second, we wish to make clear, as we did in Order 79-6-78, that we do not intend to encourage carrier actions which unduly inconvenience passengers, without proper safeguards for those holding reservations on cancelled flights. National indicates that it will compensate passengers under the denied boarding rules. We will not condition the authority we are granting on such action. However, we will require that it follow the procedures under Rule 380 of the Airline Tariff Publishing Company, Agent, C.A.B. No. 142, to which National subscribes. They include the arrangement for alternate transportation for the passenger at no additional cost either on the same carrier or a different carrier, where feasible, or the refund of the unused portion of the ticket, if no alternative flight or combination of flights is available which is acceptable to the passenger. Failure to follow these procedures would be considered as a violation of this order.

Accordingly—1. We exempt National Airlines from the provisions of section 405 of the Act and section 231.5(b) of our Regulations to the extent necessary to permit it to make schedule changes regarding services at Charleston, S.C. and Savannah, Ga. on less than 10 days notice;

2. We exempt National Airlines from the provisions of section 401(j)(1) of the Act and section 323.3(a)(1) of our Regulations to the extent necessary to permit it to eliminate service at Charleston, S.C. and Savannah, Ga. without filing a notice of its intent to suspend such services;

3. We dismiss the application of National Airlines in Docket 35797 to the extent that it involves services at Frankfurt, Germany, Amsterdam, NL, and Paris, France;

4. Except to the extent granted or dismissed above, we deny the

application of National Airlines in Docket 35797;

5. We exempt Piedmont Aviation, Delta Air Lines, and Southern Airways from the provisions of section 401 of the Act and the terms, conditions, and limitations of their certificates for Routes 87, 24, and 98, respectively, to the extent necessary to permit them to operate nonstop service between Charleston, S.C. and Washington, D.C.;

6. The authority granted in paragraphs 2 and 5 is effective immediately and shall remain in effect until 14 days after the Federal Aviation Administration ends the DC-10 groundings;

7. This order may be amended or revoked at any time in our discretion without hearing; and

8. We will serve this order on all certificated carriers, the mayors of Norfolk, Savannah, Charleston, S.C., New York, Newark, Washington, D.C., Jacksonville, Miami, Orlando, Houston, and Las Vegas, the Norfolk Port and Industrial Authority, and the Postmaster General.

We will publish this order in the Federal Register.

By the Civil Aeronautics Board:⁴

Phyllis T. Kaylor,
Secretary.

[FR Doc. 79-20513 Filed 7-2-79; 8:45 am]
BILLING CODE 6320-01-M

Proposed Grant of New Authority to Air New England, Allegheny Airlines and Braniff Airways in the Boston-Cleveland Market

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause (Order 97-6-175).

SUMMARY: The Board is proposing to award new authority to Air New England, Allegheny Airlines, Braniff Airways and any other fit, willing and able applicant in the Boston-Cleveland market.

The complete text of this order is available as noted below.

DATES: All interested persons having objections to the Board issuing an order making final the tentative findings and conclusions shall file by August 1, 1979, a statement of objections, together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections. Such filings shall be served upon all parties listed below.

ADDRESSES: Objections to the issuance of a final order, or answers to the show-cause order, should be filed in the Dockets Section, Civil Aeronautic

⁴All members concurred.

Board, Washington, D.C., 20428, in Docket 35984, which we have entitled the *Boston-Cleveland Show-Cause Proceeding*

In addition, copies of such filings should be served on Air New England, Allegheny Airlines and Braniff Airways.

FOR FURTHER INFORMATION CONTACT: Samuel J. Lebowich, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, Washington, D.C. 20428, (202) 673-5328.

SUPPLEMENTARY INFORMATION: In the event no objections are filed, the Secretary of the Board will enter an order making final the tentative findings and conclusions contained in the show-cause order.

The complete text of Order 79-6-175 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 79-6-175 to the Distribution Section, Civil Aeronautics Board, Washington, D.C., 20428.

By the Civil Aeronautics Board: June 28, 1979.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 79-20510 Filed 7-2-79; 8:45 am]
BILLING CODE 6320-01-M

COMMISSION ON CIVIL RIGHTS

Maryland Advisory Committee; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Maryland Advisory Committee (SAC) of the Commission will convene at 6:30 p.m. and will end at 10:00 p.m., on July 21, 1979, at the Baltimore-Washington International Airport Terminal, Conference Room #1, Baltimore, Maryland.

Persons wishing to attend this open meeting should contact the Committee Chairperson of the Mid-Atlantic Regional Office of the Commission, 2120 L Street, N.W., Room 510, Washington, D.C. 20037.

The purpose of this meeting is to review information gathered in consultation with Baltimore police and organizational representatives on the procedures for handling complaints against police officers.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., June 28, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79-20558 Filed 7-2-79; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Economic Development Administration

Petitions by Fourteen Producing Firms for Determinations of Eligibility to Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from fourteen firms: (1) Lesco Sportswear Company, Inc., 422 Park Avenue, Williamsport, Pennsylvania 17701, a producer of men's, women's and children's jackets and blazers (accepted June 20, 1979); (2) Act II Lighting, Inc., P.O. Box 1052, Elkhart, Indiana 46514, a producer of lighting fixtures (accepted June 21, 1979); (3) Darst Bulb Farms, P. O. Box 806, Mount Vernon, Washington 98273, a producer of flower bulbs, peas, wheat and barley (accepted June 21, 1979); (4) Top Form Mills, Inc., 16 East 34th Street, New York, New York 10016, a producer of fabrics; women's panties, nightgowns, slips and loungewear; and boys' pajamas (accepted June 21, 1979); (5) Autocrat Corporation, Illinois & Benton Streets, New Athens, Illinois 62264, a producer of heaters, ranges and stoves (accepted June 21, 1979); (6) Pacific Accessory Corporation, 3613 W. MacArthur Boulevard, #603, Santa Ana, California 92704, a producer of mounting brackets and noise filters for automobile radios (accepted June 21, 1979); (7) Tonia Fashions, Inc., 85 Maple Street, Weehawkin, New Jersey 07087, a producer of women's rainwear (accepted June 21, 1979); (8) Keane Monroe Corporation, Box 1071, Broome and Mason Streets, Monroe, North Carolina 28110, a producer of automatic door operators (accepted June 22, 1979); (9) Mastercraft Leather Company, 1501 Pike Place, Seattle, Washington 98101, a producer of leather belts, handbags, coats and vests (accepted June 22, 1979); (10) Multivox Corporation of America, 370 Motor Parkway, Hauppauge, New York 11787, a producer of musical instruments (accepted June 25, 1979); (11) Glen Manufacturing, 1922 E. Harding Way, Stockton, California 95205, a producer of electronic frequency counters (accepted June 25, 1979); (12) Advanced Foam Systems, Inc., 2865 Thornhills Avenue, S. E., Grand Rapids, Michigan 49506, a producer of foam insulation and

pumping equipment (accepted June 25, 1979); (13) Foreman Manufacturing Company, Inc., 34 W. Black Horse Pike, Williamstown, New Jersey 08094, a producer of women's rainwear (accepted June 25, 1979); and (14) N & R Fashions, Inc., 13½ Van Houten Street, Paterson, New Jersey 07505, a producer of women's coats (accepted June 25, 1979).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93-618) and §315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315).

Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business on July 13, 1979.

Charles L. Smith,

Acting Chief, Trade Act Certification Division, Office of Eligibility and Industry Studies.

[FR Doc. 79-20490 Filed 7-2-79; 8:45 am]

BILLING CODE 3510-24-M

Office of the Secretary

Importers and Retailers' Textile Advisory Committee; Notice of Renewal

In accordance with the provisions of the Federal Advisory Committee Act, (5 U.S.C. App. (1976)) and Office of Management and Budget Circular A-63 (revised), and after consultation with the General Services Administration, the delegate of the Secretary of Commerce has determined that the renewal of the Importers' Textile Advisory Committee and redesignation of it as the Importers and Retailers' Textile Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department of Commerce by law.

The Committee was initially established by the Secretary of Commerce on August 13, 1963. Its

purpose was, and continues to be, to advise U.S. Government officials on the effects on import markets of cotton, wool and man-made fiber textile agreements. The information and recommendations of the Committee are not only essential to the effective functioning of the textile agreements, but are invaluable to U.S. negotiators in reaching new textile agreements. The Committee represents retailers and importers who are directly affected by the textile program. It is essential that there be a mechanism for obtaining their views and advice. The Committee's functions cannot be duplicated by any government organizational element or other advisory committees.

The Committee will have balanced representation of not more than 25 members who are directly involved in importing, retailing textile and apparel products, or who represent consumer or public interest groups. Members will be appointed by the Secretary of Commerce and will serve two-year, renewable terms.

The Committees will continue to function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act.

Copies of the Committee's revised Charter will be filed with appropriate committees of the Congress, and a copy will be forwarded to the Library of Congress.

Inquiries or comments may be addressed to Mr. Arthur Garel, Director, Office of Textiles, Bureau of Domestic Business Development, Industry and Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 377-5078.

Dated: June 25, 1979.

Guy W. Chamberlin, Jr.,

Assistant Secretary for Administration.

[FR Doc. 79-20471 Filed 7-2-79; 8:45 am]

BILLING CODE 3510-17-M

Financial Disclosure Reports; Interim Procedures for Public Inspection and Copying—Amendments

Section 8(b) of Pub. L. 96-19, amends Pub. L. 95-521, the Ethics in Government Act of 1978 (the Act), by prohibiting public disclosure of financial reports except in response to written applications containing specified information. Therefore, the Department makes the following changes in its procedures (published at 44 FR 28395, May 15, 1979) regarding access to financial disclosure reports:

A: Renumber paragraph 3 to become paragraph 3(a) and add paragraphs 3(b) and 3(c) to read as follows:

"(b) Those who wish to inspect or copy any report at the Facility must first sign a written application which states: 1) name, occupation and address, 2) name and address of any other person or organization on whose behalf the inspection or copy is requested, and 3) that the requester is aware of the prohibitions on the obtaining or use of the report. Applications may be made on forms which are available at the Facility, but any legible application which contains the required items of information will be accepted.

(c) Each written application will be publicly available upon request throughout the period during which the corresponding report(s) is publicly available."

B: In paragraph 4(b), the last sentence is deleted and replaced with:

"The request shall be signed by the individual requester, shall include the same information required in the written application described in paragraph 3(b) above, and shall include the appropriate fee for copying and mailing calculated under paragraph 5(b) below. Each mail request shall be made publicly available in the same manner as written requests in 3(c) above. If a mail request does not contain all of the required information, the requester shall be mailed an application form to be completed and returned, except that if the mailed request supplies all information other than a statement of awareness of prohibitions on access and use, then a copy of the prohibitions shall be mailed along with the copies of any reports. If the correct fees are not included in a request by mail, then the requester shall be notified of the correct fees which must be paid before copies can be made."

C: Paragraph 6(b) is deleted and paragraph 6(a) becomes 6.

D. The above amendments are to be effective immediately.

Dated: June 23, 1979.

William V. Skidmore,
Acting General Counsel.

[FR Doc. 79-20440 Filed 7-2-79; 8:45 am]

BILLING CODE 3510-17-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Additional Import Controls on Certain Man-Made Fiber Apparel Products From Thailand

June 28, 1979.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Controlling man-made fiber blouses (not knit) in Category 641 from Thailand during the agreement year which began on January 1, 1979. (A

detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), September 5, 1978 (43 FR 39408), January 2, 1979 (44 FR 94), March 22, 1979 (44 FR 17545), and April 12, 1979 (44 FR 21843)).

SUMMARY: Under the terms of paragraph 12 of the Bilateral Cotton, Wool and Man-Made-Fiber Textile Agreement of October 4, 1978, as amended, between the Governments of the United States and Thailand, the United States Government has decided to control imports of man-made fiber apparel products in Category 641, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1979 and extends through December 31, 1979.

EFFECTIVE DATE: July 2, 1979.

FOR FURTHER INFORMATION CONTACT: Norman Duckworth, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

SUPPLEMENTARY INFORMATION: On January 3, 1979, there was published in the Federal Register (44 FR 932) a letter dated December 27, 1978 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs which established levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products, produced or manufactured in Thailand and exported to the United States during the twelve-month period which began on January 1, 1979. In accordance with the terms of the bilateral agreement, as amended, the United States Government has decided also to control imports of apparel products in Category 641 at the specific limit of 132,828 dozen established for that period.

Accordingly, there is published below a letter from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs directing that imports in Category 641 be limited to the designated level of restraint. The level has not been adjusted to reflect any imports during the period which began on January 1, 1979. As the data become available, adjustments will be made in the level to account for imports in the

category after December 31, 1978 and through the effective date of this action.

Edward Gottfried,

Acting Chairman, Committee for the Implementation of Textile Agreements.

June 28, 1979.

Committee for the Implementation of Textile Agreements

Commissioner of Customs, Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner:

This directive amends, but does not cancel, the directive issued to you on December 27, 1978 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products produced or manufactured in Thailand.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 14, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 4, 1978, as amended, between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on July 2, 1979 and for the twelve-month period beginning on January 1, 1979 and extending through December 31, 1979 entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 641, produced or manufactured in Thailand, in excess of 132,828 dozen.¹

Man-Made fiber textile products in Category 641, produced or manufactured in Thailand and exported to the United States before January 1, 1979 shall not be subject to this directive.

Man-made fiber textile products in Category 641 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), September 5, 1978 (43 FR 39408), January 2, 1979 (44 FR 94), March 22, 1979 (44 FR 17545), and April 12, 1979 (44 FR 21843).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The action taken with respect to the Government of Thailand and with respect to imports of man-made fiber textile products from Thailand has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs

¹The level of restraint has not been adjusted to account for any imports after December 31, 1978.

functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,
Edward Gottfried,
*Acting Chairman, Committee for the
Implementation of Textile Agreements.*

[FR Doc. 79-20523 Filed 7-2-79; 8:45 am]
BILLING CODE 3510-25-M

Adjusting Import Restraint Level for Certain Cotton Textile Products from Pakistan

June 25, 1979

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Granting an increase for swing and carryforward on Category 363 (cotton terry and other pile towels) during the agreement year which began on January 1, 1979. (A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), September 5, 1978 (43 FR 39408), January 2, 1979 (44 FR 94), March 22, 1979 (44 FR 17545), and April 12, 1979 (44 FR 21843)).

SUMMARY: Paragraphs 7(b) and 8(a)(ii) of the Bilateral Cotton Textile Agreement of January 4 and 9, 1978, between the Governments of the United States and Pakistan provide, respectively, for percentage increases in certain specific category ceilings during an agreement year (swing) and for the borrowing of yardage from the following year's level with the amount utilized deducted from the level in the following year (carryforward). Pursuant to the foregoing paragraphs of the bilateral agreement and at the request of the Government of Pakistan, the import restraint level established for Category 363 is being increased to 5,833,640 numbers for the twelve-month period which began on January 1, 1979 and extends through December 31, 1979.

EFFECTIVE DATE: June 25, 1979.

FOR FURTHER INFORMATION CONTACT: Carl Ruths, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5421).

SUPPLEMENTARY INFORMATION: On January 2, 1979 a letter dated December 27, 1978 from the Chairman of the Committee for the Implementation of

Textile Agreements to the Commissioner of Customs was published in the Federal Register (44 FR 92), which established import restraint levels for certain specified categories of cotton textile products, produced or manufactured in Pakistan and exported to the United States during the twelve-month period which began on January 1, 1979 and extends through December 31, 1979.

In the letter published below the Commissioner of Customs is directed, in accordance with the provisions of the bilateral agreement, to amend the level of restraint previously established for Category 363, increasing it to 5,833,640 numbers.

Edward Gottfried,
*Acting Chairman, Committee for the
Implementation of Textile Agreements.*
June 25, 1979.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner:

On December 27, 1978, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, during the twelve-month period beginning on January 1, 1979 and extending through December 31, 1979 of cotton textile products in certain specified categories, produced or manufactured in Pakistan, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.¹

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 14, 1977; pursuant to paragraphs 7(b) and 8(a)(ii) of the Bilateral Cotton Textile Agreement of January 4 and 9, 1978, between the Governments of the United States and Pakistan; and in accordance with the provisions of Executive Order 11951 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed, effective on June 25, 1979, to increase the twelve-month level of restraint established for cotton textile products in Category 363 to 5,833,640 numbers.²

The action taken with respect to the Government of Pakistan and with respect to imports of cotton textile products from Pakistan has been determined by the

¹The term "adjustment" refers to those provisions of the Bilateral Cotton Textile Agreement of January 4 and 9, 1978, between the Governments of the United States and Pakistan, which provide, in part, that: (1) within the aggregate and applicable group limits of the agreement, specific levels of restraint may be exceeded by designated percentages; (2) these same levels may be increased for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

²The level of restraint has not been adjusted to reflect any imports after December 31, 1978.

Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register

Sincerely,
Edward Gottfried,
*Acting Chairman, Committee for the
Implementation of Textile Agreements.*

[FR Doc. 79-20524 Filed 7-2-79; 8:45 am]
BILLING CODE 3510-25-M

Adjusting Level of Restraint for Certain Wool Apparel Products Imported from India

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Restoring unused carryforward in the amount of 6,369 dozen, previously deducted from the level of restraint established for men's and boys', women's, girl's and infants' cotton trousers in Category 347/348, produced or manufactured in India and exported to the United States during the twelve-month period which began on January 1, 1979. (A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), September 5, 1978 (43 FR 39408), January 2, 1979 (44 FR 94), March 22, 1979 (44 FR 17545), and April 12, 1979 (44 FR 21843)).

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 30, 1977, as amended, between the Governments of the United States and India provides, among other things, for the borrowing of designated amounts from the succeeding year's levels (carryforward) and deducting the amounts utilized from the levels in the succeeding year. The amount of 6,369 dozen was applied to the level of restraint for Category 347/348 during the agreement year which began on January 1, 1978 and was deducted from the level established for the year which began on January 1, 1979. It has been determined that the carryforward was not used in 1978. Accordingly, in the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directed the Commissioner of Customs to increase by 6,369 dozen the level of restraint for cotton textile products in Category 347/348, produced or manufactured in India, from 105,086 dozen to 111,455 dozen during the

twelve-month period which began on January 1, 1979.

EFFECTIVE DATE: June 27, 1979.

FOR FURTHER INFORMATION CONTACT: Jane C. Bonds, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, Washington, D.C., 20230 (202/377-5421).

SUPPLEMENTARY INFORMATION: On January 9, 1979, there was published in the Federal Register (44 FR 2003) a letter dated January 5, 1979 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established import restraint levels for certain cotton, wool and man-made fiber textile products, produced or manufactured in India and exported to the United States during the twelve-month period which began on January 1, 1979. The letter published below restores carryforward deducted from the level of restraint established for Category 347/348 during that twelve-month period.

Edward Gottfried,
Acting Chairman, Committee for the Implementation of Textile Agreements.
June 27, 1979.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner:

This directive amends, but does not cancel, the directive of January 5, 1979 from the Chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of certain categories of cotton, wool and man-made fiber textile products, produced or manufactured in India.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Wool and Man-Made Fiber Textile Agreement of December 30, 1977, as amended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed, effective on June 27, 1979 to increase the twelve-month level of restraint established in the directive of January 5, 1979 for Category 347/348 to 111,455 dozen.

The action taken with respect to the Government of India and with respect to imports of cotton textile products from India has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to

the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

Edward Gottfried,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 79-20525 Filed 7-2-79; 8:45 am]

BILLING CODE 3510-25-M

Announcing Import Restraint Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products from Colombia, Effective on July 1, 1979

June 26, 1979.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Establishing import restraint levels for certain cotton, wool and man-made fiber textile products from Colombia during the twelve-month period beginning on July 1, 1979.

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 3, 1978, as amended, between the Governments of the United States and Colombia, establishes specific ceilings for cotton, wool and man-made fiber textile products in Categories 313, 443, 633 and 641 during the agreement year which begins on July 1, 1979 and extends through June 30, 1980. It also establishes consultation levels, among other categories, for cotton textile products in Categories 317 and 320, wool textile products in Category 444 and man-made fiber textile products in Category 666 during that same time period. Accordingly, there is published below a letter from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs directing that entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton, wool and man-made fiber textile products in the foregoing categories be limited to the designated twelve-month levels of restraint. (A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), September 5, 1978 (43 FR 39408), January 2, 1979 (44 FR 94), March 22, 1979 (44 FR 17545), and April 12, 1979 (44 FR 21843).)

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to

assist only in the implementation of certain of its provisions.

EFFECTIVE DATE: July 1, 1979.

FOR FURTHER INFORMATION CONTACT: William J. Boyd, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

Edward Gottfried,
Acting Chairman, Committee for the Implementation of Textile Agreements.
June 26, 1979.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner:

Under the terms of the Arrangement Regarding International Trade in Textile done at Geneva on December 20, 1973, as extended on December 14, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 3, 1978, as amended, between the Governments of the United States and Colombia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on July 1, 1979, and for the twelve-month period extending through June 30, 1980, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products, exported from Colombia in the following categories, in excess of the indicated twelve-month levels of restraint:

Category	Twelve-Month Level of Restraint
313.....	9,095,000 square yards
317.....	13,500,000 square yards
320.....	7,000,000 square yards
443.....	11,405 dozen
444.....	1,852 dozen
633.....	70,939 dozen
641.....	132,828 dozen
666.....	128,205 pounds

In carrying out this directive, entries of cotton, wool and man-made fiber textile products in Categories 313, 443, 444, 633 and 641, produced or manufactured in Colombia, which have been exported to the United States before July 1, 1979, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the twelve-month period beginning on July 1, 1978 and extending through June 30, 1979. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

Cotton and man-made fiber textile products in Categories 317, 320, and 666, produced or manufactured in Colombia and exported to the United States before July 1, 1979 shall not be subject to this directive. Cotton and man-made fiber textile products in Categories 317, 320, and 666 that have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the

effective date of this directive shall not be denied entry under this directive.

The levels of restraint set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of August 3, 1978, as amended, between the Governments of the United States and Colombia, which provide, in part, that: (1) within the applicable group limits of the agreement, specific levels of restraint may be exceeded by designated percentages; (2) these same levels may also be increased for carryover and carry forward up to 11 percent of the applicable category limit; (3) Certain consultation levels may be increased within the applicable group limits upon agreement between the two governments; and (4) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement referred to above will be made to you by letter.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), September 5, 1978 (43 FR 39408), January 2, 1979 (43 FR 94), March 22, 1979 (43 FR 17545), and April 12, 1979 (43 FR 21843).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Colombia and with respect to imports of cotton, wool and man-made fiber textile products from Colombia have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the direction to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register

Sincerely,
Edward Gottfried,

*Acting Chairman, Committee for the
Implementation of Textile Agreements.*

[FR Doc. 79-20526 Filed 7-2-79; 8:45 am]

BILLING CODE 3510-25-M

Adjusting Import Restraint Levels for Certain Wool and Man-Made Fiber Apparel Products From the Socialist Republic of Romania

June 27, 1979.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Applying available carryover to the import restraint levels established for men's and boys' wool suits in Category 443 and men's and women's man-made fiber sweaters in Category

645/646 during the agreement year which began on January 1, 1979.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), September 5, 1978 (43 FR 39408), January 2, 1979 (44 FR 94), March 22, 1979 (44 FR 17545), and April 12, 1979 (44 FR 21843).)

SUMMARY: Paragraph 6 of the Bilateral Wool and Man-Made Fiber Textile Agreement of June 17, 1977, as amended, between the Governments of the United States and the Socialist Republic of Romania provides, among other things, for the carryover of short-falls in certain category ceilings from the previous agreement year. Pursuant to paragraph 6 of the bilateral agreement, the import restraint levels established for wool and man-made fiber apparel products in Categories 443 and 645/646 during the agreement year which began on January 1, 1979 are being increased to 7,886 and 157,988 dozen, respectively.

EFFECTIVE DATE: June 27, 1979.

FOR FURTHER INFORMATION CONTACT: Shirley Hargrove, Trade and Industry Assistant, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-5423).

SUPPLEMENTARY INFORMATION: On January 3, 1979, there was published in the Federal Register (44 FR 934) a letter dated December 28, 1978 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, establishing import restraint levels for certain wool and man-made fiber textile products for the agreement year which began on January 1, 1979 and extends through December 31, 1979. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the previously established levels of restraint for Categories 443 and 645/646 to the designated levels.

Edward Gottfried

*Acting Chairman, Committee for the
Implementation of Textile Agreement.*

Committee for the Implementation of Textile Agreements

June 27, 1979.

Commissioner of Customs,
*Department of the Treasury,
Washington, D.C. 20229.*

Dear Mr. Commissioner: On December 28, 1978, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for

consumption, or withdrawal from warehouse for consumption of wool and man-made fiber textile products in certain specific categories, produced or manufactured in the Socialist Republic of Romania and exported to the United States during the agreement year which began on January 1, 1979, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.¹

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 14, 1977; pursuant to the Bilateral Wool and Man-Made Fiber Textile Agreement of June 17, 1977, as amended, between the Governments of the United States and the Socialist Republic of Romania; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to amend, effective on June 27, 1979, the levels of restraint established in the directive of December 28, 1978 for wool and man-made fiber textile products in Categories 443 and 645/646 to the following:

Category	Amended twelve-month level of restraint ¹
443	7,886 dozen.
645/646	157,988 dozen.

¹The levels of restraint have not been adjusted to reflect any imports after December 31, 1978.

The actions taken with respect to the Government of the Socialist Republic of Romania and with respect to imports of wool and man-made fiber textile products from Romania have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,
Edward Gottfried,
*Acting Chairman, Committee for the
Implementation of Textile Agreements.*

[FR Doc. 79-20527 Filed 7-2-79; 8:45 am]

BILLING CODE 3510-25-M

¹The term "adjustment" refers to those provisions of the Bilateral Wool and Man-Made Fiber Textile Agreement of June 17, 1977, as amended, between the Governments of the United States and the Socialist Republic of Romania which provide, in part, that: (1) specific limits within the applicable group limits may be exceeded by designated percentages to account for flexibility; (2) specific ceilings may be increased for carryover and carryforward up to 11 percent of the applicable category limit; (3) consultation levels may be increased within the applicable group limits upon agreement between the two governments; and (4) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

DEPARTMENT OF DEFENSE

Engineers Corps

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Flood Control Project Located at Asan Village, Territory of Guam.

June 21, 1979.

AGENCY: U.S. Army Corps of Engineers, DoD Honolulu Engineer District.

ACTION: Notice of Intent to Prepare a DEIS.

SUMMARY: 1. Brief Description of the Proposed Action. The proposed action is a flood damage reduction project on the Asan and Calacag Rivers, Asan Village, Guam. The project currently considers excavation and revetment (where required) beginning approximately 200 feet offshore and extending 1,600 feet upstream along Asan River. Similar work is anticipated on the Calacag River beginning at the confluence point with Asan River and extending 800 feet.

2. Brief Description of Reasonable Alternatives. Alternatives considered would include non-structural and structural measures:

a. *Relocation:* Conversion of the flood prone area to a use consistent with the hazard.

b. *Floodplain Management:* Providing zoning, building regulation, and warning systems compatible with the Asan redevelopment project.

c. *Floodproofing:* Elevate existing or planned damageable structures above the hazard level.

d. *Maintenance:* Clear and dredge the streams to provide water carrying capacity within the limits of the existing stream.

e. *Trapezoidal Shape Rock Lined Channel:* Excavate and line a new channel with rock.

f. *Levees:* Provide higher banked earth structures adjacent to the existing stream.

3. Brief Description of the Corps Scoping Process which is Reasonably Foreseeable for the DEIS.

a. Proposed Public Involvement Program. The program will involve coordination with the sponsoring agencies, other governmental agencies, community organizations, and the general public. Activities include informal meetings, workshops, formal public meetings, issuance of public notices and letter responses. All pertinent agencies have been notified of study initiation. A workshop session was held with interested agencies and the public in January 1979.

b. Identification of Significant Environmental Issues to be Analyzed in Depth in the DEIS.

(1) Effect of alternatives on known and unknown archeological and historic sites.

(2) Relationship of alternatives to War in the Pacific National Historical Park.

(3) Effect of project on aquatic/marine flora and fauna.

(4) Assessment of Asan community responses to alternatives.

c. Possible Assignments for Input into the EIS under Consideration Among the Lead and Cooperating Agencies.

(1) *U.S. Fish and Wildlife Service:* Provision of a 2(b) report.

(2) *Guam Historical Preservation Officer:* Identification and evaluation of previous surveys and recommendations for new surveys.

(3) *National Park Service:* Historic site evaluation report.

(4) *Guam Housing and Urban Redevelopment Authority:* Socio-economic and public involvement data.

d. Identification of Other Environmental Review and Consultation Requirements.

(1) "Protection of Historic and Cultural Properties," 36 CFR Part 800 (44 Federal Register, 30 January 1979), pursuant to Section 106 of the National Historic Preservation Act of 1966.

(2) Section 404 (Clean Water Act of 1977).

4. A scoping meeting will not be held on this project. Significant agencies involved in the planning process are already informed on the potential action. These agencies include the sponsoring agency, Guam Housing and Urban Renewal Authority (GHURA), Guam Environmental Protection Agency (GEPA), Territorial Historic Preservation Officer, National Park Service and the U.S. Fish and Wildlife Service.

5. Under the present schedule the DEIS will be made available to the public in December of 1979.

ADDRESS: Questions about the proposed action and DEIS can be answered by:

Mr. Paul Mizue, Hydraulic Engineer, U.S. Army Engineer District, Honolulu, Building 230, Fort Shafter, Hawaii 96858, 438-9526/438-1307.

Dated: June 21, 1979.

Peter D. Stearns,
Colonel, Corps of Engineers, District Engineer.

[FR Doc. 79-20492 Filed 7-2-79; 8:45 am]

BILLING CODE 3710-NN-M

Intent To Prepare a Revised Draft Supplemental Environmental Impact Statement (RDSEIS) for Proposed Downstream Measures at Harry S. Truman Dam and Reservoir, Osage River Missouri.

AGENCY: US Army Corps of Engineers, DoD.

ACTION: Notice of Intent to prepare a RDSEIS.

SUMMARY: 1. The proposed Federal action is to ameliorate the downstream impacts caused by power operation of the Harry S. Truman Dam and Reservoir project (HST).

2. Reasonable alternatives include no action, various structural measures including levees and filling of low areas, and changes in operation plan of the power plant.

3. Scoping for the proposed action is not required in accordance with 43 CFR 1502.9(c)(4) of the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act issued by the Council on Environmental Quality.

4. Public involvement to date has included release of a Draft Supplemental Environmental Statement (DESIS) and Draft Feasibility Report on 12 April 1978 and a public meeting in Warsaw, MO on 4 May 1978. The RDSEIS is being prepared to address concerns raised during review of the DSEIS. Because of coordination on the previous draft, input at the public meeting, and extensive correspondence and meetings with Federal, State, and local interests, scoping meetings will not be held.

5. The Kansas City District estimates that the RDSEIS will be released for public review in February 1980.

ADDRESS: Questions about the proposed action and the RDSEIS should be directed to Mr. Leland C. Fuerst, Basin Planning Branch, US Army Engineer District, Kansas City, 700 Federal Building, Kansas City, Missouri 64108. Phone: (816) 374-2405.

Dated: June 22, 1979.

Paul D. Barber,
Chief, Engineering Division.
[FR Doc. 79-20493 Filed 7-2-79; 8:45 am]
BILLING CODE 3710-DD-M

Intent To Prepare a Draft Environmental Impact Statement for Proposed Flood Control Measures for the town of Florence, Colorado.

AGENCY: U.S. Army, Corps of Engineers, Albuquerque District, DOD.

ACTION: Preparation of a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. Proposed Action and Alternatives: The two projects authorized for study consists of two earthfill dams and two diversion channels on south bank tributaries of the Arkansas River and about six miles of levee along the south bank of the Arkansas River. Coal Creek Dam is located on Coal Creek about 1.3 miles upstream from the Arkansas River. The other dam is located on Oak Creek about 2.3 miles upstream from the Arkansas River. Chandler Creek Diversion diverts flows from Chandler Creek to Oak Creek Dam and the Oak Creek Outfall Channel conveys flows from Oak Creek Dam to the Arkansas River. Along with the projects authorized for study, a variety of alternatives involving various combinations of dams, levees, channels and non-structural measures are being studied as means of reducing flood damages to Florence caused by south bank tributaries of the Arkansas River. Alternatives to the south bank Arkansas River levee involve various degrees of protection, levee alignments to reduce environmental problems and non-structural alternatives. Advanced planning studies and the DEIS will concentrate on the above alternatives.

2. Public Involvement Process: The public involvement process for the Florence protection project will be directed toward those interests most affected by potential development. These interests include federal, state, and local agencies; environmental interests; and local residents of the area. A mailing list was established for circulation of the Notice of Initiation of Study utilizing attendance records of earlier coordination meetings and records for distribution of reports and information. Feed-back from the notice will be used to promote coordination meetings and workshops. It is envisioned that one formal public meeting will be held in October 1979 following the preliminary screening of alternatives. At regular intervals during the study, status presentations will be made at meetings of the Florence city Council and the Fremont Country Board of Country Commissioners. Affected federal, state and local agencies and other interested and/or affected organizations and parties are invited to participate in the public meetings and submit comments on the DEIS when it becomes available for public review as indicated below.

3. Significant Issues Analyzed: Significant issues to be analyzed will

include the impacts of the proposed work on the various affected flood plains, especially that of the Arkansas River. Impacts on cultural and historic resources, a comparison of current and projected future conditions with and without the project and the various alternatives and needs for mitigation will also be analyzed.

4. Public Review: A DEIS should be available for public review in January 1981.

5. Information: Questions about the DEIS may be answered by:

Mr. William Tully, USAED, Albuquerque,
P.O. Box 1580, Albuquerque, New Mexico
87103, AC 505 768-2657.

Larry A. Blair,
Lieutenant Colonel, CE, Acting District
Engineer.

June 26, 1979.

[FR Doc. 79-20434 Filed 7-2-79; (45 am)]

BILLING CODE 3710-KK-M

Defense Advanced Research Projects Agency

Privacy Act of 1974; Notice of System of Records: Amendments

AGENCY: Defense Advanced Research Projects Agency, DoD.

ACTION: Notification of amendments to one system of records.

SUMMARY: The Defense Advanced Research Projects Agency proposes to amend one system of records subject to the Privacy Act of 1974. The amended system of records is set forth under the "Amendment" heading below. The system being amended is set forth below in its entirety.

DATES: This system shall be amended as proposed without further notice on August 2, 1979, unless comments are received on or before August 2, 1979, which would result in a contrary determination and require republication for further comments.

ADDRESS: Privacy Act Officer, Defense Advanced Research Projects Agency, 1400 Wilson Boulevard, Arlington, Va. 22209.

FOR FURTHER INFORMATION CONTACT: Mr. James S. Nash, telephone 202-695-0970.

SUPPLEMENTARY INFORMATION: The Defense Advanced Research Projects Agency system of records notices as prescribed by the Privacy Act have been published in the Federal Register as follows:

FR Doc. 77-28255 (42 FR 50781) September 28, 1977.

FR Doc. 78-25819 (43 FR 42376 and 42434) September 20, 1978.

The proposed amendment is not within the purview of the provisions of the Office of Management and Budget (OMB) Circular A-103, Transmittal Memoranda No. 1 and No. 3, dated September 30, 1975 and May 17, 1976, respectively, which provide supplemental guidance to Federal Agencies regarding the preparation and submission of reports of their intention to establish or alter systems of personal records are required by the Privacy Act. This OMB guidance was set forth in the Federal Register (40 FR 45877) on October 3, 1975.

H. E. Lofdahl,

Director, Correspondance and Directives,
Washington Headquarters Services,
Department of Defense.

June 26, 1979.

Amendment

Following the identification code of the Defense Advanced Research Projects Agency record system and the specific changes made therein, the complete revised record system, as amended, is published in its entirety. The citation for the record system is contained in the September 20, 1978 issue of the Federal Register.

E DARPA 001

System name:

ARPA Personnel (43 FR 42435, September 20, 1978).

Changes:

Delete "ARPA" from the system name, and insert: "DARPA".

Categories of individuals covered by the system:

In line two, delete "ARPA" and insert: "DARPA".

Categories of records in the system:

Delete the entire entry, and insert: "File contains individual's Biographical Data: Name, Prename, Date of Birth (DOB), Age, Education; Classification Data: Job Series, Job Title, Position Description Number, Salary; Grade Data: Grade Type, Grade Step, DARPA Promotion, Last Within Grade Increase (WGI), Next Within Grade Increase (WGI); Office of Personnel Management Data: Service Computation Date (SCD), Years in Government; DARPA Data: Project, Civilian-Military Professional Support, Project Number, Entered on Duty (EOD) DARPA; Left DARPA, Years in DARPA; Military Data: Rank, Service, Reassignment Due, Slot Rank, DARPA Award, Date of Rank, Position Description; Review Data: Clearance, Current office assignment data, Eligibility for Retirement; Remarks;

Mailing Data: Title, Name, Spouse's Name, Street, City, State, Zip Code, Home Phone; Office Data: Name, Office Phone, Room, Division.

Authority for maintenance of the system:

In line two, delete "March 23, 1972", and insert: "June 8, 1978". Also delete "ARPA", and insert: "DARPA".

The routine uses section is revised to read as follows:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal users, uses, and purposes:

Mainly for internal managerial and administrative needs. Director and Deputy Director, DARPA, Administrative Officer, Staff Assistant, Administrative Office, and Systems analysts have access to complete file. Information in different combinations is used for monthly manpower counts, staffing balance for civilian vs. military, professional vs. clerical; grade and salary count. Individual organizational configuration only is available to appropriate Office Director for their managerial needs.

External users, uses, and purposes:

See Defense Advanced Research Projects Agency (DARPA) Blanket Routine Uses at the head of this Component's published system notices."

Retention and disposal:

In line three, delete "ARPA" and insert: "DARPA".

System manager(s) and address:

In line one, delete "ARPA" and insert: "DARPA".

Notification procedure:

Place a coma after the words "Administrative Officer", and insert: "DARPA".

Record access procedures:

In line two of paragraph one, lines two and three of paragraph two, and line two of paragraph three, delete "ARPA", and insert: "DARPA".

Contesting record procedures:

Delete the entire entry, and insert: "The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81."

E DARPA 004

SYSTEM NAME:

DARPA Personnel

SYSTEM LOCATION:

Defense Advanced Research Projects Agency, 1400 Wilson Blvd., Arlington, Va. 22209.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former DARPA employees, civilian and military, consultants and part-time employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains individual's Biographical Data: Name, Prenom, Date of Birth (DOB), Age, Education; Classification Data: Job Series, Job Title, Position Description Number, Salary; Grade Data: Grade Type, Grade Step, DAPA Promotion, Last Within Grade Increase (WGI), Next Within Grade Increase (WGI); Office of Personnel Management Data: Service Computation Date (SCD), Years in Government; DARPA Data: Project, Civilian-Military Professional Support, Project Number, Entered on Duty (EOD) DARPA; Left DARPA, Years in DARPA; Military Data: Rank, Service, Reassignment Due, Slot Rank, DARPA award, Date of Rank, Position Description; Review Data; Clearance, Current Office Assignment Data, Eligibility for Retirement; Remarks; Mailing Data: Title, Name, Spouse's Name, Street, City, State, Zip Code, Home Phone; Office Data: Name, Office Phone, Room, Division.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301; Department of Defense Directive 5105.41, June 8, 1978, establishing DARPA as a separate Agency of the Department of Defense under the direction, authority, and control of the Secretary of Defense.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

INTERNAL USERS, USES, AND PURPOSES:

Mainly for internal managerial and administrative needs. Director and Deputy Director, DARPA, Administrative Officer, Staff Assistant, Administrative Office, and Systems analysts have access to complete file. Information in different combinations is used for monthly manpower counts, staffing balance for civilian vs. military, professional vs. clerical; grade and salary count. Individual organizational configuration only is available to appropriate Office Director for their managerial needs.

EXTERNAL USERS, USES, AND PURPOSES:

See Defense Advanced Research Projects Agency (DARPA) Blanket Routine Uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic disk, computer paper printouts, paper records, and correspondence in file folders.

RETRIEVABILITY:

Data is retrievably by last name as well as by any of the data fields listed in RECORD-CATEGORY.

SAFEGUARDS:

Access to total file limited by password; building employs security guards. Files are maintained in combination locked files and in areas accessible only to authorized personnel that are properly screened and trained.

RETENTION AND DISPOSAL:

Files are permanent. There are no plans to retire or destroy ADP files. Paper files are destroyed by burning two years after employee has left DARPA.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Officer, DARPA, 1400 Wilson Blvd., Arlington, Va. 22209.

NOTIFICATION PROCEDURE:

Information may be obtained from: Administrative Officer, DARPA, Room 827, Architect Bldg., 1400 Wilson Blvd., Arlington, Va. 22209, Telephone: 202-694-3236.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Administrative Officer, DARPA, 1400 Wilson Blvd., Arlington, Va. 22209.

Written requests for information should contain the full name of the individual, the DARPA office assigned to currently or previously, and the period of employment with DARPA.

For personal visits, the individual should be able to provide some acceptable identification, such as DARPA pass, DoD pass, or verbal information that could be verified in his file.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Information is gathered from SF 171, SF 50, DD 2515, Optional Form 8, OSD military staffing plan and roster, military award forms.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 79-20387 Filed 7-2-79; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF DEFENSE**Department of the Navy****Deletions and Amendments to Systems of Records**

AGENCY: Department of the Navy (DON).

ACTION: Notice of deletions and amendments to systems of records.

SUMMARY: The Department of the Navy proposes to delete 8 and 6 existing systems of records subject to the Privacy Act of 1974. The specific changes to the systems being amended are set forth below, followed by the systems published in their entirety, as amended.

DATES: These systems shall be amended as proposed without further notice in 30 calendar days from the date of this publication unless comments are received on or before August 2, 1979, which would result in a contrary determination.

ADDRESS: Send comments to the systems manager identified in the particular record system notice.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn R. Rhoads, Privacy Act Coordinator, Office of the Chief of Naval Operations, (OP-09B1P), Department of the Navy, The Pentagon, Washington, DC 20350, telephone 202-694-2004.

SUPPLEMENTARY INFORMATION: The Navy systems of records notices as prescribed by the Privacy Act of 1974, 5 U.S.C. 552a (Pub. Law 93-579) have been published in the Federal Register as follows:

- FR Doc. 77-28255 (42 FR 51229) September 28, 1977
 FR Doc. 78-23953 (43 FR 42379 and 42497) September 20, 1978
 FR Doc. (43 FR 54124) November 20, 1978.

The proposed amendments are not within the purview of the provisions of 5 U.S.C. 552(o) of the Act which require

the submission of a new or altered system report.

H. E. Lofdahl,
*Director Correspondence and Directives
 Washington Headquarters Services
 Department of Defense.*

June 28, 1979.

Deletions

N00018-08

System name:

Navy Medical Department, Inpatient Data System (MED-6300-2) (42 FR 51254) 28 Sep 77

Reason:

This system is incorporated with N00018-03.

N00018-07

System name:

Active Duty Navy and Marine Corps Death System (Civilian/overseas death certificates) (42 FR 51255) 28 Sep 77

Reason:

This system is incorporated with N00018-03.

N00018-08

System name:

Navy Medical Department, Medical Board Data System (42 FR 51255) 28 Sep 77

Reason:

This system is incorporated with N00018-03.

N00019 AIR 953 BIO

System name:

Peoples files (42 FR 51257) 28 Sep 77

Reason:

This system has been discontinued.

N0003403

System name:

Military Pay System (42 FR 51275) 28 Sep 77

Reason:

This system is incorporated with N0003404.

N96021-52

System name:

Missing Persons and Death Cases (42 FR 51329) 28 Sep 77

Reason:

This system is incorporated with N00011J09.

N65872SA14203

System name:

Employee Salary and Overtime Report/Budget Book (42 FR 51311) 28 Sep 77

Reason:

This system has been discontinued.

N65872SA14304

System name:

Salary Report for Budget for PARS, IMMS, and non-ADP (43 FR 51312) 28 Sep 77

Reason:

This system has been discontinued.

Amendments

N00037CNM (MAT 09G1)

System name:

Investigatory (Fraud System) (42 FR 51278) 28 Sep 77

Changes:**Retrievability:**

Delete the entire entry and substitute "By name and SSN; by case name, type of crime and command."

Safeguards:

Add the following sentence at the end of the entry: "There is no possibility that the computer can be accessed from outside the controlled area."

Systems exempted from certain provisions of the act:

Delete entire entry and substitute: "Parts of this system may be exempt under 5 U.S.C. 552a (k) (1), (2) and (5), as applicable. For additional information, contact the System Manager."

N00164-01

System name:

Employee Explosives Certification Program (42 FR 51285) 28 Sep 77

Changes:**System location:**

Delete the entire entry and substitute with the following: "Organizational elements of the Department of the Navy as listed in the directory of Department of the Navy mailing addresses."

System manager(s) and address:

Delete the entire entry and substitute with the following: "Commanding officer or head of the organization in question. See directory of Department of the Navy mailing addresses."

Notification procedure:

Delete the first sentence and substitute with the following: "Individuals may inspect personnel certifying documents at local activity to which individual is assigned. Requesters . . ."

N31698.WHSP

System name:

White House Support Program (42 FR 51293) 28 Sep 77

Changes:**System location:**

Delete the entire entry and substitute: "White House Liaison Office, Office of the Secretary of the Navy, Department of the Navy, Washington, DC 20350."

Categories of individuals covered by the system:

Add the words "and contractor employees" in the second line after "civilian personnel."

Systems exempted from certain provisions of the act:

Delete entire entry and substitute: "Parts of this system may be exempt under 5 U.S.C. 552a (k)(1), (2), (3) and (5), as applicable. For additional information, contact the System Manager."

N6276903

System name:

International Legal Hold Files (42 FR 51297) 28 Sep 77

Changes:**System location:**

Delete the entire entry and substitute as follows: "U.S. Naval Legal Offices in a foreign country."

Categories of individuals covered by the system:

Delete the entire entry and substitute as follows: "Military personnel, members of civilian component and their dependents who have had criminal charges lodged against them in a foreign country."

Routine uses of records maintained in the system, including categories of users, and the purposes of such uses:

Delete the entire entry and substitute as follows: "Used by foreign civilian attorneys' in representing the accused, by the military legal advisor of the accused and by supervisory personnel monitoring the legal hold status of personnel abroad. Information may be released to other officials in the

Department of Defense for required reports."

System manager(s) and address:

Delete the entire entry and substitute as follows: "Commanding Officer or head of the organization in question. See directory of Department of the Navy mailing addresses."

Notification procedure:

Delete the first sentence in the entry and substitute: "Requester can write to the system manager giving name, rate and service number."

Record source categories:

Delete the entire entry and substitute as follows: "Foreign judicial system, accused, attorneys representing accused, military legal advisor, Provost Marshal's office, subject's commanding officer, witnesses, and the complainant."

N63285-01

System name:

NIS Investigative Files System (42 FR 51300) 28 Sept. 77

Changes:**Systems exempted from certain provisions of the act:**

Delete entire entry and substitute: "Parts of this system may be exempt under 5 U.S.C. 552a (j)(2) and (k)(1) through (6), as applicable. For additional information, contact the System Manager."

N66715.20SAS

System name:

Officer Selection and Appointment System (42 FR 51314) 28 Sep 77

Changes:**System location:**

In line 8, delete the words "Nuclear Power Directorate"

Systems exempted from certain provisions of the act:

Delete entire entry and substitute: "Parts of this system may be exempt under 5 U.S.C. 552a (k)(1), (5), (6) and (7), as applicable. For additional information, contact the System Manager."

N00037 CNM (MAT 09G1)

SYSTEM NAME:

Investigatory (Fraud System)

SYSTEM LOCATION:

Chief of Naval Material, Navy Department, Washington, D.C. 20360.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals suspected of fraud, convicted of fraud in Navy procurement, individuals suspected of being involved in theft of Government property, conflict of interest in matters relative to Navy procurement.

Names of individuals involved in areas of possible criminal misconduct pertaining to procurement and related matters within the cognizance of CNM.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Administrative memoranda
2. Investigative report summaries
3. Report of disciplinary action taken
4. Card index file, containing only the name and file number. It is used for report retrieval purposes.
5. Pertinent public court records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5, U.S. Code, Section 301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Uses are to disseminate information on procurement fraud and related matters to the officials in the Department of the Navy to assure that they are notified in fraud cases. To request official investigations, audits, to respond to congressional inquiries and to request reports of final action taken.

Internal users are subordinate officials to the CNM, CNO, SECNAV and ASN. Documents furnished to Department of Justice to be used in prosecutive actions. Reports are also used in connection with debarment/suspension actions and require notification D/A, AF, DSA, GSA, Defense Nuclear Agency, MARCORPS and DCAA.

Referrals to NIS (law enforcement).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

File folders, index cards.

RETRIEVABILITY:

By Name and SSN; by case name, type of crime and command.

SAFEGUARDS:

Access is limited to MAT 09G personnel. Files are stored in a locked bar cabinet. The area is sight controlled during normal work hours and locked during non duty hours. Building access is controlled during security hours by a Security Force, which also conducts roving patrols of the building. There is no possibility that the computer can be

accessed from outside the controlled area.

RETENTION AND DISPOSAL:

Files are kept for three years after final action is taken.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Material, Deputy Inspector General (Investigations), NAVMAT 09G1, Crystal Plaza, Bldg. 5e, Room 422, Washington, D.C. 20360.

NOTIFICATION PROCEDURE:

Written request to: Chief of Naval Material, ATTN: Deputy IG (Investigations), MAT 09G1, CP 5, Rm 422, Washington, DC 20360 giving full name, address, social security number and business affiliation.

Requester may visit, after written visit notification, Chief of Naval Material, Deputy IG (Investigations), MAT 09G1, CP 5, Rm 422, Washington, DC 20360 between the hours 0900-1500. Requestor must show proof of identity consisting of drivers license or ID containing photograph, Military ID card, etc.

RECORD ACCESS PROCEDURES:

The Agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Law enforcement investigative reports, Audit Reports, Inspection reports, credit reports and complainants.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system may be exempt under 5 U.S.C. 552 a (k) (1), (2) and (5), as applicable. For additional information contact the System Manager.

N00164-01

SYSTEM NAME:

Employee Explosives Certification Program.

SYSTEM LOCATION:

Organizational elements of the Department of the Navy as listed in the directory of Department of the Navy mailing addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All personnel involved in the process or evolutions of explosives operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual certifying document and combined register of all employees certified.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301 Departmental Regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To record the names of all employees and their qualifications to work in certain categories of explosives operations.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folder, punched cards.

RETRIEVABILITY:

SSN, Name.

SAFEGUARDS:

Personnel escort required.

RETENTION AND DISPOSAL:

Permanent, unless employee terminates or is no longer involved in explosives processes. Document returned to employee's department for routine disposal after deletion from program.

SYSTEM MANAGER(S) AND ADDRESS:

Commanding Officer or Head of the Organization in question, see Directory of Department of the Navy Mailing Addresses.

NOTIFICATION PROCEDURE:

Individuals may inspect personnel certifying documents at local activity to which individual is assigned. Requesters must be escorted and provide identification for inspection of their personnel records.

RECORD ACCESS PROCEDURES:

The agency rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Personnel files, previous supervisors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

N31698.WHSP

SYSTEM NAME:

White House Support Program

SYSTEM LOCATION:

White House Liaison Office, Office of the Secretary of the Navy, Department of the Navy, Washington, DC 20350.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy and Marine Corps military and civilian personnel and contractor employees who have been nominated by their employing activities for assignment to Presidential support duties.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel records, correspondence, and other documents and records in both automated and nonautomated form concerning classification, security clearances, assignment, training and other qualifications relating to suitability for Presidential support duties.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Officials and employees of the Department of the Navy, other components of the Department of Defense, and Executive Office of the President in the performance of their official duties related to personnel administration and the evaluation and nomination of individuals for assignment to Presidential support duties; officials and employees of other federal agencies and offices, upon request, in the performance of their official duties related to the provision of Presidential support and protection; the Attorney General of the United States or his authorized representatives in connection with litigation, law enforcement or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies. General use and purpose: To insure that only those individuals most suitably qualified are assigned to duty in Presidential support activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tapes, disc drums, and on punched cards. Manual records may be stored in file folders, or microform.

RETRIEVABILITY:

Manual Records: By name if individual has been nominated and not yet approved. By OSD approval date if individual has been approved, and by employing activity removal date if an individual is removed from assignment for cause. Automated records may be retrieved by name, social security number, and control number.

SAFEGUARDS:

Records are afforded appropriate protection at all times, stored in locked rooms and locked file-cabinets, and are accessible only to authorized personnel who have a definite need to know and who are properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

Records are retained or disposed of in accordance with SECNAVINST P5212.5B, subj: Disposal of Navy and Marine Corps records.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Aide to the Secretary of the Navy, Navy Department, Washington, DC 20350.

NOTIFICATION PROCEDURE:

Requests for individuals by correspondence should be addressed to the Office of the Administrative Aide to the Secretary of the Navy, Navy Department, Washington, DC 20350. Visits are limited to the Office of the Administrative Aide to the Secretary of the Navy. Written requests should contain the full name of the individual and his social security number. For personal visits, the individual should be able to provide some acceptable identification, i.e., driver's license, etc.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the system manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Officials and employees of the Department of the Navy and other Department of Defense components; federal, state, and local court documents; civilian and military investigative reports; general correspondence concerning the individual; and federal and state agency records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system may be exempt under 5 U.S.C. 552a(k)(1), (2), (3) and (5), as applicable. For additional information, contact the system manager.

N6276903

SYSTEM NAME:

International Legal Hold Files

SYSTEM LOCATION:

U.S. Naval legal offices in a foreign country.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel, members of the civilian component and their dependents who have had criminal charges lodged against them in a foreign country.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case and card files containing copies of legal documents received and filed relative to the case, statements, affidavits, handwritten notes, and other miscellaneous data about the particular case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEMS:

5 U.S.C. 301

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Used by foreign civilian attorneys representing accused, by the military legal advisor of the accused, and by supervisory personnel monitoring the legal hold status of personnel abroad. Information may be released to other officials in the Department of Defense for required reports.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

File folders and file cards.

RETRIEVABILITY:

Files are retrieved by name.

SAFEGUARDS:

Only personnel in international law department are authorized access. Building is kept locked when not occupied.

RETENTION AND DISPOSAL:

Per SECNAV Records Disposal Manual.

SYSTEM MANAGER (S) AND ADDRESS:

Commanding Officer or head of the organization in question. See directory of Department of the Navy mailing addresses.

NOTIFICATION PROCEDURE:

Requester can write to the system manager giving name, rate and service number. Military ID or any standard ID showing applicant's photo shall be sufficient for personal visits.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the System Manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Foreign Judicial System, accused, attorneys representing accused, military legal advisor, Provost Marshal's Office, subject's commanding officer, witnesses, and the complainant.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None

N63285-01

SYSTEM NAME:

NIS Investigative Files System

SYSTEM LOCATION:

Primary System—NIS Records Management Division Administration Department, NIS Headquarters, Hoffman Building, 2461 Eisenhower Avenue, Alexandria, Virginia 22331.

Decentralized Segments—Naval Investigative Service Offices (NISOs) retain copies of certain segments of the investigative files, and related documentation for up to one year. Addresses of these offices are included in the directory of Department of the Navy mailing addresses. Naval Investigative Service Resident Agencies retain copies of investigative reports during pendency and for 90 days thereafter. They also retain evidence custody cards on persons from whom evidence was seized. The number and location of these Resident Agencies are subject to change in order to meet the requirements of the Department of the Navy. Current location may be obtained from Naval Investigative Service Headquarters.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons in the following categories who require access to classified defense information prior to August 1972: Active and inactive members of the naval service, civilian personnel employed by the Department of the Navy (DON), industrial and contractor personnel, civilian personnel being considered for sensitive positions, boards, conferences, etc., civilian personnel who worked or resided overseas, Red Cross personnel. Civilian and military personnel accused, suspected or victims of felonious type offenses, or lesser offenses impacting on the good order, discipline, morale or security of the DON. Civilian personnel seeking access to or seeking to conduct or operate any business or other function aboard a DON installation, facility or ship. Civilian or military personnel involved in the loss, compromise or unauthorized disclosure of classified material/information. Civilian and military personnel who were of counterintelligence interest to the DON.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in the system: Official Reports of Investigation (ROI) prepared by NIS or other military, federal, state, local or foreign law enforcement or investigative body on either hard copy or microfilm. NIS Information reports (NIRs). NIRs document information received by NIS which is of interest to the naval services or other law enforcement or investigative bodies. The information may be of criminal, counterintelligence or general investigative interest.

General Administration Reports (GEN). The investigative purpose of the GEN is to report the results of pre-employment inquiries on applicants for positions as Special Agents with NIS.

Investigative summaries, memoranda for the files and correspondence relating to specific cases and contained in the individual dossier.

Polygraph Data. A listing of persons who submitted to polygraph examination by NIS examiners. The data includes the examinee's name, location and results of the examination and the identity of the examiner.

Case Control and Management documents which serve as the basis for controlling and guiding the investigative activity.

Records identifying confidential sources and contacts with them.

Index to persons reported by 'Name Only'.

Wiretap Data Records. Automated listing of persons who were subjects of

wiretapping or eavesdropping operations.

Case Control and Narcotics Data Records. Automated records used only for statistical purposes in accounting for productivity, manhours expenditures; various statistical data concerning narcotics usage and used solely for statistical purposes.

Modus Operandi Files.

Screening Board Reports. These reports set forth the results of oral examinations of applicants for a position as a Special Agent with the NIS.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301

44 U.S.C. 3101

47 U.S.C. 605

Executive Memorandum of 26 June 1939; Investigations of espionage, counterespionage and sabotage matters.

Executive Order 10450; Security Requirements for Government employees.

ROUTINE USES OF RECORD MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in this system is (was) collected to meet the investigative, counterintelligence and security responsibilities of the DON. This includes personnel security, internal security, criminal and other law enforcement matters all of which are essential to the effective operation of the department.

The records in this system are used to make determinations of; suitability for access or continued access to classified information, suitability for employment or assignment, suitability for access to military installations or industrial firms engaged in government projects/contracts, suitability for awards or similar benefits; referral to other law enforcement or investigatory authorities for law enforcement purposes; use in current law enforcement investigation of any type including applicants; use in judicial or adjudicative proceedings including litigation or in accordance with a court order; insurance claims including workmens compensation; provide protective services under the DOD Distinguished Visitor Protection Program and to assist the U.S. Secret Service in meeting its responsibilities; Congressional interest including the General Accounting Office; respond to the Freedom of Information and Privacy Acts; use for public affairs or publicity purposes such as wanted persons, etc.; referral of matters under their cognizance to federal, state or local law

enforcement authorities including criminal prosecution, civil court action or regulatory order; disclosure to federal intelligence/counterintelligence agencies of matters under their purview; disclosure to foreign government organizations of criminal and counterintelligence information necessary for the prosecution of justice, or for mutual security and protection; advising higher authorities and naval commands of important developments impacting on security, good order or discipline; reporting of statistical data to naval commands and higher authority; disclosure to the National Archives; use by other investigative unit (federal, state or local) for whom the investigation was conducted; release to defense counsel, disclosure in course of acquiring the information, input into the Defense Central Index of Investigations.

Users of the records in this system include employees of the NIS who require access for operational, administrative or supervisory purposes; DOD criminal investigative, investigative and intelligence units; federal, state and local units engaged in criminal investigative, investigative and intelligence activities; federal regulatory agencies with investigative units, DOD components making suitability determinations; federal, state or local judicial or adjudicative bodies; Congressional bodies, including the General Accounting Office who require access within the scope of their jurisdiction for those authorized purposes enumerated above to the extent that those purposes are within the scope of their authority. Commercial insurance companies in those instances in which they have a legitimate interest in the results of the investigation, but only to that extent and provided an invasion of privacy is not involved.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records in file folders, on cards and on microfilm. Automated records on magnetic tape.

RETRIEVABILITY:

NIS permanent files are filed by terminal digit number. In order to locate the file it is necessary to query the Defense Central Index of Investigations (DCII) computer using the name of the subject and at least one other personnel identifier such as date of birth, place of birth, social security number or military service number. Files may also be retrieved by a case control number assigned at the time the investigation is

initiated. Copies of the files in the NIOSs and Resident Agencies are retrieved by name.

SAFEGUARDS:

NIS investigative files (permanent and temporary) are maintained and stored in open shelves and filing cabinets located in secured areas accessible only to authorized personnel. Dated files are retired to the Washington National Records Center where retrieval is restricted to NIS authorized personnel.

RETENTION AND DISPOSAL:

Retention of completed NIS Investigative files on Personnel Security Investigations (PSI) is authorized for 30 years unless adverse information is developed in which case they may be retained permanently. PSI files on persons considered for affiliation with DOD will be destroyed within one year if the affiliation is not consummated. Criminal files may be retained permanently. Counterintelligence files on persons affiliated with DOD may be retained permanently. Such records on persons not affiliated with DOD must be destroyed within 90 days or 1 year under criteria set forth in DOD Directive 5200.27, unless retention is required by law or specifically approved by the Secretary of the Navy. Files retained in the NISOs and Resident Agencies are temporary and are destroyed after 90 days or 1 year, as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

The Director, Naval Investigative Service has ultimate responsibility for all NIS file holdings. Management of NIS permanent files is the direct responsibility of the Assistant Director for Administration. NISO Commanding Officers are responsible for files retained in their NISO subordinate Resident Agencies.

NOTIFICATION PROCEDURE:

All requests relative to the retention and/or releasability of NIS investigative files should be addressed to the Director, Naval Investigative Service, 2461 Eisenhower Avenue, Alexandria, Virginia 22331. Requests must contain the full name of the individual and at least one additional personal identifier such as date and place of birth, social security number or military service number. Personal visits by requesters should be confined to the Naval Investigative Service headquarters at the above address. It should be borne in mind that the vagaries of the automated indexing system might preclude a same day response. Persons submitting written requests must properly establish

their identity to the satisfaction of the NIS. Where a question exists a signed, notarized statement or other certified form of identification will be required. Individuals appearing in person may present proof of identification in the form of military ID card, valid driver's license, or other suitable form of identification bearing a photograph and signature. Attorneys or other persons acting on behalf of a subject of a record must provide a notarized authorization from the subject record.

RECORD ACCESS PROCEDURES:

Individuals may make inquiries relative to NIS records maintained on them thru the NIS Information and Privacy Coordinator, Naval Investigative Service Headquarters, at the address specified in the previous paragraph.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSMANAGER.

RECORD SOURCE CATEGORIES:

See Exemption.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system may be exempt under 5 U.S.C. 552a(j)(2) and (k)(1) through (6), as applicable. For additional information, contact the System Manager.

N66715.20SAS

SYSTEM NAME:

Officer Selection and Appointment System

SYSTEM LOCATION:

Primary System—Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, Virginia 22203. Decentralized segments—Headquarters, Navy Recruiting Activities and subsidiary offices; Armed Forces Entrance and examining Centers; Bureau of Naval Personnel; Bureau of Medicine and Surgery; National Personnel Records Centers; Naval Reserve Units; Naval Education and Training Activities; NROTC Units; Naval Sea Systems Command Headquarters; Naval Intelligence Command and subsidiary activities; Department of Defense Medical Examination Review Board.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have made application for direct appointment to commissioned grade in the Regular

Navy or Naval Reserve, applied for officer candidate program leading to commissioned status in the U.S. Naval Reserve, applied for a Navy/Marine Corps sponsored NROTC scholarship program or preparatory school program, applied for interservice transfer to Regular Navy or Naval Reserve.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records and correspondence in both automated and non-automated form concerning any applicant's personal history, education, professional qualifications, physical qualifications, mental aptitude, character and interview appraisals, National Agency Checks and certifications of background investigations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10, United States Code, Sections governing authority to appoint officers. 10 U.S.C. Sections 591, 600, 716, 2107, 2122, 5579, 5600. Merchant Marine Act of 1939 (as amended); Executive Orders 9397, 10450, 11652, 12085; 5 U.S.C. 301 Departmental Regulations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Officials and employees of the Department of the Navy in the performance of their duties in managing and contributing to the recruitment of qualified men and women for officer programs in the regular and reserve components of the Navy.

Officials and employees of the Department of Defense in the performance of their official duties.

Officials and employees of the Department of Transportation in the performance of their official duties.

The Comptroller General or any of his authorized representatives, upon request, in the course of the performance of duties of the General Accounting Office relating to the management of quality military recruitment.

The Attorney General of the United States or his authorized representatives in connection with litigation, fraudulent enlistment or other matters under the jurisdiction of such agencies. Officials and employees of other Departments and agencies of the Executive Branch of government, upon request, in the performance of their official duties related to the management of quality military recruitment.

Officials and employees of the Veterans Administration and Selective Service Administration in the performance of their official duties

related to enlistment and reenlistment eligibility and related benefits.

The Senate or the House of Representatives of the United States or any committee or subcommittee on matters within their jurisdiction requiring disclosure of files or records of personnel covered by this system.

Such civilian contractors and their employees as are or may be operating in accordance with an approved official contract with the U.S. Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are stored on magnetic tape; paper records are stored in file folders.

RETRIEVABILITY:

Name and social security number of applicant.

SAFEGUARDS:

Records kept in file cabinets and offices locked after working hours. Based on requirements of user activity, some buildings have 24-hour security guards.

RETENTION AND DISPOSAL:

Application records maintained six months; after six months, summary sheets maintained for 5 years at National Record Storage Center. NROTC application records kept for current year only. Correspondence files maintained for two years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, Virginia 22203.

NOTIFICATION PROCEDURE:

Requests by correspondence should be addressed to: Commander Naval Recruiting Command (Attn: Privacy Act Coordinator), 4015 Wilson Boulevard, Arlington, Va. 22203; or, Chief of Naval Reserve (Code 111C), New Orleans, Louisiana 70146, or to applicable Naval Recruiting District as listed under U.S. Government in white pages of telephone book. Letter should contain full name, address, social security account number and signature.

The individual may visit Commander, Navy Recruiting Command, 4015 Wilson Boulevard, Arlington, Va. 22203. Proof of identification will consist of picture-bearing or other official identification.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for contesting contents and appealing initial determinations by the individual concerned may be obtained from the System Manager.

RECORD SOURCE CATEGORIES:

Navy Recruiting personnel and employees processing application; Medical personnel conducting physical examination and private physicians providing consultations or patient history; character and employer references named by applicants; educational institutions, staff and faculty members; Selective Service Commission, local, state, and Federal law enforcement agencies; prior to current military service record; members of Congress; Commanding Officer of Naval Unit, if active duty; Department of Navy offices charged with personnel security clearance functions. Other officials and employees of the Department of the Navy, Department of Defense, and components thereof, in the performance of their official duties and as specified by current instructions and regulations promulgated by competent authority.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Parts of this system may be exempt under 5 U.S.C. 552a(k) (1), (5), (6) and (7), as applicable. For additional information contact the System Manager.

[FR Doc. 79-20457 Filed 7-2-79; 8:45 am]

BILLING CODE 3810-71-M

Office of the Secretary of Defense

Privacy Act of 1974; Notice of Systems of Records: Amendments

AGENCY: Office of the Secretary of Defense (OSD).

ACTION: Notification of amendments to systems of records.

SUMMARY: The Office of the Secretary of Defense proposes to amend the Introductory Paragraph to OSD's Systems of Records, and 28 of its systems of records. The 28 amended systems are set forth below under "Amendments".

DATES: These systems shall be amended as proposed without further notice on August 2, 1979 unless comments are received on or before August 2, 1979, which would result in a contrary determination and require republication for further comments.

ADDRESS: Privacy Act Officer, Office of the Secretary of Defense, Room 5C315, Pentagon, Washington, D.C. 20301.

FOR FURTHER INFORMATION CONTACT: Mr. James S. Nash, telephone 202-695-0979.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense (OSD) Systems of Records Notices as prescribed by the Privacy Act have been published in the Federal Register as follows:

FR Doc. 77-28255 (42 FR 50731) September 28, 1977.

FR Doc. 78-25819 (43 FR 42374) September 20, 1978.

FR Doc. 78-34821 (43 FR 58405) December 14, 1978.

FR Doc. 78-35943 (43 FR 60331) December 27, 1978.

FR Doc. 79-8786 (44 FR 17780) March 23, 1979.

FR Doc. 79-11351 (44 FR 22143) April 13, 1979.

FR Doc. 79-15267 (44 FR 28706) May 16, 1979.

FR Doc. 79-17755 (44 FR 32724) June 7, 1979.

The proposed amendments are not within the purview of the provisions of the Office of Management and Budget (OMB) Circular A-108, Transmittal Memoranda No. 1 and No. 3, dated September 30, 1975, and May 17, 1976, respectively, which provide supplemental guidance to Federal agencies regarding the preparation and submission of reports of their intention to establish or alter systems of personal records as required by the Privacy Act. This OMB guidance was set forth in the Federal Register (40 FR 45877) on October 3, 1975.

H. E. Lofdahl,

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

June 26, 1979.

How systems of records are arranged. The Office of the Secretary of Defense (OSD), a Component of the Department of Defense, is located in the Pentagon. In providing immediate staff assistance and advice to the Secretary of Defense, independently organized and identified offices function in full coordination and cooperation. Therefore, the Office of the Secretary of Defense systems of records are not maintained or arranged by subject but established in functional areas of a particular responsible staff office. The Office of the Secretary of Defense includes the offices of the Under Secretaries of Defense, the Assistant Secretaries of Defense, the Assistants to the Secretary of Defense, the General Counsel, DoD, and such other staff offices as the Secretary of Defense establishes to assist him in carrying out his duties and responsibilities.

How to use the index guide. To assist the reader in locating and reviewing the particular record system of interest, the various staff offices and the prefix letter symbols represented as part of the record system identification for that office are set forth below:

OSD offices	Letter identification
Office of the Assistant to the Secretary of Defense (Atomic Energy).	DAE
Office of the Defense Audit Service.....	DAS
Office of the Special Assistant to the Secretary and Deputy Secretary of Defense.	DATSD
Office of the Assistant Secretary of Defense (Comptroller).	DCOMP
Office of the General Counsel, DoD.....	DGC
Office of the Assistant Secretary of Defense (Health Affairs).	DHA
Office of the Director, Information Operations and Reports.	DIO&R
Office of the Assistant Secretary of Defense (International Security Affairs).	DISA
Office of the Assistant to the Secretary of Defense (Legislative Affairs).	DLA
Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics).	DMRA&L
Office of the Directorate for Health Services (OCHAMPUS), DoD.	DOCHA
Office of the Assistant Secretary of Defense (Program Analysis and Evaluation).	DPA&E
Office of the Assistant Secretary of Defense (Public Affairs).	DPA
Office of the Commandant, Defense Systems Management College.	DSMC
Office of the Director, Washington Headquarters Services.	DWHS
Office of the Under Secretary of Defense for Policy.	DUSDP
Office of the Under Secretary of Defense for Research and Engineering.	DUSDRE

Amendments

Following the identification code of the OSD record systems and the specific changes made therein, the complete revised record systems, as amended, are published in their entirety. Federal Register citations for these record systems are found after the "System name:".

DAS 01

System name:

Defense Audit Service Management Information System (DAS/MIS) (43 42397, September 20, 1978).

Changes:

The routine uses section is amended by adding the following hearings:

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

Immediately after the heading, and before the words "Information is used as follows:" insert: "Internal users, uses, and purposes:".

After the end of the paragraph "(6) Travel Reporting", insert: "External users, uses, and purposes: See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices."

DCOMP PB03

System name:

Personnel Roster (42 FR 50741, September 28, 1977).

Changes:

System location:

Delete the entry, and insert: "Primary System—Office of Deputy Assistant Secretary of Defense (Program/Budget), Office of the Assistant Secretary of Defense (Comptroller) (OASD(C)), Directorate for Research and Development."

The routine uses section is revised to read as follows:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal users, uses, and purposes:

Used by the Director for Research and Development for personnel information.

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices."

Retention and disposal:

Delete "Data are destroyed through normal trash disposal. The data is never moved to the Federal Records Center, Federal Archives and Records Centers, National Archives or other designated depository," and insert: "Data is destroyed by tearing, shredding, or burning."

Notification procedure:

Delete "Area Code 202/697-1759", and insert: "202-697-1759".

Record access procedures:

Delete "Room 3A862", and insert: "Room 3B857".

Contesting record procedures:

Delete the entry, and insert: "The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81."

DCOMP PB04

System name:

(42 FR 50741, September 28, 1977).

Changes:

Delete the entry, and insert: "Primary System—Office of Deputy Assistant Secretary of Defense (Program/Budget), Office of Assistant Secretary of Defense

(Comptroller) (OASD(C)), Directorate for Program and Financial Control."

The routine uses section is amended by adding the following:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Insert the subheading "Internal users, uses, and purposes:" before "Used by the Director for Program and financial Control for Personnel Administration."

Next add "External users, uses, and purposes:" as the second subheading, and then add the entry: "See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this component's published system notices."

Retention and disposal:

Delete "Data are destroyed through normal trash disposal. The data is never moved to the Federal Records Center, Federal Archives and Records Center, National Archives or other designated depository," and insert: "Data is destroyed by tearing, shredding, or burning."

Notification procedure:

Delete "Area Code: 202/697-1759", and insert: "202-697-1759".

Record access procedures:

Delete the "Room 3B857", and insert: "Room 3B872".

Contesting record procedures:

Delete the entry, and insert: "The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction NO. 81."

DCOMP MS01

System name:

Training Records (42 FR 50737, September 28, 1977).

Changes:

System location:

Delete the entry, and insert: "Primary System—Office of the Deputy Assistant Secretary of Defense (Management Systems)(ODASD(MS)), Office of the Assistant Secretary of Defense (Comptroller)(OASD(C)), Pentagon, Washington, D.C. 20301.

"Decentralized Segments—Four Management Systems Directorates."

The routine uses section is revised to read as follows:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal users, uses, and purposes:

Information is used by the DASD(MS), his Principal Assistant, and Directors for planning, training of ODASD(MS) personnel.

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

Notification procedure:

Delete the word "Building" after the word "Pentagon".

Insert: "Washington, D.C. 20301" on the next line after the word "Pentagon".

Delete "Area Code".

Contesting record procedures:

Delete the entry, and insert: "The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81."

Record source categories:

Delete "SD Form 446", and insert: "SF 170".

DCOMP MSO3

System name:

Personnel Records (42 FR 50738, September 28, 1977).

Changes:

System location:

Delete the entry, and insert: "Primary System—Office of the Deputy Assistant Secretary of Defense (Management Systems) (ODASD(MS)), Office of the Assistant Secretary of Defense (Comptroller) (OASD(C)), Pentagon, Washington, D.C. 20301.

Decentralized Segments—Four Management Systems Directorates.

The routine uses section is revised to read as follows:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal users, uses, and purposes:

Information is used by the DASD(MS), his Principal Assistant, and Directors for personnel administration within the management responsibilities of ODASD(MS).

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

Notification procedure:

Delete "Area Code 202/695-3424", and insert: "202-695-3424".

Record access procedures:

Delete the entry, and insert: "Requests from personnel should be addressed to Office of the Secretary of Defense, ODASD(MS), Room 3E831, Pentagon, Washington, D.C. 20301, including personal identification."

Contesting record procedures:

Delete the entry, and insert: "The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81."

DCOMP MSO4

System name:

Civilian Pay Time and Attendance Report (42 FR 50738, September 28, 1977).

Changes:

System location:

Delete the entry, and insert: "Primary System—Office of the Deputy Assistant Secretary of Defense (Management Systems) (ODASD(MS)), Office of the Assistant Secretary of Defense (Comptroller) (OASD(C)), Pentagon, Washington, D.C. 20301.

Decentralized Segments—Four Management Systems Directorates.

The routine uses section is revised to read as follows:

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

Internal users, uses, and purposes:

Information is used by the Department of the Army to prepare payrolls, employee checks, and earnings and leave statements.

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

Notification procedure:

Insert "Washington, D.C. 20301" after the "Pentagon".

Delete "Area Code: 202/695-3424", and "insert: 202-695-3424".

Record access procedures:

Delete the entry, and insert: "Requests from personnel should include personal identification and be addressed to: Office of the Deputy Assistant Secretary of Defense (Management Systems) (ODASD(MS)), Office of the Assistant Secretary of Defense (Comptroller) (OASD(C)), Pentagon, Washington, D.C. 20301."

Contesting record procedures:

Delete the entry, and insert: "The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81."

DCOMP MS05

System name:

Request for Overtime Authorization (42 FR 50738, September 28, 1977).

Changes:

System location:

Delete the entry, and insert: "Primary System—Office of the Deputy Assistant Secretary of Defense (Management Systems) (ODASD(MS)), Office of the Secretary of Defense (Comptroller) (OASD(C)), Pentagon, Washington, D.C. 20301.

Decentralized Segments—Four Management Systems Directorates.

The routine uses section is revised to read as follows:

Routine uses of records maintained in the system, including, categories of users and the purposes of such uses:

Internal users, uses, and purposes:

Information is used by the DASD(MS), his Principal Assistant, and Directors to justify and approve overtime compensation for ODSAD (Management Systems) employees.

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

Notification procedures:

Delete "Area Code: 202/695-3424", and insert: "202-695-3424".

Record access procedures:

Delete "Office of SECDEF, ODASD(MS)", and insert: Office of the Deputy Assistant Secretary of Defense (Management Systems) (ODASD(MS)), Office of the Assistant Secretary of Defense (Comptroller) (OASD(C)), Pentagon, Washington, D.C. 20301."

Contesting record procedures:

Delete the entry, and insert: "The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81."

DCOMP MS06**System name:**

Time and Attendance Report (42 FR 50739, September 28, 1977).

Changes:**System location:**

Delete the entry, and insert: "Primary System—Office of the Deputy Assistant Secretary of Defense (Management Systems) (ODASD(MS)), Office of the Assistant Secretary of Defense (Comptroller) (OASD(C)), Pentagon, Washington, D.C. 20301.

Decentralized Segments—Four Management Systems Directorates."

The routine uses section is revised to read as follows:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal users, uses, and purposes:

Used as an office record of employees' time and attendance.

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

Notification procedure:

After "Pentagon Building", insert: "Washington, D.C. 20301."

Contesting record procedures:

Delete the entry, and insert: "The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81."

DCOMP MS07**System name:**

Classified Container Custodian Data, SD 411 (42 FR 50739, September 28, 1977).

Changes:**System location:**

Delete the entry, and insert: "Decentralized Segments—Four Management Systems Directorates, Office of the Deputy Assistant Secretary

of Defense (Comptroller) (OASD(C)), Office of the Assistant Secretary of Defense (Comptroller)(OASD(C)), Pentagon, Washington, D.C. 20301."

The routine uses section is revised to read as follows:

Routine uses of records maintained in the systems, including categories of users and the purposes of such uses:

Internal users, uses, and purposes:

Information is used by security personnel or counterintelligence personnel to contact the individuals in the event classified container is found unsecured.

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices."

Notification procedure:

Delete "Room 4B938", and insert: "Room 4B915".

Delete "Room 4B918", and insert: "Room 4B915".

Record access procedures:**Contesting record procedures:**

Delete the entry, and insert: "The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81."

DCOMP MS08**System name:**

List of personnel and security clearances (42 FR 50739, September 28, 1977).

Changes:**System location:**

Delete the entry, and insert: "Decentralized Segments—Four Management Systems Directorates, Office of the Deputy Assistant Secretary of Defense (Management Systems) (ODSASD) (MS)), Office of the Assistant Secretary of Defense (Comptroller) (OASD(C)), Pentagon, Washington, D.C. 20301."

The routine uses section is revised to read as follows:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal users, uses, and purposes:

Information is used by each Directorate Security Officer as reference of security clearance of each individual.

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices."

Notification procedure:

Delete "Room 4B938", and insert: "Room 4B915".

Record access procedures:

Delete "Room 4B938", and insert: "Room 4B915".

Contesting record procedures:

Delete the entry, and insert: "The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81."

DIO&R 01**System name:**

Combat Area Casualties (44 FR 22144, April 13, 1979).

Changes:

The routine uses section is revised to read as follows:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal users, uses, and purposes:

The purpose of this system of records is to compile a list of all military personnel who were killed, missing, captured, or interned in Southeast Asia. This list is used by the Office of the Assistant Secretary of Defense (International Security Affairs) (OASD (ISA)); the Defense Intelligence Agency (DIA), and other OSD activities.

External users, uses, and purposes:

To the Veterans Administration—listing the name, Social Security Number (SSN), and rank of all former prisoners-of-war of the Vietnam conflict for the purpose of conducting comprehensive studies of the disability compensation awarded to and the health care needs of veterans. To any public or private person for statistical purposes. The name, grade, date of birth only are released on those who are currently missing, captured, or interned.

DMRA&L 01.0**System name:**

Overseas Education Correspondence Files (43 FR 42400, September 20, 1978).

Changes:

Delete the above title and insert: "Teacher Correspondence Files".

Categories of individuals covered by the system:

Line two, delete the word "Branch", and insert: "Section".

Categories of records in the system:

Line two, delete the word "Branch", and insert "Section".

The routine uses section is revised to read as follows:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:**Internal users, uses, and purposes:**

Teacher Recruitment Section—To maintain accurate record of correspondence with individuals making inquiry to Section; any individual records might be transferred to any component of the Department of Defense having a need to know in the performance of official business.

External users, uses, and purposes:

Records may be disclosed to law enforcement or investigatory authorities for investigation and possible criminal prosecution, civil court action, or regulatory order."

Storage:

Insert the word "individual's" between the words "in" and "file".

System manager(s) and address:

In line one, delete "Overseas". Also delete "Education", and insert: "Schools".

Record access procedures:

In line two, delete the word "Division", and insert: "Section". Delete the word "Overseas", also delete "Education", and insert: "Schools".

DMRA&L 02.0**System name:**

Teacher Application Files (43 FR 42400, September 20, 1978)

Changes:**System location:**

In line four, delete "102", and insert: "120".

Categories of individuals covered by the system:

In line one, delete "Overseas", and insert: "Office of".

The routine uses section is revised to read as follows:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Teacher Recruitment Section—To determine qualifications, and make selection of candidates for positions with DoD Office of Dependents Schools of selected applicants; to review types of experience, educational background, evaluation of previous employers, professional credentials, and interviewer's rating.

Department of the Army—Staff Agencies and Commands to complete processing of hired individuals, to obtain Office of Personnel Management National Agency Check, medical examination, passports, arrange transportation and shipment/storage household goods, and to provide gaining Civilian Personnel Offices necessary documentation for placing individuals on rolls.

Department of the Air Force—Staff Agencies and Commands to complete processing of hired individuals, to obtain Office of Personnel Management National Agency Check, medical examination, passports, arrange transportation and shipment/storage household goods, and to provide gaining Civilian Personnel Offices necessary documentation for placing individuals on rolls.

Department of the Navy—Staff Agencies and Commands to complete processing of hired individuals, to obtain Office of Personnel Management National Agency Check, medical examination, passports, arrange transportation and shipment/storage household goods, and to provide gaining Civilian Personnel Offices necessary documentation for placing individuals on rolls.

Any individual records in a system of records might be transferred to any component of the Department of Defense having a need to know in the performance of official business.

External users, uses, and purposes:

Records may be disclosed to law enforcement or investigatory authorities for investigation and possible criminal prosecution, civil court action, or regulatory order."

System manager(s) and address:

In line one, delete "Overseas"; delete "Education", and insert: "Schools"; and delete "Office of the Secretary of Defense," and insert: "OASD (MRA&L)".

Record access procedures:

In line two, delete "Division", and insert: "Section"; delete "Overseas";

delete "Education", and insert: "Schools"; delete "Office of the Secretary of Defense," and insert: "OASD (MRA&L)".

DMRA&L 09.0**System name:**

Defense Race Relations Institute (DRRI) Student File (43 FR 42403, September 20, 1978).

Changes:

Delete the entire entry under the *System location: Primary Location:*, and insert:

"Primary Location—Bldg. 559(MU611) Patrick AFB, Fla. 32925.

Hard copy backup file for students in active status, and for former students, the location is Deputy Director for Special Programs, Defense Race Relations Institute, Patrick AFB, Fla. 32925"

The routine uses section is revised to read as follows:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

The purpose of the file is to evaluate the progress of students enrolled at the Defense Race Relations Institute and to create a permanent record of academic accomplishment.

Internal users, uses, and purposes:

The Defense Race Relations Institute—used by advisors in counseling students, to verify attendance and grades to colleges and universities; to select instructors; to make decisions to release students from the program.

Used by students to evaluate their programs.

Any individual records in the system may be transferred to any component of the Department of Defense having the need to know in the performance of official business.

External users, uses, and purposes:

Records may be disclosed to law enforcement or investigatory authorities for investigations and possible criminal prosecution, civil court action, or regulatory order."

DMRA&L 17.0**System name:**

DoD Overseas Dependent School Teachers Retroactive Pay Project (43 FR 42406, September 20, 1978).

Changes:**System location:**

Delete "OSD" in line one.

The routine uses section is revised to read as follows:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal users, uses, and purposes:

Used by Office of Overseas Dependents Schools Back Pay Project workers to: (1) compute back pay as it applies to individual teacher; (2) prepare necessary updating for individual's Official Personnel Record, life insurance entitlement where applicable; (3) prepare reports to individual teachers; and (4) prepare reports to Treasury, Social Security, Office of Personnel Management, Attorneys for the teachers, and General Accounting Office. Addresses will be used for mailing purposes.

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

System manager(s) and address:

Delete the entire entry, and insert: "Director, DoD Office of Dependents Schools, Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics)."

DOCHA O8

System name:

DoD Health Services Enrollment/Eligibility System (43 FR 42409, September 20, 1979).

Changes:

The routine uses section is revised to read as follows:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal users, uses, and purposes:

Offices of the Surgeons General of the Army, Navy, and Air Force for determination of eligibility to receive health care benefits from the Uniformed Health Services Delivery System.

Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), for determination of eligibility to receive health care benefits and to receive reimbursement for health care services claimed under CHAMPUS.

Office of the Assistant Secretary of Defense (Health Affairs) and the Offices of Surgeons General of the Army, Navy and Air Force, for the conduct of health care studies and research on a longitudinal basis, and for planning,

management and allocation of medical resources.

Offices of the Surgeons General of the Army, Navy and Air Force, and OCHAMPUS for dissemination of health care information.

External users, uses, and purposes:

Department of Health, Education and Welfare, Veterans Administration, Federal Preparedness Agency and Commerce Department for the Conduct of health care studies and for the planning and allocation of medical resources. Data will be provided to State and local government health planning agencies to assist in the determination and allocation of health resources. The data will include a summary data on ages, sex, residence, and other demographic parameters."

System manager(s) and address:

In line two, delete "3D200" and insert: "3E173".

Contesting record procedures:

Delete the entry, and insert: "The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81."

DWHS PO2

System name:

Job Opportunity Announcements (43 FR 42419, September 20, 1978).

Categories of records in the system:

Delete the entire entry, and insert: "File contains copies of SF-171's plus any attachments submitted by the applicant, copies of supervisory appraisals, copies of Job Opportunity Announcement, original certificate of eligibles, rating sheet for all applicants, rating schedule or definition of 'best qualified' and copies of nonselection and not certified letters."

The routine uses section is revised to read as follows:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal users, uses, and purposes:

Personnel and Security Directorate—To advertise vacant positions and to solicit applicants for employment from qualified individuals for organizations serviced. Armed Forces Information Service (AFIS), Court of Military Appeals (COMA), Defense Advanced Research Projects Agency (DARPA), Defense Security Assistance Agency

(DSAA), Office of Dependents Education, Organization of the Joint Chiefs of Staff (OJCS), TriService Medical Information System (TRIMIS), and Washington Headquarters Services (WHS), are routine users.

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices."

The policies and practices section is amended by adding the following paragraph after the heading:

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Documents filed in folders by Job Opportunity Announcement (JOA) number and title, series and grade of position."

Retention and disposal:

In lines one and two, delete "Civil Service Commission", and insert: "Office of Personnel Management (OPM)".

Record access procedures:

Delete "SYSMANAGER", and insert: "System Manager".

Record source categories:

In the fifth line after the word "WHS", add a coma and then insert: "and supervisory officials".

DWHS PO4

System name:

Reduction-in-Force Case Files (43 FR 42420, September 20, 1978).

Changes:

The routine uses section is revised to read as follows:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal users, uses, and purposes:

To maintain a case file on each reduction-in-force situation in serviced organizations for record purposes of System Manager. Background information for the Merit System Promotion Board (MSPB) in case of appeal. Review by OSD management officials in cases of questions of qualifications. Armed Forces Information Service (AFIS), Court of Military Appeals (COMA), Defense Advanced Research Projects Agency (DARPA), Defense Security Assistance Agency (DSAA), Office of Dependents Education, Organization of the Joint Chiefs of Staff (OJCS), Tri-Service

Medical Information System (TRIMIS), and Washington Headquarters Services (WHS), are part of routine users.

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices."

Record access procedures:

Delete "SYSMANAGER", and insert: "System Manager".

Record source categories:

In line four, delete "Civil Service Commission", and insert: "MSPB/OPM".

DWHS P09

System name:

Computer Data Base [43 FR 42422, September 20, 1978].

Changes:

Categories of records in the system:

In lines one and two, delete "Civil Service Commission", and insert: "Office of Personnel Management (OPM)".

The routine uses section is amended by making the following changes:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Add the new subheading "Internal users, uses, and purposes:" before "Personnel and Security Directorate".

In line two of this paragraph, delete "Civil Service Commission", and insert: "Office of Personnel Management".

Add as a second subheading and entry the following: "External users, uses, and purposes:"

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices."

Record access procedures:

Delete "SYSMANAGER", and insert: "System Manager".

DWHS P10

System name:

Training File (43 FR 42423, September 20, 1978).

Changes:

The routine uses section is revised to read as follows:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal users, uses, and purposes:

The Personnel and Security Directorate to determine eligibility for training assignments.

External users, uses, and purposes:

The Office of Personnel Management (OPM) for information necessary to carry out its Government wide personnel management function."

Record access procedures:

Delete "SYSMANAGER" and insert: "System Manager".

DWHS P12

System name:

Executive Development Programs File (43 FR 42423, September 20, 1978).

Changes:

The routine uses section is revised to read as follows:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal users, uses, and purposes:

Personnel and Security Division—To determine eligibility for specialized development programs.

External users, uses, and purposes:

The Office of Personnel Management (OPM) for information necessary for OPM to carry out its Government-wide personnel management functions."

Record access procedures:

Delete "SYSMANAGER", and insert: "System Manager".

DWHS P18

System name:

The Office of the Secretary of Defense Identification Badge Suspense Card System (43 FR 42425, September 20, 1978).

Changes:

Categories of individuals covered by the system:

In line one, delete "Army/Navy/Air Force/Marine Corps", and insert: "military" between the words "All" and "personnel".

Categories of records in the system:

In line one, insert: "military" between the words "All" and "personnel".

The routine uses section is revised to read as follows:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal users, uses, and purposes:

Military Personnel Division—To establish who is eligible for the Office of the Secretary of Defense Identification Badge after being assigned to an authorized space in the Office of the Secretary of Defense, and activities serviced by WHS.

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices."

Record access procedures:

Delete "SYSMANAGER", and insert: "System Manager".

DWHS P19

System name:

General/Flag Officer Files (43 FR 42426, September 20, 1978).

Changes:

Categories of individuals covered by the system:

In line two, insert "WHS" between the words "Staff" and "and".

Categories of records in the system:

In line three, insert "WHS" between the words "Staff" and "and".

The routine uses section is revised to read as follows:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal users, uses, and purposes:

To provide a centralized file to incorporate all staffing and personnel correspondence dealing with General/Flag officer positions and incumbents in the Office of the Secretary of Defense, Organization of the Joint Chiefs of Staff, WHS, and Defense Agencies.

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

The policies and practices section is amended by making the following change:

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

In line two of the entry under this heading, delete "as it comes in", and insert: "as it is received".

Retention and disposal:

Delete the entire entry, and insert: "Manpower authorizations: transfer one year after no longer current to Washington National Records Center (WNRC). Destroy when forty years old."

Record access procedures:

Delete "SYSMANAGER", and insert: "System Manager".

DWHS P23**System name:**

Roster of Military Personnel (43 FR 42427, September 20, 1978).

Changes:

The routine uses section is revised to read as follows:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal users, uses, and purposes:

Military Personnel Division/Office of the Secretary of Defense, and activities serviced by WHS/Defense Agencies/ and the Military Departments—To provide a base for recording all military personnel changes in the Office of the Secretary of Defense and activities serviced by WHS with regard to: requisitioning personnel, notification of their arrival, all changes in rank, date of rank, dates of arrival and departure. For use by the Military Personnel Division to facilitate personnel records checks and various military staffing actions.

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

Notification procedure:

In lines one and two, after the word "Personnel", insert: "and Security, WHS," and delete "OSD".

Record access procedures:

Delete "SYSMANAGER", and insert: "System Manager".

Record source categories:

In line two, after the word "Defense", insert: "and WHS".

DWHS P25**System name:**

Overseas Staffing Files (43 FR 42428, September 20, 1978).

Changes:

The routine uses section is revised to read as follows:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal users, uses, and purposes:

Files are used as records of individuals employed in overseas positions located in Defense Advanced Research Projects Agency (DARPA), North Atlantic Treaty Organization (NATO), and U.S. Mission to NATO.

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

Record access procedures:

Delete "SYSMANAGER", and insert: "System Manager".

DWHS P35**System name:**

Defense Meritorious Service Medal Files (43 FR 58405, December 14, 1978).

Changes:

The routine uses section is revised to read as follows:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal users, uses, and purposes:

Authorized personnel of the Office of the Secretary of Defense and Washington Headquarters Services for the purposes of insuring that certificate, citation, orders and medal are obtained for the individual receiving the award.

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

DAS 01**SYSTEM NAME:**

Defense Audit Service Management Information System (DAS/MIS).

SYSTEM LOCATION:

Defense Audit Service, Audit Management Division (DAS-AM), Arlington, Virginia. The system utilizes the Computer Science Corporation's INFONET System, 1616 North Fort Myer Drive, Arlington, Virginia 22209.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All active personnel employed by the Defense Audit Service with history data including previous employees maintained for two years.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data on the individual's current position, current employment status, travel, audit experience training, and the following specific personal data: name, Social Security Account Number (SSAN), date of birth (DOB), service computation date (SCD), career status, experience, address, assigned station, job series clearance, education, and evaluation due date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10, United States Code, section 136(b), and Department of Defense Directive 5105.48, 'Defense Audit Service,' October 14, 1978, conveys the authority for maintenance of a system of records to the Director of the Defense Audit Service in support of the DAS mission.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**INTERNAL USERS, USES, AND PURPOSES:**

Information is used as follows:

(1) Security Clearance notification alert; provided to all audited activities in advance of visits by DAS audit personnel. Information provided in Alert is name, SSAN, Office of Assignment, and the security clearance for each auditor.

(2) Time and Attendance Reporting; provided to DAS Main Office by 9 CONUS Regional Offices and 3 Overseas Regional Offices. Time and Attendance Reports are used by various managers to track Temporary Duty Travel Frequency and duration, to accrue manhour data on assigned audit projects, to categorize indirect time for end of year reporting to provide time and attendance data to the centralized payroll system at the Main Office. Information included in Time and Attendance Reports are SSAN, Name, Grade, Assigned Office, Hours Present for Duty, Annual Leave Hours, Sick Leave Hours, Other Leave Hours and Type, TDY Location, and TDY Duration.

(3) Planned Annual Leave Reporting, utilized by various managers for workload planning and travel scheduling. Information included is Name, Assigned Office, and dates of planned annual leave.

(4) Audit Status and Auditor Assignment Reporting; used by managers to control audits and auditors, and to maximize effectiveness of manpower resources. Included information is Audit Number, Audit Requestor Code, Title, Milestone Dates, Audit Cost Summary, Personnel

Assigned/Release Dates, and Personnel Manhours Expended.

(5) As required Personnel Reporting; used by the Staff Manager to determine training needs, promotional eligibility, education and background, professional organization participation, and performance evaluation. Information included is Name, Assigned Offices, Education, Professional Activities Training History (Course Title, Dates, Attended), Performance Evaluation, Date of Birth, and Service Computation Data.

(6) Travel Reporting; used by managers to control Temporary Duty Travel, travel costs, and issuances of Blanket Travel Orders.

EXTERNAL USERS, USES, AND PURPOSES:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Active records are stored on immediate access disk and magnetic tape maintained within the computer center. Inactive records are maintained on magnetic tape within the computer center. Hard copy records are stored in file cabinets under the control of functional users.

RETRIEVABILITY:

Records are internally stored by employee SSAN and are selectively retrievably by all data elements as specified in the Categories of Records in the System.

SAFEGUARDS:

All records reside in a 'private library' which is not accessible by any other user. All system files are backed up upon creation and upon any update action. A 'Master ID' with unrestricted access to all records in the private library is available only to Main Office MIS Management Personnel. A 'Subordinate ID' which has restricted access, only to pertinent records, is used by field offices. Password protection is afforded at the session and file level. All user ID's are protected by separate validation. Any attempt to circumvent the password validation initiates immediate 'log-off'. Physical control includes limiting password to only authorized personnel. Master ID is located in a secure environment, within the Main Office, and access to the terminal facility is restricted to MIS Management employees who work

within the area. Access to records containing personal data is restricted to those who require the records in the performance of their official duties and to the individual who is subject of the record (or his authorized representative). Tape files are maintained in an environmentally secure vault area when not in use. Computer Science Corporation has been cleared to process personal data for Government agencies by General Services Administration on December 11, 1975.

RETENTION AND DISPOSAL:

Machine resident records are maintained for 2 years after they become inactive. All inactive records are afforded the same safeguards as active records and are maintained on magnetic tape within the computer center. Machine resident records are destroyed at the end of the 2 year period. Hard copy records are retained until the records are replaced or become obsolete.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Audit Service, Suite 1200, Commonwealth Building, 1300 Wilson Boulevard, Arlington, VA 22209. Telephone: 202-697-9108.

NOTIFICATION PROCEDURE:

Written or personal request for information should be addressed to the System Manager.

RECORD ACCESS PROCEDURES:

Procedures for gaining access by an employee/previous employee to his/her records may be obtained from the System Manager. Written request for information should contain the full name of the employee/past employee and Social Security Account Number. For personal visits, the employee should be able to identify himself/herself with Defense Audit Service Identification Card. Past employees should be able to identify himself/herself with Social Security Card and one other corroborating personal identification.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81

RECORD SOURCE CATEGORIES:

Official Personnel Folder and other personnel documents, activity supervisors, applications and forms completed by the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DCOMP PB03

SYSTEM NAME:

Personnel Roster.

SYSTEM LOCATION:

Primary System—Office of Deputy Assistant Secretary of Defense (Program/Budget), Office of Assistant Secretary of Defense (Comptroller) (OASD)(C)), Directorate for Research and Development.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian personnel assigned to the Directorate for Research and Development.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

System contains personnel social security number, name, date of birth, grade, step, position number, date of grade, date of step, position title, service computation date, veteran preference, job series, present salary, salary next level.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

United States Code Annotated title 10, 136B.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

INTERNAL USERS, USES, AND PURPOSES:

Used by the Director for Research and Development for personnel information.

EXTERNAL USERS, USES, AND PURPOSES:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folder.

RETRIEVABILITY:

Filed alphabetically by last name.

SAFEGUARDS:

Building employees security guards. Folder is stored in safe.

RETENTION AND DISPOSAL:

Data is updated with personnel changes. Data is destroyed by tearing, shredding, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director for Research and Development.

NOTIFICATION PROCEDURE:

Information may be obtained from: ODASD (Administration), Personnel Office, Room 3A346, Pentagon, Washington, D.C. 20301, Telephone: 202-697-1759.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Directorate for Research and Development, ODASD(P/B), OASD(C), Room 3B857, Pentagon, Washington, D.C. 20301.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Roster contents obtained from personnel file Office Secretary of Defense, Personnel Data.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DCOMP PB04**SYSTEM NAME:**

Personnel Roster

SYSTEM LOCATION:

Primary System—Office of Deputy Assistant Secretary of Defense (Program/Budget), Office of Assistant Secretary of Defense (Comptroller) (OASD(C)), Directorate for Program and Financial Control.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian personnel assigned to the Directorate for Program and Financial Control.

CATEGORIES OF RECORDS IN THE SYSTEM:

System contains personnel name, position title, series/grade, position description number, security classification, age, years of service, veteran's preference.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

United States Code Annotated Title 10, 136B.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:*Internal users, uses, and purposes:*

Used by the Director for Program and Financial Control for personnel information.

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records in loose leaf binder.

RETRIEVABILITY

Filed alphabetically by last name.

SAFEGUARDS:

Building employs security guards. Binder is stored in safe.

RETENTION AND DISPOSAL:

Data is updated with personnel changes. Data is destroyed by tearing, shredding, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Director for Program and Financial Control.

NOTIFICATION PROCEDURE:

Information may be obtained from: ODASD (Administration), Personnel Office, Room 3A346, Pentagon Building, Washington, D.C. 20301, Telephone: 202-697-1759.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Directorate for Program and Financial Control, ODASD(P/B)/OASD(C), Room 3B872, Pentagon, Washington, D.C. 20301.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Roster contents obtained from personnel file Office of the Secretary of Defense, personnel data.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DCOMP MS01**SYSTEM NAME:**

Training Records

SYSTEM LOCATION:

Primary System—Office of the Deputy Assistant Secretary of Defense (Management Systems) (ODASD(MS)), Office of the Assistant Secretary of Defense (Comptroller) (OASD(C)), Pentagon, Washington, D.C. 20301.

Decentralized Segments—Four Management Systems Directorates.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All personnel in ODASD(MS).

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains name, birthdate, service computation date, grade, training completed since 6-30-72, and training desired.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 136

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:*Internal users, uses, and purposes:*

Information is used by the DASD(MS), his Principal Assistant, and Directors for planning, training of ODASD(MS) personnel.

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records in looseleaf folder.

RETRIEVABILITY:

Filed by Directorate.

SAFEGUARDS:

Records are kept in locked office with access available only to authorized personnel.

RETENTION AND DISPOSAL:

Filed are active and are kept current. Out-of-date material disposed of periodically.

SYSTEM MANAGER(S) AND ADDRESS:

DASD (Management Systems), Room 3E831, Pentagon, Washington, D.C. 20301.

NOTIFICATION PROCEDURE:

Information may be obtained from: DASD(MS), Room 3E831, Pentagon, Washington, D.C. 20301, Telephone: 202-695-3424.

RECORD ACCESS PROCEDURES:

Requests from personnel should be addressed to Office of the Assistant Secretary of Defense (Comptroller), ODASD(MS), Room 3E831, Pentagon, Washington, D.C. 20301, including personal identification.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Personnel questionnaire responses and SF 170.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DCOMP MS03**SYSTEM NAME:**

Personnel Records

SYSTEM LOCATION:

Primary System—Office of the Deputy Assistant Secretary of Defense (Management Systems) (ODASD(MS)), Office of the Assistant Secretary of Defense (Comptroller) (OASD(C)), Pentagon, Washington, D.C. 20301.
Decentralized Segments—Four Management Systems Directorates.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All personnel in ODASD(MS).

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains name, birthdate, social security number, veteran's preference, tenure group, service computation date, retirement, FEGLI, education, previous employment, additional skills and awards, current employment record within MS, grade.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**Internal users, uses, and purposes:**

Information is used by the DASD(MS), his Principal Assistant, and Directors for personnel administration within the

management responsibilities of ODASD(MS).

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Record card in KARDEX file; paper records in file folder.

RETRIEVABILITY:

Filed alphabetically by last name of personnel.

SAFEGUARDS:

Records are kept in safe files with access available to only authorized personnel.

RETENTION AND DISPOSAL:

Files are active and are kept current to reflect current personnel situation. Out-of-date material is disposed of periodically.

SYSTEM MANAGER(S) AND ADDRESS:

DASD (Management Systems), Room 3E831, Pentagon, Washington, D.C. 20301.

NOTIFICATION PROCEDURE:

Information may be obtained from: DASD(MS), Room 3E831, Pentagon, Washington, D.C. 20301, Telephone: 202-695-3424.

RECORD ACCESS PROCEDURES:

Requests from personnel should be addressed to Office of the Secretary of Defense, ODASD(MS), Room 3E831, Pentagon, Washington, D.C. 20301, including personal identification.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

DD Form 2515, ODASD(MS) personal questionnaire responses; personnel action forms; SF 171.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DCOMP MS04**SYSTEM NAME:**

Civilian Pay Time and Attendance Report

SYSTEM LOCATION:

Primary System—Office of the Deputy Assistant Secretary of Defense (Management Systems) (ODASD(MS)), Office of the Assistant Secretary of Defense (Comptroller) (OASD(C)), Pentagon, Washington, D.C. 20301.
Decentralized Segments—Four Management Systems Directorates.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All personnel in ODASD(MS).

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains employee name, organization code, employee number, social security number, pay period, hours worked this pay period (regular, night differential and overtime, holiday and compensatory by day and pay period), leave taken this pay period (annual, sick, compensatory, AWOL, LWOP/SUSP and other by day and pay period), time of absence each day, remarks, employee certification of sick leave, employee initials for leave taken, supervisors signature and extension for certification.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 112A of Budget and Accounting Procedures Act of 1950.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**INTERNAL USERS, USES, AND PURPOSES:**

Information is used by the Department of the Army to prepare payrolls, employee checks, and earnings and leave statements.

EXTERNAL USERS, USES, AND PURPOSES:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Cards maintained in envelopes/file folders are stored in timekeeper's official file cabinets.

RETRIEVABILITY:

Maintained in sequence by employee last name. Employee card is selected to post hours of leave taken and hours worked each pay period.

SAFEGUARDS:

Cards are maintained and used by officially authorized timekeepers and are kept in secured filing facilities.

RETENTION AND DISPOSAL:

Exception data is posted as it occurs and the complete posting and certification is accomplished at the end of the pay period. Completed certified cards are hand carried by each timekeeper to ODASD(MS) office. The cards are then forwarded to the Personnel Data Branch.

SYSTEM MANAGER(S) AND ADDRESS:

DASD (Management Systems), Room 3E831, Pentagon, Washington, D.C. 20301.

NOTIFICATION PROCEDURE:

Information may be obtained from: DASD(MS), Room 3E831, Pentagon, Washington, D.C. 20301, Telephone: 202-695-3424.

RECORD ACCESS PROCEDURES:

Requests from personnel should include personal identification and be addressed to: Office of the Deputy Assistant Secretary of Defense (Management Systems) (ODASD(MS)), Office of the Assistant Secretary of Defense (Comptroller) (OASD(C)), Pentagon, Washington, D.C. 20301.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Employee's presence on the job, leave approval (verbal or documented); overtime approval memoranda; physician certificate; and official holidays.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DCOMP MS05**SYSTEM NAME:**

Request for Overtime Authorization

SYSTEM LOCATION:

Primary System—Office of the Deputy Assistant Secretary of Defense (Management Systems) (ODASD(MS)), Office of the Assistant Secretary of Defense (Comptroller) (OASD(C)), Pentagon, Washington, D.C. 20301. Decentralized Segments—Four Management Systems Directorates.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All personnel in ODASD(MS).

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains requesting organization addressee, request number, date of request for pay period, organizational elements, hours requested (overtime, holiday, compensatory), hours worked (overtime, holiday, compensatory), total hours justification (employee name, social security number, hours requested), requesting official and date, programmed overtime, quarter, fiscal year, requested/used to date, balance, approved/disapproved, approving officer and date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 136

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**INTERNAL USERS, USES, AND PURPOSES:**

Information is used by the DASD(MS), his Principal Assistant, and Directors to justify and approve overtime compensation for ODASD (Management Systems) employees.

EXTERNAL USERS, USES, AND PURPOSES:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING RECORDS IN THE SYSTEM:**STORAGE:**

Copies maintained in file folders are stored in time-keeper's official file cabinet.

RETRIEVABILITY:

Maintained in sequence by pay period. Employees for which overtime is requested are listed in the justification section of each form.

SAFEGUARDS:

Overtime authorization requests are maintained and used by officially authorized timekeepers and are kept in secured filing facilities.

RETENTION AND DISPOSAL:

These requests (copies) are maintained for the entire leave year. The approved originals are handcarried along with the Civilian Pay Time and Attendance Reports by each timekeeper to ODASD(MS) office from where they are then forwarded to the Personnel Data Branch. Disposition of each

timekeeper's file folder is made at the beginning of each new leave year.

SYSTEM MANAGER(S) AND ADDRESS:

DASD (Management Systems), Room 3E831, Pentagon, Washington, D.C. 20301.

NOTIFICATION PROCEDURE:

Information may be obtained from: DASD(MS), Room 3E831, Pentagon, Washington, D.C. 20301, Telephone: 202-695-3424.

RECORD ACCESS PROCEDURES:

Requests from personnel should include personnel identification and should be addressed to:

Office of the Deputy Assistant Secretary of Defense (Management Systems) (ODASD(MS)), Office of the Assistant Secretary of Defense (Comptroller) (OASD(C)), Pentagon Washington, D.C. 20301.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Initialed by Supervisors and Directors to justify overtime work for employees to accomplish peak and excessive workloads.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DCOMP MS06**SYSTEM NAME:**

Time and Attendance Report

SYSTEM LOCATION:

Primary System—Office of the Deputy Assistant Secretary of Defense (Management Systems) (ODASD(MS)), Office of the Assistant Secretary of Defense (Comptroller) (OASD(C)), Pentagon, Washington, D.C. 20301.

Decentralized Segments—Four Management Systems Directorates.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All personnel in ODASD(MS).

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains employee name, social security number, pay period, hours worked this pay period (regular, night differential, overtime, holiday, compensatory by day and pay period), leave taken this pay period (annual,

sick, compensatory, AWOL, LWOP/ SUSP and other by day and pay period.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 136.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

INTERNAL USERS, USES, AND PURPOSES:

Used as an office record of employees time and attendance.

EXTERNAL USERS, USES, AND PURPOSES:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in a notebook and filed in timekeeper's official file cabinets.

RETRIEVABILITY:

Filed by pay period. Each report is in sequence by employee's last name.

SAFEGUARDS:

The notebooks are maintained in a file cabinet with access available only to authorized personnel.

RETENTION AND DISPOSAL:

These records are maintained for the leave year. Disposition of the yearly records is made at the beginning of each new leave year.

SYSTEM MANAGER(S) AND ADDRESS:

DASD (Management Systems), Room 3E831, Pentagon, Washington, D.C. 20301.

NOTIFICATION PROCEDURE:

Information may be obtained from: DASD(MS), Room 3E831, Pentagon, Washington, D.C. 20301, Telephone: 202-695-3424.

RECORD ACCESS PROCEDURES:

Requests from personnel should include personal identification and be addressed to: Office of the Deputy Assistant Secretary of Defense (Management Systems) (ODASD(MS)), Office of the Assistant Secretary of Defense (Comptroller) (OASD(C)), Pentagon, Washington, D.C. 20301.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

The Time and Attendance Report is posted from Civilian Pay Time and Attendance Reports, MDW, FINW Form 46 TEST (Rev) 1 Dec 74.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DCOMP MS07

SYSTEM NAME:

Classified Container Custodian Data, SD 411.

SYSTEM LOCATION:

Decentralized Segments—Four 1 Management Systems Directorates, Office of the Deputy Assistant Secretary of Defense (Management Systems) (ODASD(MS)), Office of the Assistant Secretary of Defense (Comptroller) (OASD(C)), Pentagon, Washington, D.C. 20301.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Names of three individuals responsible for each classified container.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, address, and telephone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 136.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

Internal users, uses, and purposes:

Information is used by security personnel or counter-intelligence personnel to contact the individuals in the event classified container is found unsecured.

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The form for each classified container is attached inside the front of combination drawer or top drawer.

RETRIEVABILITY:

Data on name, address, or telephone number may be retrieved only if classified container is open.

SAFEGUARDS:

Information is in locked container; can only be accessed if classified container are left open.

RETENTION AND DISPOSAL:

Only latest applicable form is affixed to the classified container, outdated forms are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Each MS Directorate having custody of safes.

NOTIFICATION PROCEDURE:

Information may be obtained from: Security Officer, ODASD (Management System), Room 4B915, Pentagon, Washington, D.C. 20301.

RECORD ACCESS PROCEDURES:

Requests should be addressed to Security Officer, ODASD (Management Systems), Room 4B915, Pentagon, Washington, D.C. 20301.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Individuals responsible for each classified container.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DCOMP MS08

SYSTEM NAME:

List of personnel and security clearances.

SYSTEM LOCATION:

Decentralized Segments—Four Management Systems Directorates, Office of the Deputy Assistant Secretary of Defense (Management Systems) (ODASD(MS)), Office of the Assistant Secretary of Defense (Comptroller) (OASD(C)), Pentagon, Washington, D.C. 20301.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All personnel in the Directorate.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains name, security clearance, date granted.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 136

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

Internal users, uses, and purposes:

Information is used by each Directorate Security Officer as reference of security clearance of each individual.

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Typed list in Directorate Security Officer's file.

RETRIEVABILITY:

Data may be retrieved by name.

SAFEGUARDS:

Information is kept in locked classified container.

RETENTION AND DISPOSAL:

Only latest list of personnel and access is retained, outdated lists are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Each MS Directorate Security Officer.

NOTIFICATION PROCEDURE:

Information may be obtained from: Security Officer, ODASD (Management Systems), Room 4B915, Pentagon, Washington, D.C. 20301.

RECORD ACCESS PROCEDURES:

Requests should be addressed to: Security Officer, ODASD (Management Systems), Room 4B915, Pentagon, Washington, D.C. 20301.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Knowledge of all individuals assigned to the Directorate/Division.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DIO&R 01

SYSTEM NAME:

Combat Area Casualties.

SYSTEM LOCATION:

Directorate for Information Operations and Reports, Washington Headquarters Services, Pentagon, Washington, D.C. 20301.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Names of all military personnel who were killed, missing, captured, or interned in Southeast Asia.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain a completed report of Casualty (DD Form 1300).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11216, 3 CFR 301 (1964-1965 Compilation), "Designation of Vietnam and Waters Adjacent thereto as a Combat Zone for the purposes of Section 112 of the Internal Revenue Code of 1954," approved April 24, 1965; and Pub. L. 95-479, 92 Stat. 1565, "Veterans Disability Compensation and Survivors' Benefits Act of 1978," approved October 18, 1978.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, USES, AND PURPOSE OF SUCH USES:

Internal users, uses, and purposes:

The purpose of this system of records is to compile a list of all military personnel who were killed, missing, captured, or interned in Southeast Asia. This list is used by the Office of the Assistant Secretary of Defense (International Security Affairs) (OASD(ISA)), the Defense Intelligence Agency (DIA), and other OSD activities.

External users, uses, and purposes:

To the Veterans Administration—listing the name, Social Security Number (SSN), and rank of all former prisoners-of-war of the Vietnam conflict for the purpose of conducting comprehensive studies of the disability compensation awarded to and the health care needs of veterans. To any public or private person for statistical purposes. The name, grade, date of birth only are released on those who are currently missing, captured, or interned.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

DD 1300's are filed in file reference order by service, country of occurrence.

RETRIEVABILITY:

Data may be retrieved by name or file reference number.

SAFEGUARDS:

All information is maintained in locked safes.

RETENTION AND DISPOSAL:

Records are permanent. ADP files will be made available to National Archives when no longer required by Office of the Secretary of Defense (OSD).

SYSTEM MANAGER(S) AND ADDRESS:

The OASD(C), The Pentagon, Washington, D.C.

NOTIFICATION PROCEDURE:

Information may be obtained from: Director of Information Operations and Reports, Washington Headquarters Services, Room 4B938, Pentagon, Washington, D.C. 20301. Telephone: 202-697-8107.

RECORD ACCESS PROCEDURES:

Requests should be addressed to the System Manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

The source of this information is the serviceman's casualty section.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DMRA&L 01.0

SYSTEM NAME:

Teacher Correspondence Files

SYSTEM LOCATION:

Teacher Recruitment Section, Staffing Branch, Office of Dependents Schools, Office of Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics), Room 120, Hoffman Building, 2461 Eisenhower Avenue, Alexandria, Virginia 22331.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual with whom or about whom the Teacher Recruitment Section has correspondence.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains all correspondence received from and responses to individuals writing the Teacher Recruitment Section.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

PL 86-91

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:*Internal users, uses, and purposes:*

Teacher Recruitment Section—To maintain accurate record of correspondence with individuals making inquiry to Section, any individual records might be transferred to any component of the Department of Defense having a need to know in the performance of official business.

External users, uses, and purposes:

Records may be disclosed to law enforcement or investigatory authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records in individual's file folders.

RETRIEVABILITY:

Filed alphabetically by either the last name of the correspondent or the last name of the employee/applicant the correspondence concerns.

SAFEGUARDS:

Building employs security guards, office locked during nonbusiness hours.

RETENTION AND DISPOSAL:

Files are retained for three years.

SYSTEM MANAGERS(S) AND ADDRESS:

Director, Office of Dependents Schools, Office of the Assistant Secretary of Defense (MRA&L), Pentagon, Washington, D.C. 20301.

NOTIFICATION PROCEDURE:

Information may be obtained from: Chief, Teacher Recruitment Section, DoD, Office of Dependents Schools, Room 120, Hoffman Building, 2461 Eisenhower Avenue, Alexandria, Virginia 22331, Telephone: 202-325-0885.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Teacher Recruitment Section, Office of Dependents Schools, Office of the Assistant Secretary of Defense (MRA&L), Pentagon, Washington, D.C. 20301.

Written requests for information should contain full name and address of the individual.

For personal visits, the individual should be able to provide some acceptable identification such as

driver's license or other identification card.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Correspondence initiated by the individual or by others on his or her behalf and replies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DMRA&L 02.0**SYSTEM NAME:**

Teacher Application Files.

SYSTEM LOCATION:

Teacher Recruitment Section, Staffing Branch, Personnel Division, DoD, Office of Dependents Schools, Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics), Room 120, Hoffman Building, 2461 Eisenhower Avenue, Alexandria, Va. 22331.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any citizen who applies for a position with the DoD Office of Dependents Schools.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains all papers and forms relating to individual's application for employment to include SF 171, Personal Qualifications Statement; DD 1835, DoD Dependents Schools—Application Index; DD 1836, Supplemental Application for Employment with DoD Overseas Dependents Schools; DD 1456, Professional Evaluation Department of Defense Overseas Dependents Schools; DD 1453, Record of Personal Interview; official college transcripts; copy of teaching certificates; copy of birth certificates and correspondence to or concerning applicant.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

PL 86-91.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:*Internal users, uses, and purposes:*

Teacher Recruitment Section—To determine qualifications, and make selection of candidates for positions with DoD Office of Dependents Schools

of selected applicants; to review types of experience, educational background, evaluation of previous employers, professional credentials, interviewer's rating.

Department of the Army—Staff Agencies and Commands to complete processing of hired individuals, to obtain Office of Personnel Management National Agency Check, medical examination, passports, arrange transportation and shipment/storage household goods, and to provide gaining Civilian Personnel Offices necessary documentation for placing individuals on rolls.

Department of the Air Force—Staff Agencies and Commands to complete processing of hired individuals, to obtain Office of Personnel Management National Agency Check, medical examination, passports, arrange transportation and shipment/storage household goods, and to provide gaining Civilian Personnel Offices necessary documentation for placing individuals on rolls.

Department of the Navy—Staff Agencies and Commands to complete processing of hired individuals, to obtain Office of Personnel Management National Agency Check, medical examination, passports, arrange transportation and shipment/storage household goods, and to provide gaining Civilian Personnel Offices necessary documentation for placing individuals on rolls.

Any individual records in a system of records might be transferred to any Component of the Department of Defense having a need to know in the performance of official business.

External users, uses, and purposes:

Records may be disclosed to law enforcement or investigatory authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THIS SYSTEM:**STORAGE:**

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by last name of applicant.

Cross file by index card by category (Teaching field) of applicant.

Cross file by index card by location of applicant.

SAFEGUARDS:

Building employs security guards, office locked during nonbusiness hours.

Records are maintained in area accessible only to authorized personnel who are properly screened.

RETENTION AND DISPOSAL:

Records are retained for recruitment period (no more than one year).

For nonselected applicants, portions are returned to applicant for future use and portions are destroyed.

Records of selected applicants are forwarded to Department of the Army, Department of the Air Force, or Department of the Navy as appropriate for processing.

SYSTEM MANAGER(S) AND ADDRESS:

The Director, Office of Dependents Schools, Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) (OASD(MRA&L)), Washington, D.C. 20301.

NOTIFICATION PROCEDURE:

Information may be obtained from: Chief, Teacher Recruitment Section, DoD, Office of Dependents Schools, Room 120, Hoffman Building, 2461 Eisenhower Avenue, Alexandria, Va. 22331, Telephone: 202-325-0885.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Teacher Recruitment Section, Office of Dependents Schools, OASD(MRA&L), Washington, D.C. 20301.

Written requests for information should contain the full name and address of the individual.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Former employers, educational institutions, and information supplied by the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DMRA&L 09.0

SYSTEM NAME:

Defense Race Relations Institute (DRRI) Student File.

SYSTEM LOCATION:

Primary Location—Bldg. 559(MU811) Patrick AFB, Fla. 32925.

Hard copy backup file for students in active status, and for former students,

the location is Deputy Director for Special Programs, Defense Race Relations Institute, Patrick AFB, Fla. 32925.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current or former students of the Defense Race Relations Institute.

CATEGORIES OF RECORDS IN THE SYSTEM:

Life history summary, name, race, age, military organization, test and examination scores and forms, peer group and instructor ratings, advisor progress reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 136.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The purpose of the file is to evaluate the progress of students enrolled at the Defense Race Relations Institute and to create a permanent record of academic accomplishment.

Internal users, uses, and purposes:

The Defense Race Relations Institute—Used by advisors in counseling students, to verify attendance and grades to colleges and universities; to select instructors; to make decisions to release students from the program.

Used by students to evaluate their programs.

Any individual records in the system may be transferred to any component of the Department of Defense having the need to know in the performance of official business.

External users, uses, and purposes:

Records may be disclosed to law enforcement or investigatory authorities for investigations and possible criminal prosecution, civil court action, or regulatory order.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Primary file is magnetic computer tape. Backup files are paper records in file folders.

RETRIEVABILITY:

Files are sequenced alphabetically by last name by class.

SAFEGUARDS:

Primary location is a controlled access area. Backup files—storage is in

locked file cabinets. Only authorized personnel have access to files.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Race Relations Institute, Patrick AFB, Fla. 32925.

NOTIFICATION PROCEDURE:

Information may be obtained from: Director, Defense Race Relations Institute, Patrick AFB, Fla. 32925, Telephone: 305-494-6976.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the Director, Defense Race Relations Institute, Patrick AFB, Fla. 32925.

Written requests for information should contain the full name, current address and telephone number, and class of the individual.

For personal visits, the individual should be able to provide some acceptable identification, such as military ID card or driver's license.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Information is provided by the individual, student peers, instructors, counselors, and examinations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DMRA&L 17.0

SYSTEM NAME:

DoD Overseas Dependent School Teachers Retroactive Pay Project.

SYSTEM LOCATION:

DoD Office of Dependents Schools, 2461 Eisenhower Avenue, Alexandria, Virginia. 22331.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All former DoD Overseas Dependents School teachers who were paid under Public Law 89-391, dated April 14, 1966.

CATEGORIES OF RECORDS IN THE SYSTEM:

System is comprised of names, Social Security Numbers, and Dates of Birth of former DoD Overseas teachers, and information extracted from their Official Personnel Records which will effect

computation of their retroactive pay; and current addresses of former teachers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Court Decision in the case called Virginia J. March et al, v. United States of America (Civil Action 3437-70, U.S. District Court, District of Columbia, June 30, 1975) on intent of Public Law 89-391, dated April 14, 1966.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Internal users, uses, and purposes:

Used by Office of Dependents Schools Back Pay Project workers to compute back pay as it applies to individual teacher; prepare necessary updating for individual's Official Personnel Record, life insurance entitlement where applicable; prepare reports to individual teachers, Treasury, Social Security, Office of Personnel Management, Attorneys for the teachers, and General Accounting Office. Addresses will be used for mailing purposes.

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer tapes, computer printouts.

RETRIEVABILITY:

Social Security Number and name.

SAFEGUARDS:

All records are stored under strict control, maintained in spaces normally accessible only to authorized personnel, in cabinets in locked room.

RETENTION AND DISPOSAL:

Records will be maintained in this office until all requirements of the Judgment and will be destroyed when they are no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Director, DoD Office of Dependents Schools, Office of the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics).

NOTIFICATION PROCEDURE:

Request by correspondence should be addressed to Director, DoD Office of Dependents Schools, Attn: Back Pay Project, 2461 Eisenhower Avenue, Room 148, Alexandria, Va. 22331. Telephone:

202-325-0660. Letter should contain the full name and signature of the requester.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to same address as stated in the Notification section, above.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Official Personnel Records obtained from Federal Records Center and other agencies currently employing individuals concerned.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DOCHA 08

SYSTEM NAME:

DoD Health Services Enrollment/Eligibility System.

SYSTEM LOCATION:

Tri-Service Medical Information System (TRIMIS) Project Office, Pentagon, Washington, D.C. 20301, and various contractual facilities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Armed Forces personnel and their dependents, retired Armed Forces personnel and their dependents, surviving dependents of deceased active duty or retired personnel; Coast Guard personnel and their dependents; Public Health Service (PHS) personnel (Commissioned Corps) and their dependents; and National Oceanic and Atmospheric Administration (NOAA) employees (Commissioned Corps) and their dependents.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains beneficiary's name, Service Number of sponsor, enrollment number, relationship of beneficiary to sponsor, residence address of beneficiary (includes zip code), date of birth of beneficiary, sex of beneficiary, branch of service of sponsor, dates of eligibility, marital status and dates of beneficiary, number of dependents of sponsor, primary unit duty location of sponsor, race and ethnic origin of beneficiary, occupation of beneficiary, rank/pay grade of sponsor.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chapter IV, Title 10, United States Code, Section 136; 1969 Pub. L. 91-121, section 404(A)(2), 'Establishment of the Assistant Secretary of Defense for Health Affairs; the Presidentially Commissioned Department of Defense, Department of Health, Education and Welfare, Office of Management and Budget Report of the Health Care Study (completed December 1975); Memorandum, 'Establishment of DoD Health Council,' dated December 28, 1976, and the DoD Appropriations Bill for FY 1976.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Internal users, uses, and purposes:

Offices of the surgeons General of the Army, Navy and Air Force for determinations of eligibility to receive health care benefits from the Uniformed Health Services Delivery System.

Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), for determination of eligibility to receive health care benefits and to receive reimbursement for health care services claimed under CHAMPUS.

Offices of the Assistant Secretary of Defense (Health Affairs) and the Offices of Surgeons General of the Army, Navy and Air Force, for the conduct of health care studies and research on a longitudinal basis, and for planning, management and allocation of medical resources.

Offices of the Surgeons General of the Army, Navy and Air Force, and OCHAMPUS for dissemination of health care information.

External users, uses, and purposes:

Department of Health, Education and Welfare; Veterans Administration; Federal Preparedness Agency and Commerce Department for the conduct of health care studies and for the planning and allocation of medical resources. The data will include summary data on ages, sex, residence, and other demographic parameters.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tapes and discs housed in a controlled computer media library.

RETRIEVABILITY:

Records about individuals are retrieved by an algorithm to be determined by contractor which uses

name, enrollment number, which is not Social Security Number, date of birth, rank and duty location as possible inputs.

Retrievals are made on a summary basis by geographic location and demographic characteristics. Information about individuals will not be distinguishable in such summary retrievals.

Retrievals for the purposes of generating address lists for direct mail distribution of health care information may be made using selection criteria based on geographic and demographic keys.

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas shall be restricted to those personnel with a valid requirement and authorization to enter. Physician entry shall be restricted by the use of locks, guards, administrative procedures (e.g., fire protection regulations). Exits used solely for emergency situations shall be secured to prevent unauthorized intrusion.

Personal data stored at a separate location for backup purposes shall be afforded protection at least comparable to the protection provided at the primary location.

Requirements for protection of information are binding on contractors or their representative and are subject to the following minimum standards:

Restrict access to personal information to those who require the records in the performance of their official duties, and to the individual who is the subject of the record or authorized representative. Access to personal information shall be restricted by the use of passwords which are changed periodically.

Insure that all whose official duties require access to, or processing and maintenance of, personal information are trained in the proper safeguarding and use of such information.

RETENTION AND DISPOSAL:

Computerized records on an individual are maintained as long as the individual is legally eligible to receive health care benefits from the Uniformed Health Sciences Delivery System. The records are maintained for two (2) years after termination of eligibility.

Records may be disposed of or destroyed only in accordance with DoD Component record management regulations which conform to the controlling disposition of such material as set forth in 44 U.S.C. 3301-3314. Non-

record material containing personal information and other material of similar temporary nature, shall be destroyed as soon as its intended purpose has been served under procedures established by the Head of the DoD Component consistent with the following requirement. Such material shall be destroyed by tearing, burning, melting, chemical deposition, pulping, pulverizing, shredding, or mutilation sufficient to preclude recognition or reconstruction of the information.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Health Systems Planning, Office of the Assistant Secretary of Defense (Health Affairs), Room 3E173, Pentagon, Washington, D.C. 20301.

NOTIFICATION PROCEDURE:

Information may be obtained from: Director, Tri-Service Medical Information System Program Office, Office of the Assistant Secretary of Defense (Health Affairs), Room 3E182, Pentagon, Washington, D.C. 20301.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to: Director, Tri-Service Medical Information System Program Office, Office of the Assistant Secretary of Defense (Health Affairs), Room 3E182, Pentagon, Washington, D.C. 20301.

Written requests for the information should contain full name of individual and sponsor if applicable and other attributes required by previously mentioned search algorithm.

Visits are limited to: Director, Tri-Service Medical Information System Program Office, Office of the Assistant Secretary of Defense (Health Affairs), Room 3E182, Pentagon, Washington, D. C. 20301.

For personal visits the individual should be able to provide a data element required to satisfy the previously mentioned algorithm.

Identification should be corroborated with a driver's license or other positive identification.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Military Department's personnel and financial pay systems.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DWHS PO2

SYSTEM NAME:

Job Opportunity Announcements

SYSTEM LOCATION:

Directorate for Personnel and Security, Washington Headquarters Services (WHS), Department of Defense, Room 3B347, Pentagon, Washington, D.C. 20301.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any applicant for employment who applies for a specific vacancy.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains copies of SF-171's plus any attachments submitted by applicant, copies of supervisory appraisals, copies of Job Opportunity Announcement, original certificate of eligibles, rating sheet for all applicants, rating schedule or definition of 'best qualified' and copies of nonselection and not certified letters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 3301

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Internal users, uses, and purposes:

Personnel and Security Directorate—To advertise vacant positions and to solicit applications for employment from qualified individuals for organizations serviced. Armed Forces Information Service (AFIS), Court of Military Appeals (COMA), Defense Advanced Research Projects Agency (DARPA), Defense Security Assistance Agency (DSAA), Office of Dependents Education, Organization of the Joint Chiefs of Staff (OJCS), TriService Medical Information System (TRIMIS), and Washington Headquarters Services (WHS), are part of routine users.

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Documents filed in folders by Job Opportunity Announcement (JOA) number and title, series and grade of position.

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed by Job Opportunity Announcement (JOA) number and title.

SAFEGUARDS:

Building employs security guards. Records are maintained in file cabinet in areas accessible only to authorized personnel who are properly screened and trained.

RETENTION AND DISPOSAL:

Records are maintained for a two year period or Office of Personnel Management (OPM) inspection, whichever occurs earlier. Then they are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director for Personnel and Security, WHS, Room 3B347, Pentagon, Washington, D.C. 20301.

NOTIFICATION PROCEDURE:

Information may be obtained from: Directorate for Personnel and Security, WHS, Room 3B347, Pentagon, Washington, D.C. 20301. Telephone: 202-697-3305.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the above System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Application and related forms from the individual applying for position, supervisory appraisals from current or previous employers, forms completed by persons whose names are given as a reference, ratings and correspondence from Directorate for Personnel and Security, WHS, and supervisory officials.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DWHS-P04

SYSTEM NAME:

Reduction-In-Force Case Files.

SYSTEM LOCATION:

Directorate for Personnel and Security, Washington Headquarters Services (WHS), Department of Defense

(DoD), Room 3B347, Pentagon, Washington, D.C. 20301.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees served by OSD System Manager who have been reached for reduction-in-force actions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of retention registers, letters from management officials, letters prepared by Personnel to individual regarding type of action required, correspondence from individual concerned and other miscellaneous correspondence concerning the specific action.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 1302, 2502.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:*Internal users, uses, and purposes:*

To maintain a case file on each reduction-in-force situation in serviced organizations for record purposes of System Manager. Background information for the Merit System Promotion Board (MSPB) in case of appeal. Review by OSD management officials in cases of questions of qualifications. Armed Force Information Service (AFIS), Court of Military Appeals (COMA), Defense Advanced Research Projects (DARPA), Defense Security Assistance Agency (DSAA), Office of Dependents Education, Organization of the Joint Chiefs of Staff (OJCS), Tri-Service Medical Information System (TRIMIS), and Washington Headquarters Services (WHS), are part of routine uses.

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Filed alphabetically by last name. Destroy two years after case is closed.

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed alphabetically by last name. Destroy two years after case is closed.

SAFEGUARDS:

Building employs security guards. Records are maintained in file cabinets

in areas accessible only to authorized personnel who are properly screened and trained.

RETENTION AND DISPOSAL:

Destroy two years after case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Director for Personnel and Security, WHS, Room 3B347, Pentagon, Washington, D.C. 20301.

NOTIFICATION PROCEDURE:

Information may be obtained from: Directorate for Personnel and Security, WHS, Room 3B347, Pentagon, Washington, D.C. 20301, Telephone: 202-697-3305.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the above System Manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Letters to individuals originated by Personnel, Retention Registers furnished by Personnel, correspondence from management officials, correspondence from individual concerned, correspondence from MSPB/OPM and correspondence from appeal examiner in case of an appeal.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DWHS P09

SYSTEM NAME:

Computer Data Base

SYSTEM LOCATION:

Directorate for Personnel and Security, Washington Headquarters Services (WHS), Department of Defense, Room 3B347, Pentagon, Washington, D.C. 20301.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian employees serviced by Directorate for Personnel and Security, WHS.

CATEGORIES OF RECORDS IN THE SYSTEM:

The following data is stored in addition to that required by Office of Personnel Management (OPM): Position Number, Position Tenure, Organization Code, Building Code, Date of Last

Within Grade Increase, Due Date for Within Grade Increase, Highest Grade Held, Date of Last Promotion, Expiration Date of Appointment (If applicable), Nine Month Appraisal Date (If applicable), Leave Category, Special Category, Type of Appointment, Date of Current Appointment, Marital Status, Legal Residence, Security Clearance and Health Benefits Status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

EO 9830 and 5 USC 301

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Internal users, uses, and purposes:

Personel and Security Directorate—Data extracted as required by Office of Personnel Management for Central Personnel Data File. Certain fields used as required for statistical data. Stored data printed on personnel change forms to report a change in status i.e., Standard Form 50, DA 2515. Extracts of data base used periodically to insure currency of files. Alphabetic locator to verify employment organizational staffing summary.

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Used daily to update employee's records as changes occur.

STORAGE:

IBM Computer 370.

RETRIEVABILITY:

Files may be retrieved and sorted by any field in Data Base.

SAFEGUARDS:

Building has security guards. User of Data Base must have a 'user code' in order to be admitted access to computer room.

RETENTION AND DISPOSAL:

Records are permanent and current as long as the employee is employed.

SYSTEM MANAGER(S) AND ADDRESS:

Director for Personnel and Security, WHS, Room 3B347, Pentagon, Washington, D.C. 20301.

NOTIFICATION PROCEDURE:

Information may be obtained from: Directorate for Personnel and Security,

WHS, Room 3B347, Pentagon, Washington, D.C. 20301. Telephone: 202-697-3305.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the above System Manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Processing documents initiated by the Directorate for Personnel and Security and employee's Standard Form 171.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DWHS P10

SYSTEM NAME:

Training File.

SYSTEM LOCATION:

Directorate for Personnel and Security, Washington Headquarters Services (WHS), Department of Defense, Room 3B347, Pentagon, Washington, D.C. 20301.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees applying for Training Programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Standard Form 171, Optional Form 37, Optional Form 170, DD Form 1556, SD Forms 446 and 447, Training Record Card File, which contains name, social security number, date of birth, home address, annual salary, and office and home telephone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 4101.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Internal users, uses, and purposes:

The Personnel and Security Directorate to determine eligibility for training assignments.

External users, uses, and purposes:

The Office of Personnel Management (OPM) for information necessary for the

OPM to carry out its Government wide personnel management functions.

To ensure that complete records are maintained for program evaluation purposes.

STORAGE:

Metal file drawer legal size file cabinet without lock.

RETRIEVABILITY:

Filed by training program name and employee name.

SAFEGUARDS:

Building has security guards. File is maintained in an area which is secured during non-working hours.

RETENTION AND DISPOSAL:

Records are permanent. Maintained in the Training and Career Development Branch at all times.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel and Security, WHS, Room 3B347, Pentagon, Washington, D.C. 20301.

NOTIFICATION PROCEDURE:

Information may be obtained from: Directorate for Personnel and Security, WHS, Room 3B347, Pentagon, Washington, D.C. 20301. Telephone: 202-697-3305.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the System Manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Employees submit application forms.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DWHS P12

SYSTEM NAME:

Executive Development Programs File

SYSTEM LOCATION:

Directorate for Personnel and Security, Washington Headquarters Services (WHS), Department of Defense, Room 3B347, Pentagon, Washington, D.C. 20301.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees applying for executive development programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Optional Form 59 individual development plans, SF-171, SF-59, which contain name, social security number, date of birth, home address, annual salary, and office and home telephone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 4101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:*Internal users, uses, and purposes:*

Personnel and Security Directorate—To determine eligibility for specialized development programs.

External users, uses, and purposes:

The Office of Personnel Management (OPM) for information necessary for OPM to carry out its Government-wide personnel management functions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

To ensure that complete records are maintained for program evaluation purposes.

STORAGE:

Metal five drawer legal size file cabinet without lock.

RETRIEVABILITY:

Filed by training program name and employee name.

SAFEGUARDS:

Building has security guards. File is maintained in an area which is secured during non-working hours.

RETENTION AND DISPOSAL:

Records are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Director for Personnel and Security, WHS, Room 3B347, Pentagon, Washington, D.C. 20301.

NOTIFICATION PROCEDURE:

Information may be obtained from: Directorate for Personnel and Security, WHS, Room 3B347, Pentagon, Washington, D.C. 20301. Telephone: 202-697-3305.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the above System Manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the

individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Employees submit application forms.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DWHS P18

SYSTEM NAME:

The Office of the Secretary of Defense Identification Badge Suspense Card System.

SYSTEM LOCATION:

Directorate for Personnel and Security, Washington Headquarters Services (WHS), Department of Defense, Room 3B347, Pentagon, Washington, D.C. 20301.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military personnel assigned to the Office of the Secretary of Defense, and activities served by WHS.

CATEGORIES OF RECORDS IN THE SYSTEM:

All military personnel who are eligible for the Office of the Secretary of Defense Identification Badge after being assigned on permanent duty with the Office of the Secretary of Defense, and activities serviced by WHS, for a period of one year. Data includes names, social security account number, the Office of the Secretary of Defense activity, grade, service, and dates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 USC 1125.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, USES, AND THE PURPOSES OF SUCH USES:*Internal users, uses, and purposes:*

Military Personnel Division—to establish who is eligible for the Office of the Secretary of Defense Identification Badge after being assigned to an authorized space in the Office of the Secretary of Defense, and activities serviced by WHS.

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Issuance of the Office of the Secretary of Defense Identification Badges at end of each month for eligible personnel.

STORAGE:

3x5 Cardex file.

RETRIEVABILITY:

Filed alphabetically by last name of recipient.

SAFEGUARDS:

Building has security guards. Office locked during nonworking hours.

RETENTION AND DISPOSAL:

Records are permanent. Maintained in the Military Personnel Division at all times.

SYSTEM MANAGER(S) AND ADDRESS:

Director for Personnel and Security, WHS, Room 3B347, Pentagon, Washington, D.C. 20301.

NOTIFICATION PROCEDURE:

Information may be obtained from: Directorate for Personnel and Security, WHS, Room 3B347, Pentagon, Washington, D.C. 20301. Telephone: 202-697-3305.

RECORD ACCESS PROCEDURES:

Request from individuals should be addressed to the above System Manager.

CONTESTING RECORD PROCEDURES:

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No 81.

RECORD SOURCE CATEGORIES:

Written or verbal inquiries.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

SYSTEM NAME:

General/Flag Officer Files

SYSTEM LOCATION:

Directorate for Personnel and Security, Washington Headquarters Services (WHS), Department of Defense, Room 3B147, Pentagon, Washington, D.C. 20301.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All General/Flag officers assigned to the Office of the Secretary of Defense, Organization of the Joint Chiefs of Staff, WHS, and Defense Agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Separate file on each General/Flag officer position in the Office of the Secretary of Defense and the Organization of the Joint Chiefs of Staff, WHS, and Defense Agencies. Each file contains information on the position (SD Form 37, Position Description and information on the General or Flag officer filling the position, to include all correspondence nominating him for the position and a summary of his military record, including prior assignments, awards, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:*Internal users, uses, and purposes:*

To provide a centralized file to incorporate all staffing and personnel correspondence dealing with General/Flag officer positions and incumbents in the Office of the Secretary of Defense, Organization of the Joint Chiefs of Staff, WHS, and Defense Agencies.

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Maintain files and update as correspondence relating to the General/Flag officer position as it is received.

STORAGE:

Metal five drawer file cabinet with lock.

RETRIEVABILITY:

Filed by organization and position.

SAFEGUARDS:

Building has security guards. File is maintained in an area that is secured during non-working hours.

RETENTION AND DISPOSAL:

Manpower authorizations: transfer one year after no longer current to Washington National Records Center (WNRC). Destroy when forty-years old.

SYSTEM MANAGER(S) AND ADDRESS:

Director for Personnel and Security, WHS, Room 3B347, Pentagon, Washington, D.C. 20301.

NOTIFICATION PROCEDURE:

Information may be obtained from: Directorate for Personnel and Security, WHS, Room 3B347, Pentagon, Washington, D.C. 20301. Telephone 202-697-3305.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the above System Manager.

CONTESTING RECORD AND PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

All documents relating to General/Flag officers and/or their positions.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DWHS P23**SYSTEM NAME:**

Roster of Military Personnel.

SYSTEM LOCATION:

Directorate for Personnel and Security, Washington Headquarters Services (WHS), Department of Defense, Room 3B347, Pentagon, Washington, D.C. 20301.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military personnel assigned to the Office of the Secretary of Defense, and activities serviced by WHS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computer printout reflects data in each position in the Office of the Secretary of Defense and activities serviced by WHS, and the individual filling it. Position information includes organization and title of position, authorized grade, authorized service and the military class code of the position. Information on the individual includes name, rank, social security number, date of rank, service, date assigned to the Office of the Secretary of Defense and activities serviced by WHS, and their projected loss date.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:*Internal users, uses, and purposes:*

Military Personnel Division/Office of the Secretary of Defense, and activities serviced by WHS/Defense Agencies/ and the Military Departments. To provide a base for recording all military personnel changes in the Office of the Secretary of Defense and activities serviced by WHS with regard to requisitioning personnel, notification of their arrival, all changes in rank, date of rank, dates of arrival and departure. For use by the Military Personnel Division to facilitate personnel records checks and various military staffing actions.

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

Computer printout updated monthly copies sent to Military Departments and all activities within the Office of the Secretary of Defense for information and manning purposes.

STORAGE:

Metal five drawer file cabinet with lock.

RETRIEVABILITY:

Filed by month and year of issue.

SAFEGUARDS:

Building has security guards. File is maintained in an area that is secured during nonworking hours.

RETENTION AND DISPOSAL:

Records are permanent. Maintained in the Military Personnel Division at all times.

SYSTEM MANAGER(S) AND ADDRESS:

Director for Personnel and Security, WHS, Room 3B347, Pentagon, Washington, D.C. 20301.

NOTIFICATION PROCEDURE:

Information may be obtained from Directorate for Personnel and Security, WHS, Room 3B347, Pentagon, Washington, D.C. 20301. Telephone: 202-697-3305.

RECORD ACCESS PROCEDURES:

Requests from individual should be addressed to the above System Manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

All personnel and assignment related actions initiated in/out of the Office of the Secretary of Defense and WHS.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DWHS P25**SYSTEM NAME:**

Overseas Staffing Files

SYSTEM LOCATION:

Directorate for Personnel and Security, Washington Headquarters Services (WHS), Department of Defense, Room 3B347, Pentagon, Washington, D.C. 20301.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel assigned to position overseas.

CATEGORIES OF RECORDS IN THE SYSTEM:

Standard Form 171's, SF 1190's, travel orders, letters to Army Finance Office concerning pay, overseas quarters allowances, post differentials, etc., Standard Form 52, messages concerning the individual's return rights, home leave, etc., to and from overseas area.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 USC 301

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:*Internal users, uses, and purposes:*

Files are used as records of individuals employed in overseas positions located in Defense Advanced Research Projects Agency (DARPA), North Atlantic Treaty Organization (NATO), and U.S. Mission to NATO.

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

Applications and documents filed in folders by name and title of position.

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Filed by employee name.

SAFEGUARDS:

Building employs security guards. Records are maintained in file cabinets in areas accessible only to authorized personnel who are properly screened and trained.

RETENTION AND DISPOSAL:

Retained until individual returns to the United States, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel and Security, WHS, Room 3B347, Pentagon, Washington, D.C. 20301. Telephone: 202-697-3305.

NOTIFICATION PROCEDURE:

Information may be obtained from: Directorate for Personnel and Security, WHS, Room 3B347, Pentagon, Washington, D.C. 20301. Telephone: 202-697-3305.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the above System Manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

The individual, overseas staff office, other Federal Agency offices.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

DWHS P35**SYSTEM NAME:**

Defense Meritorious Service Medal Files

SYSTEM LOCATION:

Directorate for Personnel and Security, Washington Headquarters Services, Department of Defense, Room 3B347, Pentagon, Washington, D.C. 20301.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel recommended for the Defense Meritorious Service Medal.

CATEGORIES OF RECORDS IN THE SYSTEM:

Master log, copy of approved award signed by the Secretary of Defense which contains name, grade, social security account number, duty title, duty activity and period of assignment.

AUTHORITY FOR THE MAINTENANCE OF THE SYSTEM:

10 USC 133(b). "The Secretary is the principal assistant to the President in all matters relating to the Department of Defense. Subject to the direction of the President and to this title and section 401 of title 50, he has authority, direction, and control over the Department of Defense."; Executive Order 12019, "Establishing the Defense Meritorious Service Medal," dated November 3, 1977; and Department of Defense Directive 1348.26, "Defense Meritorious Service Medal," February 16, 1978.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:*Internal users and purposes:*

Authorized personnel of the Secretary of Defense and Washington Headquarters Services for the purposes of insuring that certificate, citation, orders and medal are obtained for the individual receiving the award.

External users, uses, and purposes:

See Office of the Secretary of Defense (OSD) Blanket Routine Uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Manual records are maintained in file folders and stored in metal file cabinets with locks.

RETRIEVABILITY:

Filed by case number in master index, listing name, award title, and organizational entity of the nominee.

SAFEGUARDS:

Building has security guards. File is maintained in an area which is secured during nonworking hours.

RETENTION AND DISPOSAL:

Records are permanent. Will be retained for approximately two years, then transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel and Security, Washington Headquarters Services,

Department of Defense, Room 3B347, Pentagon, Washington, D.C. 20301. Telephone: 202-697-5271.

NOTIFICATION PROCEDURE:

Information may be obtained from the Directorate for Personnel and Security, Washington Headquarters Services, Department of Defense, Room 3B347, Pentagon, Washington, D.C. 20301. Telephone: 202-697-5271.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the above System Manager.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Recommendations received from Office of the Secretary of Defense, Washington Headquarters Services, and related activities.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 79-20389 Filed 7-2-79; 8:45 am]

BILLING CODE 3810-70

Uniformed Services University of the Health Sciences

Privacy Act of 1974; Notice of Systems of Records: Amendments

AGENCY: Uniformed Services University of the Health Sciences, DoD.

ACTION: Notification of amendments to systems of records.

SUMMARY: The Uniformed Services University of the Health Sciences proposes to amend four systems of records subject to the Privacy Act of 1974. Specific changes to the particular system being amended are set forth below followed by the systems published in their entirety as amended.

DATES: These systems shall be amended as proposed without further notice on August 2, 1979, unless comments are received on or before August 2, 1979, which would result in a contrary determination and require republication for further comments.

ADDRESS: Privacy Act Officer, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20014.

FOR FURTHER INFORMATION CONTACT: Mr. James S. Nash, telephone 202-695-0970.

SUPPLEMENTAL INFORMATION: The Uniformed Services University of the Health Sciences systems of records notices as prescribed by the Privacy Act have been published in the Federal Register as follows:

FR Doc. 77-28255 (42 FR 51437) September 28, 1977

FR Doc. 78-25819 (43 FR 42379 and 43 FR 42505) September 20, 1978

The proposed amendments are not within the provisions of the Office of Management and Budget (OMB) Circular A-108, Transmittal No. 1 and No. 3, dated September 28, 1975 and May 17, 1976, respectively, which provide supplemental guidance to Federal agencies regarding the preparation and submission of reports of their intention to establish or alter systems of personal records as required by the Privacy Act. This OMB guidance was set forth in the Federal Register (40 FR 45877) on October 3, 1975.

June 26, 1979.

H. E. Lofdahl,

*Director Correspondence and Directives
Washington Headquarters Services
Department of Defense.*

WUSU01

System name:

Uniformed Services University of the Health Sciences (USUHS) Personnel Files (43 FR 42505, September 20, 1978).

Changes:

System location:

Insert the following after the first sentence, "Copies of 171's and curriculum vitae's of applicants and employees will be maintained in the Personnel/Manpower office as by the Dean of the School of Medicine, and by the Department Chairman, having a need for the information."

After the zip code "20301", insert a semicolon and add: "for military personnel assigned to USUHS; at WRAMC military personnel office, NNNMC military personnel office, Andrews AFB personnel office and at PHS personnel office, Parklawn Bldg., Rockville, Md. 20850. Home phone numbers of key personnel will be provided to other key personnel, and those of students to other students on a need-to-know basis, and only with the express permission of the individual concerned, for an emergency call system. Biographical information on students to be maintained in the Commandant's office."

Categories of records in the system:

At the end of the sixth line after item "(4)", insert: "(5) Time and attendance cards; and (6) Biographical data file."

Amend the routine uses to read as follows:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal users, uses, and purposes:

The system will be used for documenting the work experience of applicants and USUHS personnel and for notification of key personnel in cases of emergency during nonworking hours. Biographical data file will be used for providing background information on USUHS students to lecturers.

External users, uses, and purposes:

See Uniformed Services University of the Health Sciences (USUHS) Blanket Routine Uses at the head of this Component's published system notices.

NOTIFICATION PROCEDURE:

Delete "SYSMANAGER", and insert: "System Manager".

WUSU02

System name:

Uniformed Services University of the Health Sciences (USUHS) Payroll System (43 FR 42505, September 20, 1978).

Changes:

Categories of records in the system:

In line three, delete "pay information", and insert: "Earnings and Leave Information (including Time and Attendance Records)."

Amend routine uses to read as follows:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal users, uses, and purposes:

The system will produce data for budget purposes and as backup information for adults.

External users, uses, and purposes:

See Uniformed Services University of the Health Sciences (USUHS) Blanket Routine Uses at the head of this Component's published system notices.

SYSTEM MANAGER(S) AND ADDRESS:

Delete the entry, and insert: "The responsible official in the USUHS for the Civilian Pay System is Director of Personnel/Manpower, 4301 Jones Bridge

Road, Bethesda, Maryland 20014.
Telephone: 202-295-2180."

NOTIFICATION PROCEDURE:

Delete the entry, and insert: "Any inquiries should be directed to the Personnel/Manpower Directorate at the above address."

CONTESTING RECORD PROCEDURES:

In the third line, delete "2864", and insert: "286(b)".

WUSU03*System name:*

Uniformed University of the Health Sciences (USUHS) Student Record System (43 FR 42506, September 20, 1978).

Changes:

Insert the following as paragraph two of this heading:

"Supplemental file consisting of student evaluation forms, grades, and course examinations pertaining to their Department, will be maintained in each department by departmental chairmen, as well as in the Registrar's office."

Amend the routine uses to read as follows:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal users, uses, and purposes:

The System will be used for documenting the academic achievement of students.

External users, uses, and purposes:

See Uniformed Services University of the Health Sciences (USUHS) Blanket Routine Uses at the head of this Component's published system notices.

WUSU04*System name:*

Uniformed Services University of the Health Sciences (USUHS) Applicant Record System (43 FR 42506, September 20, 1978).

*Changes:**Categories of records in the system:*

In line nine, insert the word "biographies" between the words "reference" and "personal".

Amend routine uses to read as follows:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Internal users, uses, and purposes:

The system will be used for selecting students to USUHS, and conducting studies of the selection process.

External users, uses, and purposes:

See Uniformed Services University of the Health Sciences (USUHS) Blanket Routine Uses at the head of this Component's published system notices.

SYSTEM MANAGER(S) AND ADDRESS:

Delete "3D200" and insert: "3E173".

CONTESTING RECORD PROCEDURES:

Delete the entry, and insert: "The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81."

WUSU01**SYSTEM NAME:**

Uniformed Services University of the Health Sciences (USUHS) Personnel Files.

SYSTEM LOCATION:

A central personnel record file will be maintained at the USUHS Personnel/Manpower Office, 4301 Jones Bridge Road, Bethesda, MD 20014. Copies of 171's and curriculum vitae's of applicants and employees will be maintained in the Personnel/Manpower office as by the Dean of the School of Medicine, and by the Department Chairman, having a need for the information. A supplemental file consisting of summary data on each civilian employee will be stored in the computer at Bolling AFB, Washington, D.C.20332; for military personnel assigned to USUHS; at WRAMC military personnel office, NNMC military personnel office Andrews AFB personnel office and at PHS personnel office, Parklawn Bldg., Rockville, MD 20850. Home phone numbers of key personnel will be provided to other key personnel, and those of students to other students on a need-to-know basis, and only with the express permission of the individual concerned, for an emergency call system. Biographical information on students to be maintained in the Commandant's office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records will be maintained on all personnel assigned to USUHS full-time and part-time.

CATEGORIES OF RECORDS IN THE SYSTEM:

The type of information which will be maintained on employees is as follows: Identity and demographic information (e.g., SSAN, name, sex, address, birth date, minority status, etc.). Academic and experience background data consisting of: (1) Schools attended; (2) Degrees earned; (3) Work experience, awards, etc.; (4) Letters of reference, performance evaluations, etc. (5) Time and attendance cards; and (6) Biographical data file.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10, United States Code, Section 136.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:*Internal users, uses, and purposes:*

The System will be used for documenting the work experience of applicants and USUHS personnel and for notification of key personnel in cases of emergency during nonworking hours. Biographical data file will be used for providing background information on USUHS students to lecturers.

External users, uses, and purposes:

See Uniformed Services University of the Health Sciences (USUHS) Blanket Routine Uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Material stored in file folders.

RETRIEVABILITY:

The system will be indexed by name and SSAN. Records will be available to: The individual concerned. Employees of USUHS on a need to know basis. Other Government agencies of the Government to satisfy requests for routine reports.

SAFEGUARDS:

The file will be maintained in securable file cabinets.

RETENTION AND DISPOSAL:

Indefinite files that are retained while the individual is employed and then retired.

SYSTEM MANAGER(S) AND ADDRESS:

The personnel officer of the University will be the custodian of this file (business address: 4301 Jones Bridge Road, Bethesda, Maryland 20014). Telephone: 202-295-2158.

NOTIFICATION PROCEDURE:

Inquiries regarding the personnel files should be directed to the System Manager.

RECORD ACCESS PROCEDURES:

Information on the procedures for gaining access to and contesting records will be furnished each employee by the Personnel Office upon entry into duty with USUHS.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Information contained in the file is furnished by the employee, supervisors and references supplied by the employee.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

WUSUO2

SYSTEM NAME:

Uniformed Services University of the Health Sciences (USUHS) Payroll System.

SYSTEM LOCATION:

Central files are maintained at Bolling Air Force Base Accounting and Finance Office, Civilian Pay Branch. Satellite file maintained at USUHS Administrative Offices at 4301 Jones Bridge Road, Bethesda, Maryland 20014.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian personnel paid by the USUHS.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information contained in the system includes: Name, SSAN, Pay Grade, Number of Withholding Exemptions, Gross and Net Pay, Other Earnings and Leave Information (including Time and Attendance Records).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10, United States Code, Section 136.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:*Internal users, uses, and purposes:*

The system will produce data for budget purposes and as backup information for audits.

External users, uses, and purposes:

See Uniformed Services University of the Health Sciences (USUHS) Blanket Routine Uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

The information will be stored as computer printout.

RETRIEVABILITY:

The system will be indexed by name.

SAFEGUARDS:

The information will be available for personnel in the Personnel/Manpower Directorate of the USUHS or other personnel who have a demonstrated need to know, e.g., auditors, Congress, etc. The material will be stored in metal file containers.

RETENTION AND DISPOSAL:

The records will be maintained for one year and then destroyed by burning.

SYSTEM MANAGER(S) AND ADDRESS:

The responsible official in the USUHS for the Civilian Pay System is the Director of Personnel/Manpower, 4301 Jones Bridge Road, Bethesda, Maryland 20014. Telephone: 202-295-2180.

NOTIFICATION PROCEDURE:

Any inquiries should be directed to the Personnel/Manpower Directorate at the above address.

RECORD ACCESS PROCEDURES:

Information may be accessed in person at the above address. Requests for change to the information must be made in writing at the above address.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286(b) and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Computerized pay records from Bolling Air Force Base Accounting and Finance Office.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

WUSU03

SYSTEM NAME:

Uniformed Services University of the Health Sciences (USUHS) Student Record System.

SYSTEM LOCATION:

The file will be maintained in the Registrar's Office, USUHS, 4301 Jones Bridge Road, Bethesda, Maryland 20014.

Supplemental file consisting of student evaluation forms, grades, and course examinations pertaining to their Department, will be maintained in each department by departmental chairmen, as well as in the Registrar's office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records will be maintained on all students who matriculate to the University.

CATEGORIES OF RECORDS IN THE SYSTEM:

Grade reports and instructor evaluations of performance/achievement; transcripts summarizing by course title, grade, and credit hours; records of disciplinary action; records of awards, honors, or distinctions earned by students; and data carried forward from the Applicant File System.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 92-426, Ch 104, Section 2114.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:*Internal users, uses, and purposes:*

The System will be used for documenting the academic achievement of students.

External users, uses, and purposes:

See Uniformed Services University of the Health Sciences (USUHS) Blanket Routine Uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records in file folders.

RETRIEVABILITY:

The system will be indexed by name and SSAN.

SAFEGUARDS:

Records will be maintained in metal file cabinets in a securable area.

RETENTION AND DISPOSAL:

Records will be maintained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

The Registrar of the University, 4301 Jones Bridge Road, Bethesda, Maryland 20014.

NOTIFICATION PROCEDURE:

Information may be obtained from: USUHS, Registrar's Office, 4301 Jones Bridge Road, Bethesda, Maryland 20014, Telephone: 202-295-2118.

RECORDS ACCESS PROCEDURES:

Requests to review individual student's records may be made by telephone or visit to the Registrar's Office, USUHS, 4301 Jones Bridge Road, Bethesda, Maryland 20014.

Written requests should include name, SSAN, and dates attended.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

RECORD SOURCE CATEGORIES:

Information is furnished by instructor personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

SYSTEM NAME:

Uniformed Services University of the Health Sciences (USUHS) Applicant Record System.

SYSTEM LOCATION:

A central applicant record file will be maintained at the USUHS Admission Office, 4301 Jones Bridge Road, Bethesda, Maryland 20014.

A supplemental file consisting of summary data on each applicant to be derived from data collected in the central file, will be stored on magnetic tape and maintained at the Pentagon Computer Center, Washington, D.C.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records will be maintained on all individuals applying for admission.

CATEGORIES OF RECORDS IN THE SYSTEM:

Identity and demographic information (e.g., SSAN, name, sex, minority status,

address, birth date, citizenship, etc.); Academic and aptitudinal background data consisting of: (1) Schools attended, (2) Degrees earned, (3) GPA for college and graduate work, (4) Course hours completed in college and graduate school, (Medical College Admission Test scores and percentiles; information regarding work experience, socioeconomic background, hobbies, extracurricular involvements in college, community/service activities, honors and awards achieved, and professional and/or societal contributions; Letters of reference; biographies; personal statements (autobiographical in nature); service preference statement; interview evaluations; test results and personality inventory scores on instruments used to assess noncognitive potential and aptitude; official college transcripts and health data. Unsolicited information provided by applicants will also normally be retained when such information pertains to the matters described above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 92-426, Ch 104, Section 2114.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**Internal users, uses, and purposes:**

The system will be used for selecting students to USUHS, and conducting studies of the selection process.

External users, uses, and purposes:

See Uniformed Services University of the Health Sciences (USUHS) Blanket Routine Uses at the head of this Component's published system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Paper records in file folders and magnetic tape.

RETRIEVABILITY:

The central file will be indexed by name. The computer file will be sequenced SSAN, with data retrievable by any single or combination of variables stored, e.g., sex, minority status, ranking by academic performance, ranking by test achievement, state of residence, college attended, etc.

SAFEGUARDS:

All material will be maintained in metal rotary files in a securable office;

the satellite file on disks, securely stored at the Pentagon Computer Center.

RETENTION AND DISPOSAL:

Records of applicants who matriculate the school will be converted to student records and maintained permanently. Records of applicants who do not matriculate will be retained for five years and then destroyed by burning. Portions of the record may be retained on magnetic tape for longer periods. System manager(s) and address:

The USUHS officer who will be responsible for the Applicant Record System is the Assistant Dean for Academic Support (business address: 4301 Jones Bridge Road, Bethesda, Maryland 20014).

NOTIFICATION PROCEDURE:

Inquiries regarding the system should be directed to the Assistant Dean for Academic Support, 4301, Jones Bridge Road, Bethesda, Maryland 20014. Telephone 202-295-2195.

RECORD ACCESS PROCEDURES:

Request for access for an individual's file should be made by either writing or calling the Assistant Dean for Academic Support.

For written requests the information should contain the full name of the individual, current address and telephone number.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR 286b and ODS Administrative Instruction, No. 81.

RECORD SOURCE CATEGORIES:

The bulk of the information in the system will be furnished by the applicants. It will be either prepared by them personally, or submitted by other individuals/agencies in their behalf at their (the applicant's) specific request. The remaining elements of the systems, the data not furnished by the applicants, will consist of evaluative records prepared and developed by admissions personnel based on interviews, school administered tests, and analyses of applicant records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Exemptions claimed for the systems:

[FR Doc. 79-20038 Filed 7-2-79; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF ENERGY**Federal Photovoltaic Utilization Program****AGENCY:** Department of Energy.**ACTION:** Notice of Availability of Environmental Assessment and Negative Determinations.

SUMMARY: The Department of Energy (DOE) announces the availability of its environmental assessment (EA) of the Federal Photovoltaic Utilization Program (FPUP). DOE has determined, based on the EA, that this program does not constitute a major Federal action significantly affecting the quality of the human environment, within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) Therefore, a negative determination pursuant to 10 CFR 208.4(c) is hereby issued to notify the public that an environmental impact statement is not required for this action. Comments regarding the EA and DOE's negative determination are invited.

DATE: Written comments to be submitted no later than 4:30 p.m., July 24, 1979.

ADDRESS: Comments should be submitted to Ms. Margaret Sibley, Office of Conservation and Solar Applications, Mail Stop 2221C, Department of Energy, 20 Massachusetts Avenue, NW., Washington, D.C. 20545.

FOR FURTHER INFORMATION CONTACT:

Elaine Smith, Department of Energy, Office of Conservation and Solar Applications, Room 1210, 20 Massachusetts Avenue, NW., Washington, D.C. 20545, (202) 376-5931.

Donald Silawsky, Department of Energy, Office of Environment, Room 4211, 20 Massachusetts Avenue, NW., Washington, D.C. (202) 376-4062.

Ms. Verlette Gatlin, Department of Energy, Freedom of Information Reading Room, Room GA-152, Forrestal Bldg., 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-5965 or 252-5969.

John Bell, Department of Energy, Office of the General Counsel, Room 6G-087, Forrestal Bldg., 1000 Independence Avenue, SW., Washington, D.C. 20585; (202) 252-6947.

SUPPLEMENTAL INFORMATION:*I. Background*

In the Federal Photovoltaic Utilization Act (Pub. L. 95-619, 92 Stat. 3280), Congress established requirements governing the purchase and installation of photovoltaic solar electric systems in Federal facilities.

Under specified conditions, the Act requires the DOE to administer a photovoltaic solar electric commercialization program. The

commercialization program is aimed at stimulating a commercially viable and competitive photovoltaic industry in the United States. The photovoltaic solar electric systems will be installed in Federal facilities. Approximately seven hundred projects will be installed during the life of the program, which is expected to end in 1981.

The DOE's Office of Solar Applications under the Assistant Secretary for Conservation and Solar Applications, had been assigned responsibility for this program. Proposed regulations implementing the monitoring and assessment standards for the performance and operation of the photovoltaic solar electric systems installed pursuant to the program were published in the Federal Register on May 9, 1979 (44 FR 27194). In accordance with its obligation under NEPA, the DOE stated in the proposed rules that it had undertaken an environmental assessment of the Federal Photovoltaic Utilization Program (FPUP) and would complete this assessment and any additional required NEPA review prior to promulgation of the final rule.

The analyses in the EA indicate that the environmental impacts of the program are expected to be insignificant on a programmatic level due to the relatively small scale of the program, which involves the generation of 7.5 megawatts peak in a nationwide generation of over 567,000 megawatts peak; the fact that no one geographic location is expected to have more than a few percent of the total number of photo-voltaic solar electric systems involved in the program; and the very small requirements for certain raw materials by the photovoltaic industry, when compared to the requirements of other uses of these materials. The only probable adverse environmental impact which cannot be avoided as a result of the FPUP consists of some near-term localized impacts on vegetation and esthetics. However, these impacts are relatively insignificant and are not likely to be distinguishable from those impacts generated by the construction or operation of the Federal facility at which the photovoltaic system is located.

Based on its evaluation of the EA, the DOE has determined that the Federal Photovoltaic Utilization Program and DOE's prepared implementing regulations would not constitute a "major Federal action significantly affecting the quality of the human environment," within the meaning of NEPA and that no environmental impact statement (EIS) is therefore required.

II. Comment Procedure

Copies of the program EA may be obtained from the Office of Solar Applications, Department of Energy, Mail Stop 2221C, Room 1210, 20 Massachusetts Avenue, NW., Washington, D.C. 20545, (202) 376-5931. Copies of the EA are also available for public review in the DOE Freedom of Information Reading Room, listed above, between the hours of 8 a.m. to 4 p.m. Monday through Friday, except Federal holidays.

Interested parties may submit written comments with respect to the EA and the negative determination to Ms. Margaret Sibley at the address given above. Comments should be identified on the outside of the envelope and on the documents submitted to the DOE with the designation "Federal Photovoltaic Utilization Program." All comments should be received by DOE by 4:30 p.m., July 24, 1979, in order to insure consideration. Any person submitting written comments should forward 5 copies, if possible, to the DOE. All comments submitted are subject to DOE's regulations at 10 CFR 1004 (44 1908, January 8, 1979) governing freedom of information requests.

Any information or data submitted in response to this notice considered by the person furnishing it to be confidential must be so identified and submitted in writing, in one copy only, in accordance with procedures set forth in 10 CFR 1004.11. Any material not accompanied by a statement of confidentiality will be considered to be non-confidential. The DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

Issued in Washington, D.C. June 27, 1979.

Kelly C. Sandy III,

Executive Director, Conservation and Solar Applications.

[FR Doc. 79-20444 Filed 7-2-79; 8:45 am]

BILLING CODE 6450-01-M

[DOE/EIS-0046-D]

Management of Commercially Generated Radioactive Waste; Extension of Public Comment Period on Draft Generic Environmental Impact Statement on Management of Commercially Generated Radioactive Waste

AGENCY: Department of Energy.

ACTION: Extension of Public Comment Period on Draft EIS.

SUMMARY: In the Federal Register of April 20, 1979 (44 FR 23569), the Department of Energy (DOE) announced the availability of the draft Generic Environmental Impact Statement (GEIS), DOE/EIS-0046-D, Management of Commercially Generated Radioactive Waste, and solicited written comments by July 6, 1979. The GEIS is intended to provide environmental input to DOE for the selection of an appropriate program strategy for the permanent isolation of commercially generated high level and transuranic radioactive wastes. As a result of requests from several parties for additional time to review the draft GEIS, DOE has decided to extend the deadline for submission of written comments ninety days to October 4, 1979.

DATE: Written comments are therefore due by October 4, 1979.

ADDRESS: Send written comments to the Department of Energy, Attention: Division of Waste Isolation, MS B-107, Washington, D.C. 20545 (301/353-4068).

AVAILABILITY OF DRAFT GEIS: Copies of the draft GEIS have been distributed to Federal, State and local agencies, organizations, and individuals known to be interested in radioactive waste isolation. Additional copies may be obtained from the address above. Copies of the GEIS are also available for public inspection at the DOE public document rooms listed in the Federal Register of April 20, 1979 (44 FR 23569).

COMMENT PROCEDURES: Comments should be identified on the outside of the envelope and on the documents submitted to DOE with the designation "Draft GEIS on Commercially Generated Radioactive Wastes." All comments and related information should be received by DOE by October 4, 1979, in order to assure full consideration. Any information or data considered by the person furnishing it to be confidential must be accompanied by a written statement of confidentiality. Any material not accompanied by a statement of confidentiality will be considered to be nonconfidential. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

PUBLIC HEARINGS: In addition to the hearing already announced for Washington D.C. on June 26 & 27 (Federal Register of June 1, 1979, 44 FR 31699), two-day hearings are planned to be held later this Summer in Dallas, Texas; San Francisco, California; Chicago, Illinois; and Atlanta, Georgia. Further details on the exact time & place

for these hearings will be announced in a subsequent notice.

FOR FURTHER INFORMATION CONTACT:

Dr. Colin A. Heath, Director, Division of Waste Isolation, Department of Energy, MS B-107, Washington, D.C. 20545 301/353-4068.

Dr. Robert J. Stern, Acting Director, NEPA Affairs Division, Department of Energy, MS E-201, Washington, D.C. 20545, 202/376-5998.

Mr. Stephen H. Greenleigh, Acting Assistant General Counsel for Environment, Forrestal Building, MS 6A-152, Department of Energy, Washington, D.C. 20585, 202/252-6947.

Mr. Ben E. McCarty, Public Affairs Officer, Forrestal Building, MS 6C-031, Department of Energy, Washington, D.C. 20585, 202/252-4296.

Dated at Washington, D.C. this 28th day of June, 1979. For the United States Department of Energy,

James L. Liverman,

Deputy Assistant Secretary for Environment.

[FR Doc. 79-20456 Filed 7-2-79; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Estate of Claire Benz-Stoddard; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective Date: June 26, 1979. Comments by: August 2, 1979.

ADDRESS: Send comments to: Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, Texas 75235.

FOR FURTHER INFORMATION CONTACT:

Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, Texas 75235, Phone 214/749-7626.

SUPPLEMENTARY INFORMATION: On June 26, 1979, the Office of Enforcement of the ERA executed a Consent Order with the Estate of Claire Benz-Stoddard of Dallas, Texas. Under 10 CFR 205.199](b), a Consent Order which involves a sum

of less than \$500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

Because the DOE and the Estate of Claire Benz-Stoddard wish to expeditiously resolve this matter as agreed and to avoid delay in the payment of refunds, the DOE has determined that it is in the public interest to make the Consent Order with the Estate of Claire Benz-Stoddard effective as of the date of its execution by the DOE and the Estate of Claire Benz-Stoddard.

I. Consent Order

The Estate of Claire Benz-Stoddard with its home office in Dallas, Texas is a firm engaged in the production and sale of crude oil and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR, Parts 210, 211, 212. The Office of Enforcement of the Economic Regulatory Administration (ERA) and the Estate of Claire Benz-Stoddard entered into a Consent Order to resolve certain civil actions which could be brought by ERA as a result of its audit of the crude oil sales by the Estate of Claire Benz-Stoddard. This Consent Order settles those matters relative to the Estate of Claire Benz-Stoddard's production and sale of crude during the period September 1, 1973 through October 31, 1977.

The significant terms of the Consent Order with the Estate of Claire Benz-Stoddard are as follows:

1. The Estate of Claire Benz-Stoddard improperly applied the provisions of 10 CFR 212.73 and its predecessor, 6 CFR § 150.353 when determining the prices to be charged for certain domestic crude oil.

2. The Estate of Claire Benz-Stoddard understands and agrees to refund \$50,000.00 to the DOE by certified check. This amount is in full settlement of any and all civil liability within the jurisdiction of the DOE in regard to actions that might be brought by the DOE arising out of the specified transactions for the following properties:

Hester Estate et al. Unit No. 1.
J. H. Hester et al. Unit No. 3.

3. The provisions of 10 CFR 205.199], including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

Refunded overcharges as described in 2. above will be made in eight installments. The first payment is due 90 days after the effective date of this Consent Order and each 90 days thereafter until the total refund has been

completed. Delivery of such payments shall be to the Assistant Administrator for Enforcement, Economic Regulatory Administration, in the form of a certified check made payable to the United States Department of Energy.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "person" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

Potential Claimants: Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established.

Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

Other Comments: The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, Texas 75235. You may obtain a free copy of this Consent Order by writing to the same address or by calling 214/749-7626.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on the Estate of Claire Benz-Stoddard Consent Order." We will consider all comments we receive by 4:30 p.m., local time, within 30 days after this publication. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Dallas, Texas on the 28th day of June 1979.

Wayne I. Tucker,
District Manager of Enforcement, Southwest District Office, Economic Regulatory Administration.

[FR Doc. 79-20554 Filed 7-2-79; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CP79-47]

Arkansas Louisiana Gas Co.; Notice of Amendment

June 22, 1979.

Take notice that on June 8, 1979, Arkansas Louisiana Gas Company (Arkla), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP79-47 an amendment to its application for a certificate of public convenience and necessity filed in said docket pursuant to Section 7(c) of the Natural Gas Act so as to substitute for its original application this superseding application into which has now been incorporated more current data relating to the request for authorization to construct and operate facilities which include a gas storage reservoir and appurtenant facilities referred to as the Chiles Dome Project, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Arkla states that its studies showed that additional underground gas storage would be required in the future if Arkla were to be able to maintain the daily deliverability needed to serve the high priority requirements on its system in the winter. Based on Arkla's studies, a two-part long-term program was begun to acquire the additional storage reservoirs it already had on its system to determine whether their utilization could be expanded and improved and decided that the Ada Storage Field was the most promising prospect for expansion. Arkla states that it appeared that the addition of more wells and compressor horsepower would permit

the Ada Storage Field reservoir to be utilized more fully and effectively.

It is stated that Arkla was also pursuing the other part of its long-term study project, which consisted of a systematic program analyzing the possibility of converting to storage one or more of the numerous other known gas reservoirs located on or near the Arkla pipeline system. Arkla indicates that the reservoir selected was the Chiles Dome Field in East Central Oklahoma. Like the Ada Storage Field, the Chiles Dome Project is located in Proximity to Arkla's principal supply transmission line extending from the Texas Panhandle, across Oklahoma, that transports gas into Arkla's heavy market areas.

It is stated that the Chiles Dome Project would provide base load deliverability over relatively longer periods than the Ada Storage Field and would have a rated deliverability of at least 133,000 Mcf per day with a working gas capacity of 12,000,000 Mcf.

Arkla states that the Chiles Dome Project specifically includes the following:

(a) Approximately 15 new injection-withdrawal wells (which include the 5 confirmation wells which have already been drilled). Five existing old field wells in the area would be reworked and continued in service, making a total of approximately 20 wells to be utilized in connection with the injection and withdrawal of gas from the Chiles Dome reservoir. Also, one observation well is projected.

(b) A 6,750 horsepower compressor station to be constructed at a central point.

(c) Related central point facilities to be installed to perform such functions as measurement, pressure regulation, dehydration, liquid separation, etc.

(d) Approximately 6.38 miles of 6-inch to 12-inch gathering lines to connect the injection-withdrawal wells to the central compressor station facilities.

(e) Approximately 11.14 miles of 16-inch pipeline to be installed to connect the central compressor station at Chiles Dome with Arkla's existing Line "AD".

(f) 14,000,000 Mcf of cushion gas.

In addition to the storage facilities incident to the Chiles Dome storage field itself, it would also be necessary to expand the capacity of certain other Arkla facilities in 1980 or 1981 to accommodate the additional deliverability volumes that would be made available by the Chiles Dome storage field when it becomes operational. Certification for such facilities is also requested by this

application. These facilities are generally identified as:

(g) 16.7 miles of 30-inch O.D. loop line paralleling an existing Arkla 24-inch line (Line "O").

(h) A 4,250 horsepower centrifugal compressor station and related facilities at an existing 11-acre compressor site in northwest Arkansas (Arkla's Chambers Station).

During the normal injection cycle gas would be delivered to Chiles Dome from Arkla's Line AD and injected into storage by means of the storage compression facilities for which authorization is here being sought.

During the withdrawal cycle the gas would be withdrawn from storage by means of the same compression facilities and delivered back into Arkla's Line AD as needed.

Arkla states that the loop line on Arkla's Line "O" and the additional transmission compression horsepower to be installed at the Chambers Station site, are necessary to increase the capacity of Arkla's system east of Chiles Dome in order to move the volumes normally flowing through the system, together with the increased volumes being delivered into the system from Chiles Dome, to Arkla's markets beyond Chambers Station.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before July 16, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 of 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-20458 Filed 7-2-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. SA79-6]

**Art Machin & Associates, Inc.;
Application for Adjustment**

June 25, 1979

Take notice that on June 6, 1979, Art Machin & Associates, Inc., P.O. Box 1069, Longview, Texas 75601, (Applicant) filed an application with the Federal Energy Regulatory Commission for an adjustment under § 271.1106 of the Commission's Regulations.

Applicant seek permission to charge \$1.50 per Mcf of natural gas from its E.O. McWhorter #3 Well located in Gregg County, Texas. Applicant states that the requested rate increase is necessary to provide the economic incentive for workover operations in this well.

The procedures applicable to the conduct of this adjustment proceeding are found in § 1.41 of the Commission's Rules of Practice and Procedure, Order No. 24 issued March 22, 1979.

Any person desiring to participate in this adjustment proceeding shall file a petition to intervene in accordance with the provisions of § 1.41. All petitions to intervene must be filed on or before July 18, 1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-20470 Filed 7-2-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-337]

El Paso Natural Gas Co.; Application

June 22, 1979.

Take notice that on June 6, 1979, El Paso Natural Gas Company (EL Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP79-337 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of pipeline, compression and meter facility additions on EL Paso's existing San Juan Triangle and San Juan Mainline interstate pipeline transmission systems, located in Colorado, New Mexico, and Arizona, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

El Paso states that the proposed facility additions and modifications are required to provide El Paso with the facility capacity necessary to accommodate the transportation of anticipated quantities of natural gas for other parties through El Paso's system. The project is said also to be designed

to provide additional pipeline capacity for transportation service at no cost to El Paso's existing gas customers while permitting effective use to be made of existing unused pipeline capacity on El Paso's system.

The total estimated cost of the proposed San Juan Triangle facilities is \$69,573,074 and the additional San Juan Mainline facilities to be installed are estimated to cost \$295,625.

El Paso indicates that it has entered into, or would shortly enter into, with Natural Gas Pipeline Company of America (Natural), Michigan Wisconsin Pipe Line Company (Michigan Wisconsin), Northern Natural Gas Company (Northern), Pacific Interstate Transmission Company (Pacific), Southwest Gas Corporation (Southwest) and Natural Gas Corporation of California (NGC), firm transportation arrangements that provide that each party would pay El Paso, on a cost of service basis, its allocable share of the cost of the incremental facilities which El Paso is requested to install and operate in the San Juan Triangle to accommodate the transportation quantities for such parties. The application states that the cost of service charge for the use of El Paso's proposed incremental San Juan Triangle facilities has been derived on the basis of a monthly demand charge reflected on Sheet No. 1-D.2 of El Paso's FERC Gas Tariff, Third Revised Volume No. 2, and is an estimated unit rate of \$2.900. Such demand charge is to be multiplied times the respective daily contract quantities established for each of the shippers who elect to pay for incremental facilities, except for Pacific, Southwest and NGC wherein the demand charge would be applied to 95 percent of the contract quantity, in order to determine such party's monthly demand charge for use of the proposed incremental San Juan Triangle facilities, it is asserted.

In order to accommodate such transportation arrangements on a firm basis, El Paso has determined that it must construct and place into operation by November 1, 1980, approximately 102.83 miles of 30-inch O.D. and 34-inch O.D. loop pipeline, install an 11,190 horsepower compressor station and certain metering facilities and modify and uprate certain existing compression and pipeline facilities in order to increase by approximately 400,000 Mcf per day its existing 1,500,000 Mcf winter maximum daily design capacity in the San Juan Triangle, the application states. This additional winter capacity of approximately 400,000 Mcf per day, together with that portion of the existing

1,500,000 Mcf of capacity in the San Juan Triangle which El Paso projects it would not require to move its own flowing gas supply, would be sufficient to enable El Paso to transport through the San Juan Triangle the aggregate of the volumes of natural gas projected by the shippers to be available at the Ignacio Receipt Point through October 31, 1981, it is further stated.

The application indicates the following facility additions and modifications:

San Juan Triangle Facilities:

A. Compressor Facilities:

Bondad Compressor Station—Install three 3,730 horsepower gas turbine-driven centrifugal compressor units, with appurtenances, at El Paso's compressor station to be located in La Plata County, Colorado.

Gallup Compressor Station—Uprate one 6,000 horsepower gas turbine-driven centrifugal compressor unit to 8,000 horsepower, at El Paso's Gallup "B" compressor station and modify compressors on eight 1,320 horsepower units and four 2,000 horsepower units at El Paso's Gallup "A" compressor station.

B. Modified Operating Pressure:

Ignacio to Blanco Plant Pipeline—Increase the authorized maximum allowable operating pressure of El Paso's existing 24-inch O.D. Ignacio to Blanco plant pipeline from 894 psia to 1,073 psia by uprating approximately 30.3 miles of 24-inch O.D. pipeline commencing at El Paso's proposed Bondad compressor station in La Plata County, Colorado, and terminating at El Paso's Blanco plant in San Juan County, New Mexico. Uprating would require replacing 433 feet of pipeline near El Paso's Blanco plant with 24-inch O.D. x 0.375-inch w.t. Grade X-70 pipeline and four valves and 5,100 feet of pipeline with 24-inch O.D. pipeline at 22 road crossings. El Paso would also install additional cathodic protection equipment and pressure limiting devices and would hydrostatically test the pipeline.

C. Measurement Facilities:

Ignacio Receipt Point Checkmeter Station—Install six flow recorders, with appurtenances, at the point of interconnection between El Paso's 24-inch O.D. Ignacio to Blanco pipeline and Northwest's 26-inch O.D. mainline in La Plata County, Colorado.

Blanco Plant—Install one 30-inch O.D. checkmeter, with appurtenances, to be located at El Paso's Blanco plant on the

proposed Ignacio to Blanco 30-inch O.D. loop pipeline, in San Juan County, New Mexico.

D. Loop Pipeline Facilities:

Ignacio to Blanco Plant—Install approximately 33.9 miles of 30-inch O.D. loop pipeline, consisting of 1.0 mile of 30-inch O.D. pipeline, 0.1 mile of 30-inch O.D. pipeline and 31.8 miles of 30-inch O.D. pipeline, with appurtenances, commencing at Northwest's Ignacio compressor station in La Plata County, Colorado, and terminating at El Paso's Blanco plant in San Juan County, New Mexico.

Blanco Plant to White Rock Compressor Station—Install approximately 37.4 miles of 34-inch O.D. loop pipeline, consisting of 37.1 miles of 34-inch O.D. pipeline, 0.2 mile of 34-inch O.D. pipeline and 0.1 mile of 34-inch O.D. pipeline, with appurtenances, commencing at Milepost 2.6 on El Paso's existing 34-inch O.D. Blanco plant to Gallup compressor station pipeline and terminating at El Paso's White Rock compressor station at Milepost 40.0, all located in San Juan County, New Mexico.

White Rock Compressor Station to Gallup Compressor Station—Install approximately 30.3 miles of 34-inch O.D. loop pipeline, consisting of 29.7 miles of 34-inch O.D. pipeline and 0.6 mile of 34-inch O.D. pipeline, with appurtenances commencing at El Paso's White Rock compressor station at Milepost 40.0 on El Paso's 34-inch O.D. Blanco plant to Gallup compressor station pipeline in San Juan County, New Mexico, and terminating at El Paso's Gallup compressor station at Milepost 70.3 in McKinley County, New Mexico.

Gallup Compressor Station to Valve City—Install approximately 18.2 miles of 30-inch O.D. loop pipeline, consisting of 16.2 miles of 30-inch O.D. pipeline, 1.7 miles of 30-inch O.D. pipeline and 0.3 mile of 30-inch O.D. pipeline with appurtenances commencing at El Paso's Gallup compressor station on El Paso's 24-inch O.D. San Juan line and San Juan 1st loop line at Milepost 65.0, and terminating at Valve City at Milepost 83.2 on the Navajo Indian Reservation (unsurveyed land), all located in McKinley county, New Mexico.

In addition to those facilities proposed to be constructed and modified as specifically described above, and as a part of the instant project, El Paso would construct and operate under authority of Section 2.55 of the Commission's General Policy and Interpretations (18 CFR 2.55) facilities specifically described as follows:

San Juan Triangle Facilities

A. Compressor Facilities:

White Rock Compressor Station—Rewheel the existing 7,900 horsepower gas turbine-driven centrifugal compressor unit at El Paso's White Rock compressor station located at Milepost 40.0 on the 34-inch O.D. Blanco-San Juan pipeline in San Juan County, New Mexico.

Gallup Compressor Station—Modify piping on three 1,320 horsepower compressor units and one 2,000 horsepower compressor unit for dual service between El Paso's 24-inch O.D. and 34-inch O.D. San Juan Mainline pipelines at the Gallup compressor station located on the Navajo Indian Reservation (unsurveyed land) in McKinley County, New Mexico.

B. Supervisory Control and Telemetering Facilities:

Ignacio and Blanco Plants—Install supervisory control and telemetering equipment, with appurtenances at Northwest's Ignacio plant located in La Plata County, Colorado, and at El Paso's Blanco plant located in San Juan County, New Mexico.

Also as a part of the instant project, El Paso would construct two plant houses at the proposed Bondad compressor station to be located in La Plata County, Colorado.

San Juan Mainline Facilities:

A. Measurement Facilities:

Franconia Junction Checkmeter—Replace one 34-inch O.D. checkmeter, with appurtenances, located at Franconia Junction on El Paso's existing 34-inch O.D. San Juan 2nd loop pipeline at Milepost 423.39 in Mohave County, Arizona.

The facilities for which El Paso seeks authorization to modify are specifically described as follows:

San Juan Mainline Measurement Facilities:

Topock City Gate Meter Station—Modify existing measurement facilities located at El Paso's existing Topock City Gate meter station located in Mohave County, Arizona. Modifications would involve replacing two 16-inch O.D. junior type orifice fittings with senior-type orifice fittings.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 16, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules

of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for El Paso to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary

[FR Doc. 79-20460 Filed 7-2-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ER79-195]

Florida Power Corp.; Filing of Service Agreements

June 26, 1979.

The filing Company submits the following:

Take notice that on June 11, 1979, Florida Power Corporation ("Florida Power") tendered the filing unexecuted transmission service agreements with the Cities of Orlando, Alachua, Leesburg, Lakeland and Gainesville, Florida, and with Tampa Electric Company and executed transmission service agreements with the Cities of New Smyrna Beach, Kissimmee, Bushnell and Tallahassee, Florida. Florida Power states that the filing is in compliance with the Commission's order of April 10, 1979 in Docket No. ER 79-195 and requests that these service agreements be made effective April 12, 1979. Florida Power states that the filing

has been served on the affected customers and on the Florida Public Service Commission.

Any person desiring to be heard or to make any protest with reference to said filing should, on or before July 17, 1979, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10).

All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission Rules. The documents filed in Florida Power are on file with the Commission and available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-20461 Filed 7-2-79; 8:45 am]
BILLING CODE 6450-01-M

George A. Angle, et al.; Determinations by Jurisdictional Agencies under the Natural Gas Policy Act of 1978

June 20, 1979.

The Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 275.104 and applicable to the indicated wells pursuant to the natural Gas Policy Act of 1978.

Kansas Corporation Commission

1. Control Number (F.E.R.C./State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block no.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 79-06618
2. 15-165-00000-
3. 108
4. George A Angle
5. #1 Allen
6. Reichel
7. Rush KS
8. 11.6 million cubic feet
9. May 24, 1979
10. Kansas-Nebraska Natural Gas Co Inc
1. 79-06617
2. 15-165-00000-
3. 108
4. George A Angle
5. #2 Allen B
6. Reichel

7. Rush KS
8. 44.0 million cubic feet
9. May 24, 1979
10. Kansas-Nebraska Natural Gas Co Inc
1. 79-06618
2. 15-165-00000-
3. 108
4. George A Angle
5. #1 Grout
6. Reichel
7. Rush KS
8. 161.0 million cubic feet
9. May 24, 1979
10. Kansas-Nebraska Natural Gas Co Inc

1. 79-06619
2. 15-165-00000-
3. 108
4. George A Angle
5. #2 Giesick
6. Reichel
7. Rush KS
8. .0 million cubic feet
9. May 24, 1979
10. Kansas-Nebraska Natural Gas Co Inc

1. 79-06641
2. 15-119-20291-
3. 103
4. Pickrell Drilling Company
5. Neumann-Wheatley Farms #1
6. Kismet
7. Meade
8. 130.0 million cubic feet
9. May 24, 1979
10. Panhandle Eastern Pipeline Company

1. 79-06642
2. 15-127-20154-
3. 108
4. Benson Mineral Group
5. Veal 1-30
6. Wilde
7. Morris KS
8. 10.5 million cubic feet
9. May 24, 1979
10. Mapco

1. 79-06643
2. 15-127-20205-
3. 108
4. Benson Mineral Group
5. Veal 4-30
6. Wilde
7. Morris KS
8. 10.6 million cubic feet
9. May 24, 1979
10. Mapco

1. 79-06644
2. 15-127-20105-
3. 108
4. Benson Mineral Group
5. Shearer 1-16
6. Wilde
7. Morris KS
8. 6.6 million cubic feet
9. May 24, 1979
10. Mapco

1. 79-06645
2. 15-127-20106-
3. 108
4. Benson Mineral Group
5. Shearer 1-16 Twin
6. Wilde
7. Morris KS
8. 6.6 million cubic feet
9. May 24, 1979
10. Mapco

1. 79-06646
2. 15-127-20188-
3. 108
4. Benson Mineral Group
5. Shearer 2-15
6. Wilde
7. Morris KS
8. 9.5 million cubic feet
9. May 24, 1979
10. Mapco
1. 79-06647
2. 15-127-20163-
3. 108
4. Benson Mineral Group
5. Fidelity State Bank 2-31
6. Wilde
7. Morris KS
8. 7.7 million cubic feet
9. May 24, 1979
10. Mapco
1. 79-06648
2. 15-127-20163-
3. 108
4. Benson Mineral Group
5. Fidelity State Bank & Trust 1-31
6. Wilde
7. Morris KS
8. 7.7 million cubic feet
9. May 24, 1979
10. Mapco
1. 79-06649
2. 15-127-20165-
3. 108
4. Benson Mineral Group
5. Roger 2-32
6. Wilde
7. Morris KS
8. 20.1 million cubic feet
9. May 24, 1979
10. Mapco
1. 79-06650
2. 15-127-20156-
3. 108
4. Benson Mineral Group
5. Koger 1-20
6. Wilde
7. Morris KS
8. 8.8 million cubic feet
9. May 24, 1979
10. Mapco
1. 79-06651
2. 15-127-20161-
3. 108
4. Benson Mineral Group
5. Koger 2-19
6. Wilde
7. Morris KS
8. 11.7 million cubic feet
9. May 24, 1979
10. Mapco
1. 79-06652
2. 15-165-00000-
3. 108
4. George A Angle
5. No. 1 Allen D
6. Reichel
7. Rush KS
8. 9.8 million cubic feet
9. May 24, 1979
10. Kansas-Nebraska Natural Gas Co Inc
1. 79-06653
2. 15-165-00000-
3. 108
4. George A Angle
5. No. 1 Allen A
6. Reichel
7. Rush KS
8. 9.8 million cubic feet
9. May 24, 1979
10. Kansas-Nebraska Natural Gas Co Inc
1. 79-06654
2. 15-165-00000-
3. 108
4. George A Angle
5. No. 2 Basgall
6. Reichel
7. Rush KS
8. 8.0 million cubic feet
9. May 24, 1979
10. Kansas-Nebraska Natural Gas Co Inc
1. 79-06655
2. 15-165-00000-
3. 108
4. George A Angle
5. No. 1 Breit
6. Reichel
7. Rush KS
8. .0 million cubic feet
9. May 24, 1979
10. Kansas-Nebraska Natural Gas Co Inc
1. 79-06656
2. 15-165-00000-
3. 108
4. George A Angle
5. No. 2 Brack A
6. Reichel
7. Rush KS
8. 13.0 million cubic feet
9. May 24, 1979
10. Kansas-Nebraska Natural Gas Co Inc
1. 79-06657
2. 15-165-00000-
3. 108
4. George A Angle
5. No. 3 Brack A
6. Reichel
7. Rush KS
8. 11.6 million cubic feet
9. May 24, 1979
10. Kansas-Nebraska Natural Gas Co Inc
1. 79-06665
2. 15-165-00000-
3. 108
4. George A Angle
5. No. 1 Edwards
6. Reichel
7. Rush KS
8. 6.6 million cubic feet
9. May 24, 1979
10. Kansas-Nebraska Natural Gas Co Inc
1. 79-06666
2. 15-165-00000-
3. 108
4. George A Angle
5. No. 1 Daubert
6. Reichel
7. Rush KS
8. 12.4 million cubic feet
9. May 24, 1979
10. Kansas-Nebraska Natural Gas Co Inc
1. 79-06667
2. 15-165-00000-
3. 108
4. George A Angle
5. No. 1 Elder
6. Reichel
7. Rush KS
8. 9.1 million cubic feet
9. May 24, 1979
10. Kansas-Nebraska Natural Gas Co Inc
1. 79-06668
2. 15-165-00000-
3. 108
4. George A Angle
5. No. 4 Burgardt A
6. Reichel
7. Rush KS
8. 18.0 million cubic feet
9. May 24, 1979
10. Kansas-Nebraska Natural Gas Co Inc
1. 79-06672
2. 15-119-20285-
3. 103
4. Imperial Oil Company
5. Sanders Ranch No. 3-19
6. Ext Angell
7. Meade KS
8. 15.0 million cubic feet
9. May 24, 1979
10. Michigan Wisconsin Pipe Line Company
1. 79-06673
2. 15-007-00000-
3. 108
4. Imperial Oil Company
5. Thurman A No. 1
6. Aetna
7. Barber KS
8. 14.0 million cubic feet
9. May 24, 1979
10. Cities Service Gas Company
1. 79-06674
2. 15-119-20080-
3. 108
4. Imperial Oil Company
5. Roberts A No. 1
6. Angell
7. Meade KS
8. 7.0 million cubic feet
9. May 24, 1979
10. Panhandle Eastern Pipe Line Company
1. 79-06675
2. 15-047-20310-
3. 102
4. Imperial Oil Company
5. Roenbaugh No. 2-27
6. Mull
7. Edwards KS
8. 13.0 million cubic feet
9. May 24, 1979
10. Kansas-Nebraska Natural Gas Co Inc
1. 79-06676
2. 15-023-20016-
3. 108
4. W R Murfin D/B/A Murfin Drilling Co
5. Schauer No. 1-12
6. Cherry Creek
7. Cheyenne KS
8. 5475.0 million cubic feet
9. May 24, 1979
10. Kansas-Nebraska Natural Gas Co Inc
1. 79-06677
2. 15-145-20305-
3. 108
4. Beren Corporation
5. Beer No. 1
6. Fort Larned
7. Pawnee KS
8. 10.9 million cubic feet
9. May 24, 1979
10. Northern Natural Gas Co
1. 79-06678

2. 15-145-20318-
3. 108
4. Beren Corporation
5. Grace-Young No. 1
6. Fort Larned
7. Pawnee KS
8. 1.8 million cubic feet
9. May 24, 1979
10. Northern Natural Gas Co

1. 79-06679
2. 15-165-00000-
3. 108
4. George A Angle
5. No. 1 Decker A
6. Reichel
7. Rush KS
8. 20.0 million cubic feet
9. May 24, 1979
10. Kansas-Nebraska Natural Gas Co Inc

1. 79-06680
2. 15-165-00000-
3. 108
4. George A Angle
5. No. 2 Erni A
6. Reichel
7. Rush KS
8. 2.1 million cubic feet
9. May 24, 1979
10. Kansas-Nebraska Natural Gas Co Inc

1. 79-06681
2. 15-165-00000-
3. 108
4. George A Angle
5. No. 1 Erbes A
6. Reichel
7. Rush KS
8. 8.7 million cubic feet
9. May 24, 1979
10. Kansas-Nebraska Natural Gas Co Inc

1. 79-06682
2. 15-007-00000-
3. 108
4. Beren Corporation
5. V L Cook No. 1
6. Driftwood
7. Barber, KS
8. 9.9 million cubic feet
9. May 24, 1979
10. Cities Service Gas Co

1. 79-06683
2. 15-007-00000-
3. 108
4. Beren Corporation
5. H Johnson No. 1
6. Hardtner
7. Barber, KS
8. 13.5 million cubic feet
9. May 24, 1979
10. Cities Service Gas Co

1. 79-06684
2. 15-145-20292-
3. 108
4. Beren Corporation
5. Gore No. 1
6. Fort Larned
7. Pawnee, KS
8. 3.3 million cubic feet
9. May 24, 1979
10. Northern Natural Gas Co

Louisiana Office of Conservation

1. Control Number (F.E.R.C./State)
2. API Well number
3. Section of NGPA

4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 79-06669
2. 17-075-22450-
3. 102
4. Exxon Corporation
5. S L 2090 No. 14
6. Southeast pass
7. Plaquemines, LA
8. 73.0 million cubic feet
9. May 24, 1979
10. Tennessee Gas Pipeline Co

1. 79-06670
2. 17-109-21970-
3. 102
4. Pennzoil Producing Company
5. C L & F A No. 20
6. Kent Bayou
7. Terrebonne, LA
8. 1550.0 million cubic feet
9. May 24, 1979
10. United Gas Pipe Line Company

1. 79-06671
2. 17-057-21501-
3. 102
4. Amerada Hess Corporation
5. C E Gheens No. 98
6. Bayou Des Allemands
7. Lafourche, LA
8. 124.0 million cubic feet
9. May 24, 1979
10. Transcontinental Gas Pipeline Corp

1. JD79-02381
2. 17-057-21481
3. 102
4. Lyons Petroleum Inc.
5. Roberts Rawle et al No. 1
6. Kings Ridge
7. Lafourche, LA
8. 730.0 million cubic feet.
9. April 04, 1979
10. Southern Natural Gas Co

Montana Board of Oil and Gas Conservation

1. Control number (F.E.R.C./State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 79-06576
2. 25-041-21891-
3. 108
4. J Burns Brown
5. Phillips 26-1
6. Badlands Gas Field
7. Hill, MT
8. 6.0 million cubic feet
9. May 22, 1979
10. Northern Natural Gas Company

1. 79-06577
2. 25-041-21836-
3. 108
4. J Burns Brown
5. Long Estate 31-1

6. Badlands Gas Field
7. Hill, MT
8. 18.0 million cubic feet
9. May 22, 1979
10. Northern Natural Gas Company

1. 79-06594
2. 25-041-21903-
3. 108
4. J Burns Brown
5. Kuhr 24-3
6. Tiger Ridge
7. Hill, MT
8. 6.0 million cubic feet
9. May 22, 1979
10. Northern Natural Gas Company

1. 79-06595
2. 25-041-21324-
3. 108
4. J Burns Brown
5. Havre 21-1
6. Tiger Ridge
7. Hill, MT
8. 10.6 million cubic feet
9. May 22, 1979
10. Northern Natural Gas Company

1. 79-06596
2. 25-041-21925-
3. 108
4. J Burns Brown
5. Sinnott 16-1
6.
7. Hill, MT
8. 7.3 million cubic feet
9. May 22, 1979
10. Northern Natural Gas Company

1. 79-06597
2. 25-005-21247-
3. 108
4. J Burns Brown
5. Wayne Wright 6-1
6.
7. Blaine, MT
8. 16.0 million cubic feet
9. May 22, 1979
10. Northern Natural Gas Company

1. 79-06598
2. 25-041-21513-
3. 108
4. J Burns Brown
5. Hall 33-1X
6. Tiger Ridge
7. Hill, MT
8. 3.0 million cubic feet
9. May 22, 1979
10. Northern Natural Gas Company

1. 79-06599
2. 25-041-21554-
3. 108
4. J Burns Brown
5. Donovan 1-28
6. Wildcat
7. Hill, MT
8. 16.4 million cubic feet
9. May 22, 1979
10. Northern Natural Gas Company

1. 79-06600
2. 25-041-21567-
3. 108
4. J Burns Brown
5. Donovan 1-33
6. Unnamed
7. Hill, MT
8. 11.0 million cubic feet
9. May 22, 1979

10. Northern Natural Gas Company

1. 79-06601
2. 25-005-21325-
3. 108
4. Cameo Minerals Inc
5. Cameo Minerals et al Starcher No. 1
6. Black Coulee
7. Blaine Co, MT
8. 13.0 million cubic feet
9. May 22, 1979
10. Northern Natural Gas Company
1. 79-06602
2. 25-005-21326-
3. 108
4. Cameo Minerals Inc
5. Cameo Minerals et al Starcher No. 2
6. Black Coulee
7. Blaine, MT
8. 10.0 million cubic feet
9. May 22, 1979
10. Northern Natural Gas Company
1. 79-06658
2. 25-095-21406-
3. 108
4. West Gas Inc
5. West Gas State 4-36
6. Lake Basin
7. Stillwater, MT
8. 14.6 million cubic feet
9. May 24, 1979
10. Montana Dakota Utilities
1. 79-06659
2. 25-095-21056-
3. 108
4. West Gas, Inc
5. West Gas Fradet 4-24
6. Lake Basin
7. Stillwater, MT
8. 12.8 million cubic feet
9. May 24, 1979
10. Montana Dakota Utilities
1. JD79-06660-A
2. 25-095-21044
3. 108
4. West Gas Inc
5. West Gas Hepp 9-23
6. Lake Basin
7. Stillwater, MT
8. 16.4 million cubic feet
9. May 24, 1979
10. Montana Dakota Utilities
1. JD79-06660-B
2. 25-095-21039
3. 108
4. West Gas Inc
5. West Gas Hepp 10-23
6. Lake Basin
7. Stillwater, MT
8. 16.4 million cubic feet
9. May 24, 1979
10. Montana Dakota Utilities
1. 79-06661
2. 25-095-21072
3. 108
4. West Gas Inc
5. West Gas Nord Hal 16-14
6. Lake Basin
7. Stillwater, MT
8. 3.7 million cubic feet
9. May 24, 1979
10. Montana Dakota Utilities
1. 79-06662
2. 25-041-21914-

3. 108

4. J Burns Brown
5. Clack 19-3
6. Tiger Ridge
7. Hill, MT
8. 10.0 million cubic feet
9. May 24, 1979
10. Montana Dakota Utilities
1. 79-06663
2. 25-095-21040-
3. 108
4. West Gas Inc
5. West Gas Keating 1-26
6. Lake Basin
7. Stillwater, MT
8. 4.4 million cubic feet
9. May 24, 1979
10. Montana Dakota Utilities

Ohio Department of Natural Resources

Division of Oil and Gas

1. Control number (F.E.R.C./State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block no.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)
1. 79-06687
2. 34-031-23238-0014-
3. 103
4. Seneca Energy Corp
5. Myers #1
- 6.
7. Coshocton OH
8. .0 million cubic feet
9. May 24, 1979
10. Columbia Gas Transmission
1. 79-06688
2. 34-031-23234-0014-
3. 103
4. Seneca Energy Corp
5. Miley #1
- 6.
7. Coshocton OH
8. .0 million cubic feet
9. May 24, 1979
10. Columbia Gas Transmission
1. 79-06689
2. 34-031-23136-0014-
3. 103
4. Seneca Energy Corp
5. Guthrie #1
- 6.
7. Coshocton OH
8. .0 million cubic feet
9. May 24, 1979
10. Columbia Gas Transmission
1. 79-06690
2. 34-031-23086-0014-
3. 103
4. Seneca Energy Corp
5. Wager Korns #1
- 6.
7. Coshocton OH
8. .0 million cubic feet
9. May 24, 1979
10. Columbia Gas Transmission
1. 79-06691
2. 34-151-22957-0014-
3. 103

4. MB Operating Co Inc

5. I & G Rine #1-A
- 6.
7. Stark OH
8. 5.0 million cubic feet
9. May 24, 1979
10. East Ohio Gas Company
1. 79-06692
2. 34-157-23000-0014-
3. 103
4. MB Operating Co Inc
5. H & I Mullett #1
- 6.
7. Tuscarawas OH
8. 50.0 million cubic feet
9. May 24, 1979
10. Columbia Gas Co
1. 79-06693
2. 34-157-22999-0014-
3. 103
4. MB Operating Co Inc
5. U & S Weaver #1
- 6.
7. Tuscarawas OH
8. 50.0 million cubic feet
9. May 24, 1979
10. Columbia Gas Co
1. 79-06694
2. 34-031-22980-0014-
3. 103
4. Seneca Energy Corp
5. Ames #1
- 6.
7. Coshocton OH
8. .0 million cubic feet
9. May 24, 1979
10. Columbia Gas Transmission
1. 79-06695
2. 34-031-22969-0014-
3. 103
4. Seneca Energy Corp
5. Bickle #1
- 6.
7. Coshocton OH
8. .0 million cubic feet
9. May 24, 1979
10. Columbia Gas Transmission
1. 79-06696
2. 34-031-23053-0014-
3. 103
4. Seneca Energy Corp
5. Lowe #3
- 6.
7. Coshocton OH
8. .0 million cubic feet
9. May 24, 1979
10. Columbia Gas Transmission
1. 79-06697
2. 34-031-23466-0014-
3. 103
4. Seneca Energy Corp
5. Lowe #4
- 6.
7. Coshocton OH
8. .0 million cubic feet
9. May 24, 1979
10. Columbia Gas Transmission
1. 79-06698
2. 34-119-24386-0014-
3. 103
4. Inland Drilling Co Inc
5. Kilpatrick-Burget Unit #1 #4386
- 6.
7. Muskingum OH

8. .4 million cubic feet
9. May 24, 1979
10.
1. 79-06699
2. 34-059-22492-0014-
3. 103
4. Inland Drilling Co Inc
5. Maley #1 #2492
6.
7. Guernsey OH
8. 1.5 million cubic feet
9. May 24, 1979
10.
1. 79-06700
2. 34-093-21083-0014-
3. 103
4. Inland Drilling Co Inc
5. Hill#1 #1083
6.
7. Lorain OH
8. 1.5 million cubic feet
9. May 24, 1979
10.
1. 79-06701
2. 34-093-21082-0014-
3. 103
4. Inland Drilling Co Inc
5. Giese #1 #1082
6.
7. Lorain OH
8. 1.5 million cubic feet
9. May 24, 1979
10.
1. 79-06702
2. 34-093-21084-0014-
3. 103
4. Inland Drilling Co Inc
5. R Beriswill #1 #1084
6.
7. Lorain OH
8. 1.5 million cubic feet
9. May 24, 1979
10.
1. 79-06703
2. 34-089-23509-0014-
3. 103
4. Inland Drilling Co Inc
5. Boyce #1 #3509
6.
7. Licking OH
8. 1.5 million cubic feet
9. May 24, 1979
10.
1. 79-06704
2. 34-119-24359-0014-
3. 103
4. Inland Drilling Co Inc
5. Shirer #1 4359
6.
7. Muskingum OH
8. .3 million cubic feet
9. May 24, 1979
10.
1. 79-06705
2. 34-119-22532-0014-
3. 103
4. Callander & Kimbrel Inc
5. Ruby #1
6.
7. Muskingum OH
8. 10.6 million cubic feet
9. May 24, 1979
10. East Ohio Gas Co
1. 79-06706
2. 34-119-24145-0014-
3. 103
4. Callander & Kimbrel Inc
5. Clemenson #1
6.
7. Muskingum OH
8. 18.0 million cubic feet
9. May 24, 1979
10. American Energy Services Inc
1. 79-06707
2. 34-133-21012-0014-
3. 103
4. Callander & Kimbrel Inc
5. Cruise #1
6.
7. Portage OH
8. 19.8 million cubic feet
9. May 24, 1979
10. East Ohio Gas Co
1. 79-06708
2. 34-085-20259-0014-
3. 103
4. Pioneer Oil Company Inc
5. #1 Hasse-Nichols
6.
7. Lake OH
8. 100.0 million cubic feet
9. May 24, 1979
10. The East Ohio Gas Company
1. 79-06709
2. 34-085-20260-0014-
3. 103
4. Pioneer Oil Company Inc
5. #2 James C Nichols
6.
7. Lake OH
8. 100.0 million cubic feet
9. May 24, 1979
10. The East Ohio Gas Company
1. 79-06710
2. 34-119-24387-0014-
3. 103
4. Inland Drilling Co Inc
5. Bowers #1 #4387
6.
7. Muskingum OH
8. .8 million cubic feet
9. May 24, 1979
10.
1. 79-06711
2. 34-119-24019-0014-
3. 103
4. Callander & Kimbrel Inc
5. Frueh #2
6.
7. Muskingum OH
8. 7.5 million cubic feet
9. May 24, 1979
10. East Ohio Gas Co
1. 79-06712
2. 34-157-22965-0014-
3. 103
4. H I Snyder
5. Floyd Sherer #1
6.
7. Tuscarawas OH
8. 38.0 million cubic feet
9. May 24, 1979
10. Republic Steel Corporation
1. 79-06713
2. 34-119-23786-0014-
3. 103
4. Callander & Kimbrel Inc
5. Pidcock #3
6.
7. Muskingum OH
8. 2.1 million cubic feet
9. May 24, 1979
10. East Ohio Gas Co
1. 79-06714
2. 34-035-20904-0014-
3. 103
4. Callander & Kimbrel Inc
5. Pamley #1
6.
7. Cuyahoga OH
8. 1.0 million cubic feet
9. May 24, 1979
10. Columbia Gas of Ohio
1. 79-06715
2. 34-119-23787-0014-
3. 103
4. Callander & Kimbrel Inc
5. Pidcock #2
6.
7. Muskingum OH
8. 2.2 million cubic feet
9. May 24, 1979
10. East Ohio Gas Co
1. 79-06716
2. 34-119-24117-0014-
3. 103
4. Callander & Kimbrel Inc
5. Murrell Rankin #1
6.
7. Muskingum OH
8. 6.0 million cubic feet
9. May 24, 1979
10. American Energy Services Inc
1. 79-06717
2. 34-133-21440-0014-
3. 103
4. Callander & Kimbrel Inc
5. McFarland-Roberto #1
6.
7. Portage OH
8. 7.8 million cubic feet
9. May 24, 1979
10. East Ohio Gas Co
1. 79-06718
2. 34-133-21092-0014-
3. 103
4. Callander & Kimbrel Inc
5. Giulitto-Cowan #1
6.
7. Portage OH
8. 8.5 million cubic feet
9. May 24, 1979
10. East Ohio Gas Co
1. 79-06719
2. 34-053-20366-0014-
3. 103
4. T & H Drilling Company
5. Rope #2
6.
7. Gallia OH
8. 14.6 million cubic feet
9. May 24, 1979
10. Columbia Gas Transmission
1. 79-06720
2. 34-053-20365-0014-
3. 103
4. T & H Drilling Co
5. Searles #2
6.
7. Gallia OH
8. 11.0 million cubic feet

9. May 24, 1979
10. Columbia Gas Transmission
1. 79-06721
2. 34-053-20358-0014-
3. 103
4. T & H Drilling Company
5. Rope #1
6.
7. Gallia OH
8. 14.8 million cubic feet
9. May 24, 1979
10. Columbia Gas Transmission
1. 79-06722
2. 34-031-22297-0014-
3. 108
4. Jerry Moore Inc
5. Erwin W Maurer #20077
6. Bakersville
7. Cushocton OH
8. 1.3 million cubic feet
9. May 24, 1979
10. Columbia Gas Transmission
1. 79-06723
2. 34-075-21473-0014-
3. 108
4. Jerry Moore Inc
5. J Keim Unit #1
6. Winesburg
7. Holmes OH
8. 3.3 million cubic feet
9. May 24, 1979
10. Columbia Gas Transmission
1. 79-06724
2. 34-169-21913-0014-
3. 108
4. Ponderosa Oil Company
5. Peter Hershberger Well #1
6.
7. Wayne OH
8. 5.0 million cubic feet
9. May 24, 1979
10. Columbia Gas Trans Corp
1. 79-06725
2. 34-053-20254-0014-
3. 103
4. T & H Drilling Company
5. Weeks #1
6.
7. Gallia OH
8. 15.0 million cubic feet
9. May 24, 1979
10. Columbia Gas Transmission
1. 79-06726
2. 34-053-20253-0014-
3. 103
4. T & H Drilling Company
5. Weeks #2
6.
7. Gallia OH
8. 15.0 million cubic feet
9. May 24, 1979
10. Columbia Gas Transmission
1. 79-06727
2. 34-053-20268-0014-
3. 103
4. T & H Drilling Co
5. R O J Corporation #1
6.
7. Gallia OH
8. 7.5 million cubic feet
9. May 24, 1979
10. Columbia Gas Transmission
1. 79-06728
2. 34-105-21729-0014-
3. 103
4. T & H Drilling Co
5. Davidson-Casto #1
6.
7. Meigs OH
8. 2.0 million cubic feet
9. May 24, 1979
10. Columbia Gas Transmission
1. 79-06729
2. 34-053-20346-0014-
3. 103
4. T & H Drilling Company
5. Stump #2
6.
7. Gallia OH
8. 14.6 million cubic feet
9. May 24, 1979
10. Columbia Gas Transmission
1. 79-06730
2. 34-105-21779-0014-
3. 103
4. H S D Oil & Gas Company
5. Klinkiewicz-Rardin #1
6.
7. Meigs OH
8. .0 million cubic feet
9. May 24, 1979
10. Columbia Gas Transmission
1. 79-06731
2. 34-105-21778-0014-
3. 103
4. H S D Oil & Gas Company
5. Swadley #1
6.
7. Meigs OH
8. 7.0 million cubic feet
9. May 24, 1979
10. Columbia Gas Transmission
1. 79-06732
2. 34-105-21765-0014-
3. 103
4. H S D Oil and Gas Company
5. Tittus #1
6.
7. Meigs OH
8. 6.0 million cubic feet
9. May 24, 1979
10. Columbia Gas Transmission
1. 79-06733
2. 34-105-21762-0014-
3. 103
4. H S D Oil and Gas Company
5. Priddy #1
6.
7. Meigs OH
8. 6.0 million cubic feet
9. May 24, 1979
10. Columbia Gas Transmission
1. 79-06734
2. 34-053-20280-0014-
3. 103
4. L R B Gas Company
5. Rathburn No. 2
6.
7. Gallia OH
8. 14.6 million cubic feet
9. May 24, 1979
10. Columbia Gas Transmission
1. 79-06733
2. 34-105-21762-0014-
3. 103
4. H S D Oil and Gas Company
5. Priddy #1
6.
7. Meigs OH
8. 6.0 million cubic feet
9. May 24, 1979
10. Columbia Gas Transmission
1. 79-06734
2. 34-053-20380-0014-
3. 103
4. L R B Gas Company
5. Rathburn No 2
6.
7. Gallia OH
8. 14.6 million cubic feet
9. May 24, 1979
10. Columbia Gas Transmission
1. 79-06735
2. 34-053-20222-0014-
3. 103
4. L R B Gas Company
5. Rathburn No 1
6.
7. Gallia OH-
8. 14.6 million cubic feet
9. May 24, 1979
10. Columbia Gas Transmission
1. 79-06736
2. 34-019-29940-0014-
3. 103
4. L & M Exploration
5. Hollyfield #3
6.
7. Carroll OH
8. 2.0 million cubic feet
9. May 24, 1979
10. Columbia Gas Transmission
1. 79-06737
2. 34-075-22133-0014-
3. 103
4. John C Mason
5. Virgil Shreiner 1A
6.
7. Holmes OH
8. 10.0 million cubic feet
9. May 24, 1979
10. Cincinnati Gas & Electric
1. 79-06738
2. 34-007-20928-0014-
3. 103
4. Clarence K Tussel Jr
5. Stasko-Raschke #1
6.
7. Ashtabula OH
8. 25.0 million cubic feet
9. May 24, 1979
10. East Ohio Gas Co
1. 79-06739
2. 34-119-24056-0014-
3. 103
4. Callander & Kimbrel Inc
5. Lake #6A
6.
7. Muskingum OH
8. 4.0 million cubic feet
9. May 24, 1979
10. East Ohio Gas Co
1. 79-06740
2. 34-117-23239-0014-
3. 103
4. Callander & Kimbrel Inc
5. Heacock #1A
6.
7. Morrow OH
8. .0 million cubic feet
9. May 24, 1979

10.
1. 79-08741
2. 34-035-20267-0014-
3. 103
4. Callander & Kimbrel Inc
5. Hall-Sprague #1
6.
7. Cuyahoga OH
8. 3.5 million cubic feet
9. May 24, 1979
10. Columbia of Ohio
1. 79-06742
2. 34-119-243790-0014-
3. 103
4. Callander & Kimbrel Inc.
5. Alfman #1
6.
7. Muskingum OH
8. 12.0 million cubic feet
9. May 24, 1979
10. Aamil
1. 79-06743
2. 34-119-24549-0014-
3. 103
4. Andrew H McConnell
5. Ellis Conley #1
6.
7. Muskingum OH
8. 20.0 million cubic feet
9. May 24, 1979
10. National Gas & Oil Corp
1. 79-06744
2. 34-151-22718-0014-
3. 103
4. MB Operating Co Inc
5. T Thomas Unit #1
6.
7. Stark OH
8. 29.2 million cubic feet
9. May 24, 1979
10. East Ohio Gas Co, Republic Steel Corp,
Columbia Gas Co
1. 79-06745
2. 34-151-22813-0014-
3. 103
4. MB Operating Co Inc
5. A Sommers Unit #1
6.
7. Stark OH
8. 5.5 million cubic feet
9. May 24, 1979
10. East Ohio Gas Co, Republic Steel Corp,
Columbia Gas Co
1. 79-06746
2. 34-157-23201-0014-
3. 103
4. MB Operating Co Inc
5. R Burky #1
6.
7. Tuscarawas
8. 13.0 million cubic feet
9. May 24, 1979
10. East Ohio Gas Co, Republic Steel Corp,
Columbia Gas Co.
1. 79-06747
2. 34-157-23037-0014-
3. 103
4. MB Operating Co Inc
5. H Collinsworth #1
6.
7. Tuscarawas OH
8. 23.7 million cubic feet
9. May 24, 1979
10. East Ohio Gas Co, Republic Steel Corp,
Columbia Gas Co.
1. 79-06748
2. 34-151-22716-0014-
3. 103
4. MB Operating Co Inc
5. State of Ohio #4
6.
7. Stark OH
8. 27.4 million cubic feet
9. May 24, 1979
10. Republic Steel Corp, Canton Drop Forging
& Manuf, Babcock & Wilcox
1. 79-06749
2. 34-151-22717-0014-
3. 103
4. MB Operating Co Inc
5. State of Ohio #5
6.
7. Stark OH
8. 27.4 million cubic feet
9. May 24, 1979
10. Republic Steel Corp, Canton Drop Forging
& Manuf, Babcock & Wilcox
1. 79-06750
2. 34-119-24096-0014-
3. 103
4. P & G Oil & Gas Co
5. Fenton Bros #4
6.
7. Muskingum OH
8. 8.0 million cubic feet
9. May 24, 1979
10. Columbia Gas Transmission
1. 79-06751
2. 34-151-22882-0014-
3. 103
4. MB Operating Co Inc
5. The E Staudt Co #1
6.
7. Stark OH
8. 27.4 million cubic feet
9. May 24, 1979
10. Republic Steel Corp, Canton Drop Forging
& Manuf, Babcock & Wilcox
1. 79-06752
2. 34-151-22719-0014-
3. 103
4. MB Operating Co Inc
5. C Steiner #1-A
6.
7. Stark OH
8. 27.4 million cubic feet
9. May 24, 1979
10. Republic Steel Corp, Canton Drop Forging
& Manuf, Babcock & Wilcox
1. 79-06753
2. 34-151-22606-0014-
3. 103
4. MB Operating Co Inc
5. T Kolp Unit #3
6.
7. Stark OH
8. 27.4 million cubic feet
9. May 24, 1979
10. Republic Steel Corp, Canton Drop Forge &
Manuf, Babcock & Wilcox
1. 79-06754
2. 34-151-22835-0014-
3. 103
4. MB Operating Inc
5. Hol-Wit Inc #
6.
7. Stark OH
8. 27.4 million cubic feet
9. May 24, 1979
10. Republic Steel Corp, Canton Drop Forge &
Manuf, Babcock & Wilcox
1. 79-06755
2. 34-151-22175-0014-
3. 103
4. MB Operating Co Inc
5. Hol-Wit Inc #1
6.
7. Stark OH
8. 27.4 million cubic feet
9. May 24, 1979
10. Republic Steel Corp, Canton Drop Forge &
Manuf, Babcock & Wilcox
1. 79-06756
2. 34-151-22692-0014-
3. 103
4. MB Operating Co Inc
5. The Flintkote #3
6.
7. Stark OH
8. 9.9 million cubic feet
9. May 24, 1979
10. East Ohio Gas Co
1. 79-06757
2. 34-151-22704-0014-
3. 103
4. MB Operating Co Inc
5. The Flintkote Co #4
6.
7. Stark OH
8. 9.9 million cubic feet
9. May 24, 1979
10. East Ohio Gas Co, Republic Steel Corp,
Columbia Gas Co
1. 79-06758
2. 34-127-24237-0014-
3. 103
4. W J Lydic Inc
5. Thomas M Ream #1
6.
7. Perry OH
8. 50.0 million cubic feet
9. May 24, 1979
10. Columbia Gas Transmission
1. 79-06759
2. 34-155-20806-0014-
3. 103
4. Morain Coating and Construction Inc
5. Mills #1
6.
7. Trumbull
8. 25.0 million cubic feet
9. May 24, 1979
10. East Ohio Gas Co
1. 79-06760
2. 34-151-22811-0014-
3. 103
4. MB Operating Co Unit #6
5. The Flintkote Co Unit #6
6.
7. Stark OH
8. 9.9 million cubic feet
9. May 24, 1979
10. East Ohio Gas Co, Republic Steel Corp,
Columbia Gas Co
1. 79-06761
2. 34-119-20393-0014-
3. 108
4. P & G Oil & Gas Co
5. Muskingum Co Infirmary #2
6. Zanesville-Falls Twp
7. Muskingum OH

8. 1.8 million cubic feet
9. May 24, 1979
10. Columbia Gas Transmission
1. 79-06762
2. 34-119-20882-0014-
3. 108
4. L Pflieger & D F Garner
5. Harkness-Kingston #1 (Gill)
6. Rich Hill
7. Muskingum OH
8. 4.8 million cubic feet
9. May 24, 1979
10. Columbia Gas of Ohio
1. 79-06763
2. 34-115-20691-0014-
3. 108
4. P & G Oil & Gas Co
5. W O Wortman (Biehl) #1
6. Bristol
7. Morgan OH
8. 1.3 million cubic feet
9. May 24, 1979
10. Columbia Gas of Ohio
1. 79-06764
2. 34-119-20936-0014-
3. 108
4. L Pflieger & D F Garner
5. Downing #2 (Bernice Wilkins)
5. Salt Creek
7. Muskingum OH
8. 9.0 million cubic feet
9. May 24, 1979
10. Columbia Gas of Ohio
1. 79-06765
2. 34-151-22883-0014-
3. 103
4. MB Operating Co Inc
5. The Flintkote Co #11
6.
7. Stark OH
8. 9.9 million cubic feet
9. May 24, 1979
10. East Ohio Gas Co Republic Steel Corp
Columbia Gas Co
1. 79-06766
2. 34-151-22838-0014-
3. 103
4. MB Operating Co Inc
5. E Furbay #2
6.
7. Stark OH
8. 9.9 million cubic feet
9. May 24, 1979
10. East Ohio Gas Co Republic Steel Corp
Columbia Gas Co
1. 79-06767
2. 34-151-22709-0014-
3. 103
4. MB Operating Co Inc
5. A & N Helmuth #1
6.
7. Stark OH
8. 9.9 million cubic feet
9. May 24, 1979
10. East Ohio Gas Co Republic Steel Corp
Columbia Gas Co
1. 79-06768
2. 34-151-22840-0014-
3. 103
4. MB Operating Co Inc
5. L & M Schlabach Unit #1
6.
7. Stark OH
8. 9.9 million cubic feet
9. May 24, 1979
10. East Ohio Gas Co Republic Steel Corp
Columbia Gas Co
1. 79-06769
2. 34-007-21049-0014-
3. 103
4. Inland Drilling Co Inc
5. Stewart #2 1049
6.
7. Ashtabula OH
8. .2 million cubic feet
9. May 24, 1979
10.
1. 79-06770
2. 34-007-21004-0014-
3. 103
4. Inland Drilling Co Inc
5. Deeter #1 1004
6.
7. Ashtabula OH
8. .2 million cubic feet
9. May 24, 1979
10.
1. 79-06771
2. 34-007-21042-0014-
3. 103
4. Inland Drilling Co Inc
5. Savchuk #3 1042
6.
7. Ashtabula OH
8. .2 million cubic feet
9. May 24, 1979
10.
1. 79-06772
2. 34-009-21919-0014-
3. 103
4. Inland Drilling Co Inc
5. Federal Valley Coal Corp #2 1919
6.
7. Athens OH
8. .5 million cubic feet
9. May 24, 1979
10.
1. 79-06773
2. 34-007-21045-0014-
3. 103
4. Inland Drilling Co Inc
5. Stewart #3 1045
6.
7. Ashtabula OH
8. .2 million cubic feet
9. May 24, 1979
10.
1. 79-06774
2. 34-093-21089-0014-
3. 103
4. Inland Drilling Co Inc
5. Gest #1 #1089
6.
7. Lorain OH
8. 1.5 million cubic feet
9. May 24, 1979
10.
1. 79-06775
2. 34-133-21781-0014-
3. 103
4. Inland Drilling Co Inc
5. Krames #1 1781
6.
7. Portage OH
8. .3 million cubic feet
9. May 24, 1979
10.
1. 79-06776
2. 34-133-21737-0014-
3. 103
4. Inland Drilling Co Inc
5. Van Auken #1 1737
6.
7. Portage OH
8. .4 million cubic feet
9. May 24, 1979
10.
1. 79-06777
2. 34-059-22346-0014-
3. 103
4. Enterprise Gas & Oil Inc
5. Beynon #1
6.
7. Guernsey OH
8. 73.0 million cubic feet
9. May 24, 1979
10.
1. 79-06778
2. 34-007-21074-0014-
3. 103
4. Inland Drilling Co Inc
5. Carr #1 1074
6.
7. Ashtabula OH
8. .2 million cubic feet
9. May 24, 1979
10.
1. 79-06779
2. 34-133-21769-0014-
3. 103
4. Inland Drilling Co Inc
5. McPeak #1 #1769
6.
7. Portage OH
8. .5 million cubic feet
9. May 24, 1979
10.
1. 79-06780
2. 34-133-21787-0014-
3. 103
4. Inland Drilling Co Inc
5. Strausse #2 1787
6.
7. Portage OH
8. .5 million cubic feet
9. May 24, 1979
10.
1. 79-06781
2. 34-007-21069-0014-
3. 103
4. Inland Drilling Co Inc
5. Carr #2 1069
6.
7. Ashtabula OH
8. .5 million cubic feet
9. May 24, 1979
10.
1. 79-06782
2. 34-153-20617-0014-
3. 103
4. Inland Drilling Co Inc
5. Wartko-Sabetti #1 #0617
6.
7. Summit OH
8. .9 million cubic feet
9. May 24, 1979
10.
1. 79-06783
2. 34-119-24668-0014-
3. 103
4. Inland Drilling Co Inc

5. Hock #1 4668
6.
7. Muskingum OH
8. .4 million cubic feet
9. May 24, 1979
10.

1. 79-06784
2. 34-163-20395-0014-
3. 103
4. Inland Drilling Co Inc
5. Jay-Mar Coal #3 0395
6.
7. Vinton OH
8. .3 million cubic feet
9. May 24, 1979
10.

West Virginia Department of Mines

Oil and Gas Division

1. Control number (F.E.R.C./State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 79-06578
2. 47-021-02931-
3. 103
4. NRM Petroleum Corporation
5. Campbell #1
6. Glenville
7. Gilmer WV
8. 8.0 million cubic feet
9. May 22, 1979
10. Consolidated Gas Supply Corp

1. Control number (F.E.R.C./State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block no.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 79-06579
2. 47-001-01019-
3. 103
4. NRM Petroleum Corporation
5. Skayra #1
6. Union
7. Barbour WV.
8. 4.0 million cubic feet
9. May 22, 1979
10. Consolidated Gas Supply Corp.

1. 79-06580
2. 47-041-02152-
3. 103
4. NRM Petroleum Corporation
5. Pringle #1
6. Hackers Creek
7. Lewis WV
8. 13.0 million cubic feet
9. May 22, 1979
10. Consolidated Gas Supply Corp

1. 79-06581
2. 47-097-01735-
3. 103
4. NRM Petroleum Corporation

5. Phillips #1
6. Meade
7. Upshur WV
8. 34.0 million cubic feet
9. May 22, 1979
10. Columbia Gas Corp
1. 79-06582
2. 47-021-03221-
3. 103
4. Petroleum Corporation
5. Black #1
6. Glenville
7. Gilmer WV
8. 352.4 million cubic feet
9. May 22, 1979
10. Consolidated Gas Supply Corp

1. 79-06583
2. 47-021-02923-
3. 103
4. NRM Petroleum Corporation
5. J S Barker 2-A
6. Tomblын Run
7. Gilmer WV
8. 24.0 million cubic feet
9. May 22, 1979
10. Consolidated Gas Supply Corp

1. 79-06584
2. 47-021-23399-
3. 103
4. Ro-Jo Industries Inc
5. E B Barbarow 3-A
6. Troy District
7. Gilmer WV
8. 20.0 million cubic feet
9. May 22, 1979
10. Consolidated Gas Supply Corporation

1. 79-06585
2. 47-005-01071-
3. 103
4. Consolidated Gas Supply Corporation
5. Spruce Boone Coal 12414
6. W Va other A-85772
7. Boone WV
8. 40.0 million cubic feet
9. May 22, 1979
10. General System Purchasers

1. 79-06588
2. 47-033-01210-
3. 103
4. Consolidated Gas Supply Corporation
5. H G Porter 12479
6. W Va other A-85772
7. Harrison WV
8. 22.0 million cubic feet
9. May 22, 1979
10. General System Purchasers

1. 79-06587
2. 47-033-01132-
3. 103
4. Consolidated Gas Supply Corporation
5. H C Morrison 12402
6. W Va other A-85772
7. Harrison WV
8. 36.0 million cubic feet
9. May 22, 1979
10. General System Purchasers

1. 79-06588
2. 47-017-01887-
3. 103
4. Consolidated Gas Supply Corporation
5. M J McMillan 12301
6. W Va other A-85772
7. Doddridge WV
8. 26.0 million cubic feet

9. May 22, 1979
10. General System Purchasers
1. 79-06589
2. 47-041-02147-
3. 103
4. Consolidated Gas Supply Corporation
5. J B Lovett 12310
6. W Va other A-85772
7. Lewis WV
8. 33.0 million cubic feet
9. May 22, 1979
10. General System Purchasers

1. 79-06590
2. 47-049-00326-
3. 103
4. Consolidated Gas Supply Corporation
5. C H Hibbs 12276
6. W Va other A-85772
7. Marion WV
8. 40.0 million cubic feet
9. May 22, 1979
10. General System Purchasers

1. 79-06591
2. 47-021-22994-
3. 103
4. Rockwell Petroleum Company
5. Barker-Marshall #1
6. Glenville District
7. Gilmer WV
8. 10.0 million cubic feet
9. May 22, 1979
10. Consolidated Gas Supply Corporation

1. 79-06592
2. 47-017-01901-
3. 103
4. United Operating Company
5. M Haight Dodd-1901
6. Freds Run
7. Doddridge WV
8. 25.0 million cubic feet
9. May 22, 1979
10. Consolidated Gas Supply Corp

1. 79-06593
2. 47-107-20760-
3. 103
4. Appalachian Exploration & Devel Inc
5. W I Cale #1
6. Walker
7. Wood WV
8. 9.1 million cubic feet
9. May 22, 1979
10. Cabot Corporation

1. 79-06603
2. 47-041-22092-
3. 103
4. Ro-Jo Industries Inc
5. Nellie Barbarow #2
6. Freemans Creek District
7. Lewis WV
8. 30.0 million cubic feet
9. May 22, 1979
10. Consolidated Gas Supply Corporation

1. 79-06604
2. 47-021-22764-
3. 103
4. Ro-Jo Industries Inc
5. Nellie Barbarow #1
6. Troy District
7. Gilmer WV
8. 30.0 million cubic feet
9. May 22, 1979
10. Consolidated Gas Supply Corporation

4. Ro-Jo Industries Inc
5. E B Barbarow I-A
6. Troy District
7. Gilmer WV
8. 45.0 million cubic feet
9. May 22, 1979
10. Consolidated Gas Supply Corporation
1. 79-06806
2. 47-015-01195-
3. 103
4. Blue Creek Gas Co
5. Campbell Woods #1
6. Henry
7. Clay WV
8. 25.0 million cubic feet
9. May 22, 1979
10. Columbia Gas Transmission
1. 79-06607
2. 47-021-03403-
3. 103
4. United Operating Company
5. Ida Hiney #2 Gil-3403
6. Ellis Creek
7. Gilmer WV
8. 43.0 million cubic feet
9. May 22, 1979
10. Carnegie Natural Gas Co
1. 79-06608
2. 47-067-00477-
3. 103
4. Appalachian Exploration & Devel Inc
5. C & H Corporation B-29
6. Jefferson
7. Nicholas WV
8. 67.9 million cubic feet
9. May 22, 1979
10. Cabot Corporation
1. 79-06609
2. 47-033-21241-
3. 103
4. Appalachian Energy Inc
5. John M Coffman #2 AE 12
6. Eagle
7. Harrison WV
8. 20.0 million cubic feet
9. May 22, 1979
10. Consolidated Gas Supply Corp
1. 79-06610
2. 47-021-02965-
3. 103
4. United Operating Company
5. W B Holbert—Gil-2965
6. Big Run
7. Gilmer WV
8. 9.0 million cubic feet
9. May 22, 1979
10. Consolidated Gas Supply Corp
1. 79-06611
2. 47-033-21711-
3. 103
4. Appalachian Energy Inc
5. Hobert Boggess #1 AE 22
6. Eagle
7. Harrison WV
8. 30.0 million cubic feet
9. May 22, 1979
10. Consolidated Gas Supply Corp
1. 79-06612
2. 47-079-00925-
3. 103
4. Appalachian Exploration & Devel Inc
5. J L Stephens #1
6. Union
7. Putnam WV
8. 22.5 million cubic feet
9. May 22, 1979
10. Cabot Corporation
1. 79-06613
2. 47-021-23203-
3. 103
4. Rockwell Petroleum Company
5. Waugh #1
6. Glenville District
7. Gilmer WV
8. 10.0 million cubic feet
9. May 22, 1979
10. Consolidated Gas Supply Corporation
1. 79-06614
2. 47-039-22828-
3. 103
4. Quaker State Oil Refining Corp
5. Gilbert #9 62200-9
6. Elk District
7. Kanawha WV
8. 8.0 million cubic feet
9. May 22, 1979
10. Columbia Gas Transmission Corp
1. 79-06620
2. 47-017-01896-
3. 103
4. Consolidated Gas Supply Corporation
5. D C Stout 12477
6. W Va other A-85772.
7. Doddridge WV
8. 39.0 million cubic feet
9. May 23, 1979
10. General System Purchasers
1. 79-06621
2. 47-041-02175-
3. 103
4. Consolidated Gas Supply Corporation
5. Edwin Gaston 12490
6. W Va other A-85772
7. Lewis WV
8. 33.0 million cubic feet
9. May 23, 1979
10. General System Purchasers
1. 79-06622
2. 47-041-02184-
3. 103
4. Consolidated Gas Supply Corporation
5. M C Burnside 12488
6. W Va other A-85772
7. Lewis WV
8. 35.0 million cubic feet
9. May 23, 1979
10. General System Purchasers
1. 79-06623
2. 47-033-01231-
3. 103
4. Consolidated Gas Supply Corporation
5. A G Swiger 12469
6. W Va other A-85772
7.
8. 25.0 million cubic feet
9. May 23, 1979
10. General System Purchasers
1. 79-06624
2. 47-017-21526-
3. 108
4. Harcon Oil & Gas Co
5. Tamiami Development Co (Well #1)
6. Southwest
7. Doddridge WV
8. 4.9 million cubic feet
9. May 23, 1979
10. Equitable Gas
1. 79-06625
2. 47-017-21547-
3. 108
4. Harcon Oil & Gas Co
5. Tamiami Development Co (Well #3)
6. Southwest
7. Doddridge WV
8. 5.2 million cubic feet
9. May 23, 1979
10. Equitable Gas Co
1. 79-06626
2. 47-021-21613-
3. 108
4. Harcon Oil & Gas Co
5. Stone Lick Oil & Gas Co (Nutter #1)
6. Troy
7. Gilmer WV
8. 1.2 million cubic feet
9. May 23, 1979
10. Equitable Gas
1. 79-06627
2. 47-021-21630-
3. 108
4. Harcon Oil & Gas Co
5. Times Square Oil & Gas Ireland #1
6. Troy
7. Gilmer WV
8. 3.8 million cubic feet
9. May 23, 1979
10. Equitable Gas Co
1. 79-06628
2. 47-085-22271-
3. 108
4. Harcon Oil & Gas Co
5. Laurel Run Dev Co (Cunn) Well #2
6. Union
7. Ritchie WV
8. 4.0 million cubic feet
9. May 23, 1979
10. Equitable Gas
1. 79-06629
2. 47-085-22160-
3. 108
4. Harcon Oil & Gas Co
5. Spruce Creek Development Co Reserve
6. Union
7. Ritchie WV
8. 1.5 million cubic feet
9. May 23, 1979
10. Equitable Gas Co
1. 79-06630
2. 47-085-22164-
3. 108
4. Harcon Oil & Gas Co
5. Spruce Creek Dev Co—Smith Well #3
6. Union
7. Ritchie WV
8. 2.2 million cubic feet
9. May 23, 1979
10. Equitable Gas Co
1. 79-06631
2. 47-085-22213-
3. 108
4. Harcon Oil & Gas Co
5. Laurel Run Development Co (Well #1)
6. Union
7. Ritchie WV
8. 3.9 million cubic feet
9. May 23, 1979
10. Equitable Gas Co
1. 79-06632
2. 47-085-22215-
3. 108
4. Harcon Oil & Gas Co

5. Laurel Run Dev Co (CUNN) Well #1
6. Union
7. Ritchie WV
8. 4.0 million cubic feet
9. May 23, 1979
10. Equitable Gas
1. 79-06633
2. 47-085-22247-
3. 108
4. Harcon Oil & Gas Co
5. Spruce Creek Dev Co—Smith Well #4
6. Union
7. Ritchie WV
8. 2.2 million cubic feet
9. May 23, 1979
10. Equitable Gas Co

United States Geological Survey

Metairie, Louisiana

1. Control number (F.E.R.C./State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)
1. 79-06575
2. 17-722-40025-0000-0
3. 107 denied
4. Chevron USA Inc
5. OSC-G-2184 #A-2
6. South pass
7. 78
8. 559.0 million cubic feet
9. May 24, 1979
- 10.
1. 79-06664
2. 17-705-40313-0000-0
3. 102
4. McMoran Offshore Exploration Co
5. OCS-G 3390 #5
6. Vermilion
7. 25
8. 5475.0 million cubic feet
9. May 24, 1979
10. Transcontinental Gas Pipeline Co
1. 79-06685
2. 17-705-40317-0000-0
3. 102
4. McMoran Offshore Exploration Co
5. OCS-G 3390 #8
6. Vermilion
7. 25
8. 5475.0 million cubic feet
9. May 24, 1979
10. Transcontinental Gas Pipeline Co
1. JD79-06686
2. 17-722-40031-00S1-0
3. 102
4. Exxon Corporation
5. OCS-G 1619 No. A-2
6. South pass
7. 93
8. 420.0 million cubic feet
9. May 24, 1979
10. Columbia Gas Transmission Corp.

The applications for determination in these proceedings together with a copy

or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of public Information, room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before July 18, 1979.

Please reference the FERC control number in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-20494 Filed 7-2-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER78-166]

Georgia Power Co.; Notice of Filing

June 25, 1979.

The filing Company submits the following:

Take notice that Georgia Power Company on June 20, 1979, tendered for filing, in accordance with the Commission letter dated June 15, 1979, the following schedules:

FERC Electric Tariff, Original Volume No. 1, Revised Sheet No. 24.

FERC Electric Tariff, Original Volume No. 2, Revised Sheet Nos. 6, 10, 11 and 11-A.

Georgia Power states that copies of the filing were served upon all of its jurisdictional customers and on the Georgia Public Service Commission.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such protests should be filed on or before July 16, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-20477 Filed 7-2-79; 8:45 am]

BILLING CODE 6450-01-M.

[Docket Nos. ER76-39, ER76-340, and ER76-363]

Kansas Power and Light Co.; Compliance Filing

June 26, 1979.

Take notice that on June 1, 1979, Kansas Power & Light Company tendered for filing in compliance with the Commission's Order dated April 17, 1979, Revised Rate Schedule for wholesale service to Municipals (WSM-75 Revised) and a contract amendment for service to the City of Clay Center.

The revised rate schedule is in conformance with the approved settlement proposal and such rates will be effective for the period October 1, 1975, through April 1, 1978.

The Company states that it will refund all amounts collected in excess of the settlement rates with interest computed at 9% annum.

According to the Company, copies of the revised rate schedule has been mailed to all municipal customers and to the State Corporation Commission of the State of Kansas.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such protests should be filed on or before July 17, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-20422 Filed 7-2-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. SA79-4]

Lone Star Gas Co., a Division of Enserch Corp.; Application for Adjustment

June 28, 1979.

Take notice that on May 24, 1979, Lone Star Gas Company, a Division of ENSERCH CORPORATION (Applicant), 301 South Harwood Street, Dallas, Texas, 75201, filed with the Federal Energy Regulatory Commission (Commission) an Application for Adjustment wherein Applicant sought exemption from the requirements of the rules or orders issued under Title II of

the Natural Gas Policy Act of 1978 applicable to interstate pipelines.

In Docket No. RM79-14, the Commission issued a notice of proposed rulemaking on June 5, 1979, regarding the pass through, by interstate pipelines and local distribution companies, of certain costs of acquiring natural gas. Applicant asserts that although it is a "natural gas company" within the meaning of section 1(b) of the Natural Gas Act, it has that status as a result of transportation in interstate commerce rather than because of any sales for resale in interstate commerce. Consequently, Applicant requests that it be exempt from any rule or order of the Commission promulgated under Title II of the Natural Gas Policy Act of 1978.

The rules applicable to the conduct of this adjustment proceeding are found in § 1.41 of the Commission's Rules of Practice and Procedure, Order No. 24, issued March 22, 1979.

Any person desiring to participate in this adjustment proceeding shall file a petition to intervene in accordance with the provisions of § 1.41. All petitions to intervene must be filed on or before July 18, 1979.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-20471 Filed 7-2-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket Nos. C179-449, et al.]

Marathon Oil Co. (Successor in Interest to Frontier Resources, Inc.); Applications for Certificates, Abandonment of Service, and Petitions To Amend Certificates¹

June 25, 1979.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before July 13, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in

¹This notice does not provide for consolidation for hearing of the several matters covered herein.

determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,
Secretary.

Docket No. and date filed	Applicant	Purchaser and Location	Price per 1,000 ft ³	Pressure base
C179-449, A, May 14, 1979	Marathon Oil Co. (successor in interest to Frontier Resources, Inc.), 539 South Main Street, Findlay, Ohio 45840.	Tennessee Gas Pipeline Co., Columbus Field Area, Colorado County, Tex.	(1)	14.65
C179-450, A, May 15, 1979	Marathon Oil Co (operator)	Michigan Wisconsin Pipe Line Co., High Island area, High Island Block A-279, Offshore Texas.	(1)	14.65
C179-451, F, May 1, 1979	Columbia Gas Development Corp. (partial successor in interest to Forest Oil Corp.), P.O. Box 1350, Houston, Tex. 77001.	Columbia Gas Development Corp., Vermilion area block 268, south addition, offshore Louisiana.	(2)	15.025
C179-452, A, May 9, 1979	Columbia Gas Development Corp.	Columbia Gas Transmission Corp., block 313, platform "B", Vermilion area, south addition, offshore Louisiana.	(2)	15.025
C179-453, B, May 16, 1979	Ray London, Box 1444, Ardmore, Okla. 73401	Arkansas Louisiana Gas Co., Kinta field, Sequoyah County, Oklahoma (Sec. 10-10N-26E, M. J. Reinhart No. 1 well).	Cost of compression and operation is exceeding the income.	
C179-454, A, May 16, 1979	Aminoil Development, Inc., Golden Center One, 2800 North Loop West, Houston, Tex. 77018.	Natural Gas Pipeline Co. of America, block 612, Cameron area, south addition, offshore Louisiana.	(1)	14.65
C179-455, A, May 16, 1979	Aminoil Development, Inc.	Natural Gas Pipeline Co. of America, block 613, West-Cameron area, south addition, offshore Louisiana.	(2)	14.65
C179-456, F, May 16, 1979	CNG Producing Company (partial successor in interest to Forest Oil Corp.), 1800 Bank of New Orleans Bldg., 1010 Common Street, New Orleans, La. 70112.	Columbia Gas Transmission Corp., Vermilion area, block 269, south addition, offshore Louisiana.	(1)	15.025
C179-457, A, May 17, 1979	Vsea, Inc., 999 The Main Building, Houston, Tex. 77002.	United Gas Pipe Line Co., blocks A-339 and A-340, High Island area, east addition, offshore Texas.	(1)	15.025
C179-458, A, May 17, 1979	Pinto, Inc., 999 The Main Building, Houston, Tex. 77002.	United Gas Pipe Line Co., blocks A-339 and A-340, High Island area, east addition, offshore Texas.	(1)	15.025
C179-459, A, May 17, 1979	Aminoil Development, Inc.	Natural Gas Pipeline Co. of America, block A-273, High Island area, east addition, south extension, offshore Texas.	(1)	14.65
C179-460, A, May 17, 1979	Aminoil Development 1974-1 Limited, Golden Center One, 2800 North Loop West, Houston, Tex. 77018.	Natural Gas Pipeline Co. of America, block A-349, High Island area, east addition, south extension, offshore Texas.	(2)	14.65
C179-461, E, May 17, 1979	Gulf Oil Corp. successor in interest to Kewanee Oil Co. P.O. Box 2100, Houston, Tex. 77001.	National Fuel Gas Supply Corp., certain acreage located in the Brooksville area, Jefferson and Clearfield Counties, Pa.	(10)	14.73
C179-462, A, May 14, 1979	Cities Service Co., P.O. Box 300, Tulsa, Okla. 74102.	Michigan Wisconsin Pipe Line Co. High Island block A-355, Offshore Texas.	(11)	14.65
C179-463 (C164-1304), B, May 21, 1979.	Continental Oil Co., P.O. Box 2197, Houston, Tex. 77001.	El Paso Natural Gas Co. Blanco Field, San Juan County, N. Mex.	Ceased production in April 1965 and was plugged in 1968.	
C179-464 (C164-1305), B, May 21, 1979.	Continental Oil Co.	El Paso Natural Gas Co. Blanco Field, San Juan County, N. Mex.	Depleted, lease released by instrument dated Oct. 1, 1974, and was plugged and abandoned.	

Docket No. and date filed	Applicant	Purchaser and Location	Price per 1,000 ft ³	Pressure base
C179-465, A, May 21, 1979	Transco Exploration Co., P.O. Box 1336, Houston, Tex. 77001.	Transcontinental Gas Pipe Line Corp., Big Point field, St. Tammany Parish, La.	(1 ²)	15.025
C179-466, B, May 21, 1979	Service Drilling Co., Jefferson, Colo. 80456	Colorado Interstate Gas Co., Prairie Dog field, Baca County, Colo.	Ceased production during 1975 and the wells involved have been plugged.	
C179-467, A, May 23, 1979	Kerr-McGee Corp., P.O. Box 25861, Oklahoma City, Okla. 73125.	Tennessee Gas Pipeline Co., "A" platform, Vermilion area, block 241, offshore Louisiana.	(1 ²)	15.025
C179-468, A, May 23, 1979	Kerr-McGee Corp.	Tennessee Gas Pipeline Co., "A" platform, Vermilion area, block 261, offshore Louisiana.	(1 ²)	15.025
C179-469 (C176-502), B, May 22, 1979	Ocean Production Co., P.O. Box 61780, New Orleans, La. 70161.	Trunkline Gas Co., South Timber, block 140, offshore Louisiana.	Well was shut in after cessation of gas flow and unsuccessful maintenance program during January 1979.	
C179-470, A, May 16, 1979	Cities Service Co.	Michigan Wisconsin Pipe Line Co., High Island block A-356, offshore Texas.	(1 ²)	14.85
C179-471, A, May 18, 1979	Mesa Petroleum Co., One Mesa Square, P.O. Box 2009, Amarillo, Tex. 79189.	Michigan Wisconsin Pipe Line Co., High Island area, block A-273, offshore Texas.	(1 ²)	14.65
C179-472, A, May 18, 1979	Mesa Petroleum Co., One Mesa Square, P.O. Box 2009, Amarillo, Tex. 79189.	Michigan Wisconsin Pipe Line Co., High Island area, block A-313, offshore Texas.	(1 ²)	14.85
C179-473, A, May 18, 1979	Mesa Petroleum Co.	Michigan Wisconsin Pipe Line Co., High Island area, block A-278, offshore Texas.	(1 ²)	13.85
C179-474, B, May 29, 1979	Miles Kimball Co. d/b/a Kimball Production Co., et al. 8939 Richmond Avenue, suite 151, Houston, Tex. 77042.	Northern Natural Gas Co., Coyanosa Plant, Pecos County, Tex.	(1 ²)	
C179-475, A, May 23, 1979	Pan Eastern Exploration Co., P.O. Box 1642, Houston, Tex. 77001.	Panhandle Eastern Pipe Line Co., High Island area, south addition, block A-511, offshore Texas.	(1 ²)	14.65
C179-476, A, May 9, 1979	Anadarko Production Co., P.O. Box 1330, Houston, Tex. 77001.	Trunkline Gas Co., High Island, block A-317, offshore Texas.	(1 ²)	14.55
C179-477, A, June 1, 1979	Case-Pomeroy Oil Corp., P.O. Box 2266, Midland, Tex. 79702.	Southern Natural Gas Co. and United Gas Pipe Line Co., block 330, West Cameron area, offshore Louisiana.	(1 ²)	15.025
C179-478, A, June 1, 1979	Felmont Oil Corp., P.O. Box 2266, Midland, Tex. 79702.	Southern Natural Gas Co. and United Gas Pipe Line Co., Block 330, West Cameron area, offshore Louisiana.	(1 ²)	15.025
C179-479, A, May 31, 1979	Chevron U.S.A. Inc., P.O. Box 7643, San Francisco, Ca. 94120.	Southern Natural Gas Co. and United Gas Pipe Line Co., West Cameron block 330 Field, offshore Louisiana.	(1 ²)	15.025
C179-480, (G-2647), B, April 27, 1979.	Phillips Petroleum Co., 5 C4 Phillips Building, Bartlesville, Okla. 74004.	Tennessee Gas Pipeline Co., Donna field, Hidalgo County, Tex.	(1 ²)	
C179-481 (C174-602), B, May 8, 1979.	Phillips Petroleum Co.	Colorado Interstate Gas Co., Peterson "G" lease, Allen field, Morgan County, Colo.	(1 ²)	
C179-482, B, June 5, 1979	Richard P. George, 2301 Rega Drive, Houston, Tex. 77019.	Kansas-Nebraska Natural Gas Co., Inc., Bradshaw Depleted field, Hamilton County, Kans.		
C179-483, B, May 21, 1979	Clayton Corp., Jefferson, Colo. 80456	Colorado Interstate Gas Co., Fourteen Mile field, Washita County.	No prospects of gas production.	
C179-484, A, May 21, 1979	Marathon Oil Co. (operator), 539 South Main Street, Findlay, Ohio 45840.	Natural Gas Pipeline Co. of America, West Cameron area, West Cameron block, 543 Field, offshore Louisiana.	(1)	15.025
C179-485, E, June 1, 1979	Gulf Oil Corp. (successor in interest to Kewanee Oil Co.), P.O. Box 2100, Houston, Tex. 77001	Michigan Wisconsin Pipe Line Co., Certain acreage located in the West Cameron Area block 171, offshore Louisiana.	(1 ²)	15.025

¹ Applicant is willing to accept the applicable national rate pursuant to Opinion No. 770, as amended, as modified by the Natural Gas Policy Act of 1978.

² The sale of gas from the property described was originally certificated in Docket No. C175-547 and Applicant is willing to accept a certificate containing the same conditions and provisions which was granted to Forest Oil Corporation, et al.

³ Applicant is filing under Section 102 of the Natural Gas Policy Act of 1978.

⁴ Applicant is filing under Gas Purchase Contract dated February 21, 1979.

⁵ Applicant is filing under Gas Purchase Contract dated February 28, 1979.

⁶ Applicant is filing under Ratification Agreement dated May 2, 1979, and the Ratification Agreement ratifies and adopts that certain Gas Purchase Contract dated March 6, 1975 between Forest Oil Corporation, et al., and Columbia Gas Transmission Corporation, for which sales were certificated in Docket No. C175-547. Applicant is willing to accept a certificate containing the same conditions and provisions as the certificate granted to Forest Oil Corporation, et al., in the aforementioned Docket.

⁷ Applicant is willing to accept a permanent certificate conditioned to the applicable price(s) provided for in the Natural Gas Policy Act of 1978, and applicable to the categories of gas sold under the Gas Purchase Contract dated May 4, 1979 which would qualify under Sections 102(d) and 104(b) of the NGPA.

⁸ Applicant is filing under Gas Purchase Contract dated February 23, 1979.

⁹ Applicant is filing under Gas Purchase Contract dated February 20, 1979.

¹⁰ Effective as of July 1, 1978, Applicant acquired all of Kewanee's interest in properties covered by Contract dated November 15, 1974, as amended.

¹¹ Applicant is filing under Sections 102 and 104 of the Natural Gas Policy Act of 1978.

¹² Applicant is willing to accept a Certificate conditioned upon the applicable rate as set forth in the Natural Gas Policy Act of 1978.

¹³ Applicant is filing under Section 104 of the Natural Gas Policy Act of 1978.

¹⁴ Applicant is filing under Section 102(b) of the Natural Gas Policy Act of 1978.

¹⁵ George F. Thegard, Sr., et al., (Lessor) is exercising its options under Article II of the Oil and Gas Lease dated August 11, 1965 and amended on March 14, 1966, to withdraw a volume of gas to be used as pump fuel for irrigation wells located on the dedicated acreage.

¹⁶ Applicant is filing under Gas Purchase Contract dated April 30, 1979.

¹⁷ The May 15, 1951 Agreement expired by its own terms on August 16, 1970; however, deliveries continued to Tennessee under the expired contract until the wells were plugged and abandoned.

¹⁸ Reserves depleted and that neither reworking the well nor adding compression would be economically feasible. The Peterson "G" No. 1 was plugged and abandoned on July 25, 1977 and all of the acreage committed to the subject contract has expired and has or soon will be released of record.

¹⁹ Effective as of July 1, 1978, Applicant acquired all of Kewanee's interest in properties covered by Contract dated September 13, 1972, as amended.

Filing Code:

A—Initial Service.

B—Abandonment.

C—Amendment to add acreage.

D—Amendment to delete acreage.

E—Total Succession.

F—Partial Succession.

[FR Doc. 79-20470 Filed 7-2-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER78-425]

**Minnesota Power & Light Co.;
Certification of Settlement
Agreement**

June 25, 1979

Please take notice that Minnesota Power & Light Company (MP&L) filed executed settlement agreements applicable to municipal wholesale customers, cooperative wholesale customers and the City of Wadena, Minnesota, a transmission service customer, on June 8, 1979. In addition, the motion accompanying the settlement agreements reflects an understanding between MP&L and Staff with respect to the rates applicable to Superior Water, Light & Power Company, a wholly-owned subsidiary of MP&L. On June 11, 1979, the motion and accompanying documents were certified by the Presiding Judge to the Commission for disposition.

Any person desiring to be heard or to protest said settlement should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before July 6, 1979. Comments will be considered by the Commission in determining appropriate action to be taken. Copies of the settlement proposal are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-20478 Filed 7-2-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ER79-21]

**Missouri Utilities Co.; Notice of
Reference of Settlement**

June 25, 1979.

Take notice that on June 14, 1979, Presiding Administrative Law Judge, William L. Ellis, referred to the Commission a proposed settlement agreement in the above-noted docket.

The Judge indicated that as a result of a number of conferences, the issues between the parties have been resolved and, Staff supports the settlement and plans to so state when their comments are sought following this reference.

The Judge stated that the case did not go to hearing, so no formal record was

opened, and there is none to certify. However, the files contain the Company's original filing in support of the rate increase, as well as the staff "top sheets" of April 12 and 19, 1979. With the Company's agreement as filed there will be found the settlement cost of service.

Any person desiring to be heard or to protest said settlement agreement should file comments with the Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20426, on or before July 16, 1979.

Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this agreement are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-20479 Filed 7-2-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ER79-444]

Montana Power Co.; Notice of Filing

June 25, 1979.

The filing Company submits the following:

Take notice that on June 15, 1979, the Montana Power Company tendered for filing in compliance with the Federal Power Commission's Order of May 6, 1977, a summary of sales made under the Company's FPC Electric Tariff M-1 during May, 1979, along with cost justification for the rate charged.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8. 1.10). All such petitions or protests should be filed on or before July 16, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-20460 Filed 7-2-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket Nos. RP71-107 and RP72-127]

**Northern Natural Gas Co.; Notice of
Settlement Conference**

June 25, 1979.

Take notice that an informal conference in the subject proceeding will be convened on July 17, 1979 at 1:30 P.M. in a conference room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Customers and other interested persons will be permitted to attend, but if such persons have not previously been permitted to intervene, attendance at the conference will not be deemed to authorize intervention as a party in the proceeding.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-20481 Filed 7-2-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. ER 79-438]

**Public Service Co. of Indiana, Inc.;
Notice of Filing**

June 20, 1979.

The filing Company submits the following:

Take notice that Public Service Company of Indiana, Inc., on June 13, 1979, tendered for filing pursuant to the Interconnection Agreement between Public Service Company of Indiana, Inc., and the Cincinnati Gas & Electric Company a Fifth Supplemental Agreement to become effective August 8, 1979.

Said Supplemental Agreement increases the demand charge for Short Term Power from 60¢ per kilowatt per week to 70¢ per kilowatt per week.

Copies of the filing were served upon the Cincinnati Gas & Electric Company, the Public Utilities Commission of Ohio, and the Public Service Commission of Indiana.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure on or before July 10, 1979. Protests will be considered by

the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the filing are available for public inspection at the Federal Energy Regulatory Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-20432 Filed 7-2-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ER78-228]

**Public Service Co. of Indiana, Inc.;
Notice of Filing**

June 26, 1979

The filing Company submits the following:

Take notice that Public Service Company of Indiana, Inc., on May 8, 1979, tendered for filing a Revised Service Schedule A to the Interconnection Agreement between Public Service Company of Indiana, Inc. and the City of Crawfordsville, Indiana, to become effective May 2, 1978. Such effective date of May 2, 1978 was the date upon which the Commission accepted for filing subject to refund the Interconnection Agreement.

Said Revised Exhibit A reduces the level of firm demand ratchet from 35% to 10%.

Copies of the filing were served upon the City of Crawfordsville, Indiana, and the Public Service Commission of Indiana.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825

North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practices and Procedure (18 CFR 1.8, 1.10). All such petitions should be filed on or before July 17, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the filing are available for public inspection at the Federal Energy Regulatory Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-20463 Filed 7-2-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket Nos. C175-649, et al.]

**Sun Oil Co., et al.; Applications for
Certificates, Abandonment of Service
and Petitions To Amend Certificates¹**

June 20, 1979.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any

¹This notice does not provide for consolidation for hearing of the several matters covered herein.

protest with reference to said application should on or before June 29, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft ³	Pressure base
C175-649, C, May 30, 1978	Sun Oil Co., P.O. Box 20, Dallas Tex. 75221	Mississippi River Transmission Corp., MC's Ranch Field, Wheeler County, Tex.	(1)	14.65
C177-796, C, June 7, 1979	General Crude Oil Co., P.O. Box 2252, Houston, Tex. 77001.	Northern Natural Gas Co., South Marsh Island Area, blocks 243 and 244, offshore Louisiana.	(2)	15.025
C178-416, C, May 30, 1978	Sun Oil Co.	El Paso Natural Gas Co., Cheyenne SW. Field, Roger, MC's County, Okla.	(7)	14.95
C178-670, C, June 20, 1978	Arkla Exploration Co., P.O. Box 21734, Shreveport, La. 71151.	Arkansas Louisiana Gas Co., Carthage Field, Panola County, Tex.	(1)	14.65

¹Applicant is filing under Gas Purchase Contract dated April 17, 1975, amended by Agreement dated April 20, 1978.

²Applicant in filing under Gas Purchase Contract dated August 19, 1977.

³Applicant in filing under Gas Purchase Contract dated December 22, 1977, amended by Agreement dated April 21, 1978.

⁴Applicant in filing under Gas Purchase Contract dated January 24, 1978, amended by Agreement dated May 11, 1978.

Filing Code:

A—Initial Service.

B—Abandonment.

C—Amendment to add acreage.

D—Amendment to delete acreage.

E—Total Succession.

F—Partial Succession.

[FR Doc. 79-20469 Filed 7-2-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. RP74-4 (PGA79-2)]

**Texas Eastern Transmission Corp.;
Proposed Changes in FERC Gas Tariff**

June 26, 1979.

Take notice that Texas Eastern Transmission Corporation on June 15, 1979 tendered for filing proposed changes in its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets:

- Forty-ninth Revised Sheet No. 14
- Forty-ninth Revised Sheet No. 14A
- Forty-ninth Revised Sheet No. 14B
- Forty-ninth Revised Sheet No. 14C
- Forty-ninth Revised Sheet No. 14D

These sheets are issued pursuant to provisions of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff contained in (1) Section 12.4, Demand Charge Adjustment Commodity Surcharge, (2) Section 23, Purchased Gas Cost Adjustment and (3) Section 26, Louisiana First Use Tax Adjustment.

The proposed effective date of the above tariff sheets is August 1, 1979.

The changes proposed consist of:

- (1) Increased PGA Adjustments based on increases in the projected cost of gas purchased from producer and pipeline suppliers and an increase in the Account 191 balance as of April 30, 1979;
- (2) A reduction in the Louisiana First Use Tax (La. FUT) Adjustment of \$(,0059); and
- (3) Reductions in the DCA Commodity Surcharges.

Copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before July 13, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-20465 Filed 7-2-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. CP79-351]

**Texas Gas Transmission Corp.; Notice
of Application**

June 22, 1979

Take notice that on June 8, 1979, Texas Gas Transmission Corporation (Texas Gas), P.O. Box 1160, Owensboro, Kentucky 42301, filed in Docket No. CP79-351 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of volumes of natural gas with Arkansas Louisiana Gas Company (Arkla), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Gas seeks authorization to exchange volumes of natural gas with Arkla in accordance with a gas exchange agreement dated February 13, 1979, between Texas Gas and Arkla. Pursuant to the agreement, Texas Gas would cause volumes of gas to be delivered to Arkla at existing facilities owned and operated by Arkla located near the Harold Wilson No. 2 Well in Carthage Field, Panola County, Texas. Arkla would then redeliver to Texas Gas, by displacement, at the tailgate of Champlin Petroleum Company's East Texas Plant, Panola County, Texas, volumes of gas equivalent to those volumes which Texas Gas causes to be delivered to Arkla, less 0.5 percent for dehydration fuel.

It is indicated that the volumes of natural gas which Texas Gas causes to be delivered to Arkla are being purchased by Texas Gas from Delta Drilling Company (Delta). It is further indicated that such volumes are to be produced from Delta's Harold Wilson No. 1 Well in Carthage Field, Panola County, Texas. Texas Gas states that the Harold Wilson No. 1 Well is approximately 6,000 feet from the Harold Wilson No. 2 Well where Arkla's facilities are located. Texas Gas further states that Delta would lay a pipeline from the Harold Wilson No. 1 Well to Arkla's facilities.

It is anticipated that initially Texas Gas would cause approximately 500 Mcf per day of gas to be delivered to Arkla for redelivery.

Any person desiring to be heard or to make any protest with reference to said

application should on or before July 16, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-20464 Filed 7-2-79; 8:45 am]
BILLING CODE 6450-01-M

[Docket No. CP79-344]

**Transcontinental Gas Pipe Line; Notice
of Application**

June 22, 1979.

Take notice that on June 7, 1979, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77001, filed in Docket

No. CP79-344 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain pipeline and appurtenant facilities in the offshore Texas and Louisiana areas, as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant has the right to purchase natural gas from reserves located offshore Louisiana in West Cameron Area Blocks 498 and 494. In order to make these additional supplies of natural gas available to its system, Applicant proposes to construct a natural gas gathering system consisting of approximately 16.18 miles of 20-inch pipeline and 1.08 miles of 16-inch pipeline which would connect production platforms in said blocks with the facilities of High Island Offshore System (HIOS) in High Island Block A-264, offshore Texas. Applicant also proposes to construct appurtenant metering, regulating and connecting facilities at the production platforms in both blocks, as well as dehydration facilities at Block 494. The proposed facilities would connect to an underwater tap in High Island Block A-264 on facilities to be proposed by HIOS in a separate certificate application, at which point the gas would be delivered for further transportation to onshore points.

The proposed West Cameron Block 498 facilities would be constructed and owned by Applicant, and operated by Michigan Wisconsin Pipe Line Company, as agent, as is the case with the HIOS system and the supply laterals connected thereto. Such facilities are estimated to cost \$14,650,000. Applicant states that the West Cameron Block 498 facilities would be financed initially with funds on hand or from short-term loans, with permanent financing to be arranged later as part of Applicant's overall long-term financing program.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 16, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a

proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-20466 Filed 7-2-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. GP79-37]

Belco Petroleum Corp.; Notice of Preliminary Finding Regarding New, Onshore Production Well

Issued June 22, 1979.

On May 9, 1979, the United States Geological Survey Northern Rocky Mountain Area Oil and Gas Supervisor (USGS) submitted to the Federal Energy Regulatory Commission (Commission) a notice of determination that the Belco Petroleum Corporation (Belco) Chapita Wells Unit 32-21 well, API No. 43-047-30233, met all the requirements of a new, onshore production well under section 103 of the Natural Gas Policy Act of 1978 (NGPA) and Commission regulations implementing that section. The Commission published the notice of the determination on May 16, 1979.

Section 103(c)(1) of the NGPA provides that the surface drilling of a new, onshore production well must have begun on or after February 19, 1977, in order for the well to qualify for the section 103 maximum lawful price. However, the USGS notice included a USGS Well Completion Report which indicates that the surface drilling of the well in question was commenced on February 18, 1977.

On the basis of our review of the record submitted with this determination, the Commission hereby makes a preliminary finding, pursuant to § 275.202(a)(1)(i) of our regulations (18 CFR 275.202(a)(1)(i)), that the determination submitted by the USGS that the Belco Chapita Wells Unit 32-21 well qualifies as a section 103 new, onshore production well is not supported by substantial evidence in the record on which such determination was made.

By Direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-20467 Filed 7-2-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. EL79-22]

Upper Peninsula Power Co.; Application for Authority To Acquire Securities

June 20, 1979.

The filing Company submits the following:

Take notice that on June 14, 1979, Upper Peninsula Power Company ("Applicant"), filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to Section 203(a) of the Federal Power Act, to purchase 36,220 shares of Common Stock of Upper Peninsula Generating Company (Generating Company) from Cliffs Electric Service Company (Service Company).

The Applicant is incorporated under the laws of the State of Michigan, with its principal business office at Houghton, Michigan. It is engaged in the generation, transmission and distribution of electric energy in all or parts of eleven counties in the upper peninsula of Michigan.

Service Company is incorporated under the laws of the State of Michigan with its principal business office at Ishpeming, Michigan. It is a wholly-owned subsidiary of The Cleveland-Cliffs Iron Company and operates certain electric facilities in the upper peninsula of Michigan. Energy from those facilities is sold principally to iron mines and related mining facilities which are operated by the parent company.

Generating Company is engaged in the generation and transmission of electric energy for sale to its owners, the Applicant and Service Company. Applicant is the owner of record of 422,905 shares of Generating Company's Common Stock. Service Company is the owner of record of 5,935,195 shares of

Generating Company's Common Stock. The Applicant proposes to make an additional investment in Generating Company for the purpose of obtaining full entitlement to the output of Units 2 and 3 (95,874 kW) at Generating Company's Presque Isle Generating Station, Marquette, Michigan which will result in the Applicant being responsible for all costs associated with Units 2 and 3. The Applicant was previously entitled to 50% of the generation (89,705 kW) and responsible for 50% of the costs associated with the output of Units 1 through 4.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR §§ 1.8, 1.10). All such petitions or protests should be filed on or before July 10, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-20468 Filed 7-2-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. SA79-2]

Verdigris Gathering System, Inc. & J. V. Atkinson; Application for Adjustment

June 28, 1979.

Take note that on April 17, 1979, Verdigris Gathering System, Inc. and J. V. Atkinson jointly filed with the Federal Energy Regulatory Commission an application for adjustment under 18 CFR §§ 1.41 *et seq.* and Section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), Pub. L. No. 95-621. Both applicants are located at 806 Building of the Southwest, Midland, Texas 79701.

The applicants seek recovery, pursuant to 18 CFR §§ 271.1105-1106, of substantial gathering and compression costs connected with natural gas deliveries to Cities Service Gas Company (Cities) through applicants' Wimer Compression Station in Craig County, Oklahoma. Recovery of these costs would be through a cost rebate of \$0.70 per Mcf paid by Cities as an expense included in its base rate.

The applicants are currently seeking a determination from the Oil and Gas Conservation Commission of the Oklahoma Corporation Commission that this gas delivered to Cities qualifies for the maximum lawful price of Section 108 (gas from stripper wells) of the NGPA. If the applicants were to receive a final, favorable determination that the gas qualifies for the price of Section 108, approval of their request in this proceeding would mean that the \$0.70 per Mcf could be charged in addition to the price allowed by Section 108.

The procedures which apply to the conduct of this staff adjustment proceeding can be found at 18 CFR §§ 1.41 *et seq.* See also Commission Order No. 24 (March 22, 1979).

Any person desiring to participate in this adjustment proceeding must file a petition to intervene in accordance with the provisions of 18 CFR 1.41(e). All petitions to intervene must be filed no later than July 23, 1979 and should be sent to the Federal Energy Regulatory Commission, 825 North Capitol St. NE., Washington, D.C. 20426

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-20472 Filed 7-2-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-370]

Citizens' Alliance, Complainant v. National Fuel Gas Co., et. al.; Notice of Complaint

June 26, 1979.

Take notice that on June 7, 1979, Citizens' Alliance (Complainant), filed in Docket No. CP79-370 pursuant to § 1.6 of the Commission's Rules of Practice and Procedure (18 CFR 1.6) a complaint against National Fuel Gas Company (National Fuel), National Fuel Gas Supply Corporation (Supply), National Fuel Gas Distribution Corporation (Distribution), National Gas Storage Corporation (Storage), Louis R. Reif, John M. Brown, John A. Comet, Bernard J. Kennedy, Harold J. Wilkins, Richard M. DiValerio, David L. Cownie, Consolidated Gas Supply Corporation (Consolidated), and Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), alleging violations of the Natural Gas Act, the Sherman Antitrust Act, and the Clayton Antitrust Act, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.¹

¹ Addresses of the parties are: Complainant, 295 Main Street, Buffalo, New York 14203; National Fuel, Supply, Distribution, and Storage, 10 Lafayette Square, Buffalo, New York 14203; Louis R. Reif, 30

Complainant states that it is a voluntary membership organization dedicated to protecting the interests of low and moderate income consumers in the State of New York.

The complaint contains the following allegations:

1. Distribution is a natural gas company within the meaning of the Natural Gas Act and is not entitled to a Section 1(c) exemption from the provisions of the Natural Gas Act and is, therefore, subject to the jurisdiction of the Commission and has willfully failed to file FERC Form No. 2 (annual report for natural gas companies) in violation of the Natural Gas Act.

2. The rates of Supply are not just and reasonable and are, therefore, unlawful pursuant to Section 4 of the Natural Gas Act.

3. Distribution has unlawfully agreed with Supply not to use gas from a competitor in violation of the Clayton Antitrust Act and the Sherman Antitrust Act.

4. Defendants have conspired to create a monopoly in the underground gas storage market in violation of the Sherman Antitrust Act and the Natural Gas Act.

5. Defendants have unlawfully produced and sold gas that had migrated from a storage field.

6. Consolidated and Supply jointly operate the Woodhill and Tuscarora Storage Fields in violation of the Natural Gas Act.

7. Supply and Tennessee have unlawfully extended the Golden Storage Field in violation of Section 7 of the Natural Gas Act.

8. Supply has negligently lost gas from the East Independence Storage Field and has improperly charged said losses to Supply's customers.

9. Supply has failed to keep open in convenient form, and place for inspection, documents filed with the Federal Power Commission and the Federal Energy Regulatory Commission pursuant to Section 4 of the Natural Gas Act.

10. Supply has granted an undue preference or advantage to one of its corporate officers in violation of Section 4(b) of the Natural Gas Act.

Rockefeller Plaza, New York City, New York 10020; John M. Brown, 10 Lafayette Square, Buffalo, New York 14203; John A. Comet, 303 Seneca Street, Oil City, Pennsylvania 16301; Bernard J. Kennedy, 10 Lafayette Square, Buffalo, New York 14203; Harold J. Wilkins, 30 Rockefeller Plaza, New York City, New York 10020; Richard M. DiValerio, 10 Lafayette Square, Buffalo, New York 14203; David L. Cownie, 10 Lafayette Square, Buffalo, New York 14203; Consolidated, 445 W. Main Street, Clarksburg, West Virginia 26301; and Tennessee, P.O. Box 2511, Houston, Texas 77001.

Any person desiring to be heard or to make any protest with reference to said complaint should on or before July 25, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-20459 Filed 7-2-79; 8:45 am]
BILLING CODE 6450-01-M

Office of Special Counsel for Compliance

[Case No. 690R00104]

Proposed Consent Order with Continental Oil Co.

I. Introduction

Pursuant to 10 CFR 205.199j, the Office of Special Counsel of the Department of Energy (DOE) hereby gives Notice of a Consent Order which was executed between Continental Oil Company (Conoco) and the DOE on March 12, 1979. In accordance with that Section, DOE will receive comments with respect to this Consent Order. Although the DOE has signed and tentatively accepted this Consent Order, DOE may, after consideration of comments received, withdraw its acceptance and, if appropriate, attempt to negotiate an alternative Consent Order.

Continental Oil Company is a refiner engaged in the production of crude oil, in refining and in the marketing of petroleum products subject to DOE regulations. Home Fuel Oil Company (Home), a wholly owned subsidiary of Conoco, sells No. 2 heating oil and/or No. 2 diesel fuel as a retail marketing organization of Conoco.

Home makes 98.6 percent of its sales to residences in the Northern New Jersey area. Home is organized into five marketing divisions, each of which Home had historically treated as a separate class of purchaser. During the period of audit, Home had approximately 6,300 customers within its various marketing divisions; these

customers changed constantly during the period.

In computing the weighted average May 15, 1973, selling price for customers in the Passaic, Riverdale and Ridgewood marketing divisions, Home failed to include temporary competitive discounts which it had afforded some customers in those classes.

The Special Counsel has determined that the omission of these temporary competitive discounts resulted in an overstatement of the May 15, 1973, weighted average selling price, causing an inflated selling price for the product sold to customers in those divisions.

In resolution of the issue raised, DOE and Conoco executed a Consent Order on March 12, 1979, the significant terms of which are as follows:

(1) The Office of Special Counsel has determined that an appropriate remedy is the total amount of excess revenues received by Conoco, plus interest as hereinafter described, will be refunded to the same classes of purchaser in the Passaic, Riverdale, and Ridgewood Divisions of Home as were affected by the violation. The refund will be accomplished by a single credit to the accounts of current customers within the class of purchaser. The term "current customer" is defined as those customers who have purchased No. 2 heating fuel and/or No. 2 diesel fuel in the three calendar months prior to the month in which the accounts are credited. The accounts are to be credited in the month following the month in which the Consent Order becomes effective. The refund to be made is to be calculated by dividing the total amount of the violation plus interest as hereinafter described by the total number of current customers. The credits made to all accounts will be in equal amounts.

(2) Interest will be computed at the simple rate of six per cent (6%) on amounts outstanding from November 1, 1973, through June 30, 1975, nine per cent (9%) on amounts outstanding from July 1, 1975, through January 31, 1976, seven per cent (7%) on amounts outstanding from February 1, 1976, through January 1, 1978, and at a rate of six per cent (6%) on amounts outstanding thereafter. Due to the fact that the violation extended over a long period of time the company will determine, through its records of volume of product sold, the amount of the excess revenue received during each calendar quarter in which the violation occurred and calculate interest on those amounts, beginning on the last day of each quarter. Interest will be calculated on each quarterly amount to October 1, 1978.

(3) The procedures for publication and comment set forth in 10 CFR 205.199j shall apply to this document regardless of the amount of the violation indicated herein.

II. Submission of Written Comments

Interested persons are invited to comment in writing to Mr. Bill Eaton, Deputy Director-Houston, Southwest District, Office of Special Counsel, Department of Energy, One Allen Center, Suite 660, 500 Dallas Street, Houston, Texas 77002. Copies of this Consent Order may be received free of charge by written request to this same address or by calling (713) 228-5421. Comments should be identified on the outside of the envelope and on documents submitted with the designation, "Comments on Continental Oil Company Consent Order." All comments received by 4:30 p.m., CDT, on or before the 30th calendar day following publication of this notice will be considered by DOE in evaluating the Consent Order.

Any information of data, which, in the opinion of the person furnishing it is confidential must be identified as such and submitted in accordance with the procedures outlined in 10 CFR 205.9(f).

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

Paul L. Bloom,
Special Counsel for Compliance.

[FR Doc. 79-20533 Filed 7-2-79; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-180316; FRL 1263-2]

Department of Agriculture; Issuance of Specific Exemption To Use Goal (RH-2915) To Control Witchweed in North Carolina and South Carolina

AGENCY: Environmental Protection Agency (EPA), Office of Pesticide Programs.

ACTION: Issuance of a specific exemption.

SUMMARY: EPA has granted a specific exemption to the Animal and Plant Health Inspection Service, U.S. Department of Agriculture (hereafter referred to as the "Applicant" or "USDA") to use Goal 2E (RH-2915) on 2,000 acres of corn in a witchweed eradication program in 30 contiguous counties in North Carolina and South Carolina. The specific exemption expires on August 31, 1979.

FOR FURTHER INFORMATION CONTACT: Emergency Response Section,

Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, SW., Room E-124, Washington, D.C. 20460, Telephone: 202/426-2691. It is suggested that interested persons telephone before visiting EPA Headquarters, so that the appropriate files may be made conveniently available for review purposes.

SUPPLEMENTARY INFORMATION:

According to the USDA, witchweed is an annual chlorophyll-producing, seed-bearing, semi-parasitic plant that affects corn, sorghum, sugarcane, and more than 60 other species of the grass family in this country. A single witchweed plant may produce up to 500,000 microscopic seeds. The pest was initially identified in 1956 in North and South Carolina, and threatens corn, sorghum, and sugarcane crops having an estimated annual value of more than \$16 billion in the United States.

Experience has demonstrated that if heavy infestations of witchweed are uncontrolled, complete corn crop failure can result. If witchweed are allowed to spread, research data indicate that annual corn crop losses would approach 50 percent. According to USDA, the spread of witchweed in the U.S. could cost farmers about \$675 million in annual cost plus an estimated 10 percent yield loss.

According to the Applicant, paraquat and 2,4-D are registered for witchweed control in corn; however, although these herbicides are effective when applied post-emergence, they fail to provide residual control. Because Goal 2E (RH-2915), which contains the active ingredient (a.i.) oxyfluorfen, provides pre-emergence control of witchweed, the first application can be made in May or June, post-emergent to the corn but pre-emergent to the witchweed. A second application, if necessary, would be made in July or August. The Applicant has stated that two applications of Goal will control the pest throughout the season and that continuous seasonal control is essential for eradication. Eradication efforts of previous years may be lost if viable seeds reinfest the area.

The Applicant proposed to use a maximum of 3,000 pounds a.i. on a maximum of 2,000 acres of corn located in 30 contiguous counties in North Carolina and South Carolina. The total amount applied will not exceed 2 pounds a.i./acre/year. Data indicate that Goal is efficacious at the proposed rate.

EPA has determined that residues of oxyfluorfen in or on corn should not exceed 0.05 part per million (ppm) as a

result of the proposed program. This level has been judged adequate to protect the public health.

Since oxyfluorfen is toxic to fish and invertebrates, EPA has imposed appropriate restrictions. If used in accordance with the conditions imposed, oxyfluorfen should pose no unreasonable adverse effect on the environment.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of witchweed has occurred or is about to occur; (b) there is no effective pesticide presently registered and available for use to control witchweed in North and South Carolina; (c) there are no alternative means of control taking into account the efficacy and hazard; (d) significant economic problems may result if the witchweed is not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until August 31, 1979, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The product Goal 2E (RH-2915), manufactured by Rohm & Haas, is authorized;
2. A maximum of two applications may be made as a directed ground spray (pressure not to exceed 25 lbs/sq. inch). The first application shall be made in May or June post-emergence for corn and pre-emergence for witchweed, at a rate of $\frac{3}{4}$ to 1 pound a.i./20 gallons water/acre. The second application may be made in July or August at a rate of $\frac{1}{2}$ to 1 pound a.i./20 gallons water/acre. The total quantity applied shall not exceed 2 pounds a.i./acre/year;
3. A maximum of 3,000 pounds a.i. may be applied;
4. A maximum of 2,000 acres of corn located in 30 contiguous counties in North and South Carolina may be treated;
5. Treatments shall be made by personnel of the USDA Plant Protection and Quarantine Programs (PPQ) or by State-certified commercial applicators under the supervision of qualified PPQ personnel in accordance with plans outlined by the Environmental Evaluation staff to determine the environmental impact resulting from the program and to obtain crop residue data. The results of the monitoring program shall be submitted to EPA;
6. Applications will be made no closer than 60 feet to fish habitat and 120 feet to oyster habitat;

7. Application will not be made when wind speed is in excess of five miles per hour;

8. Oxyfluorfen is toxic to fish. It may not be applied where run-off is likely to occur. Water must not be contaminated by the cleaning of equipment or disposal of wastes;

9. Due to oxyfluorfen's potential to bioaccumulate in fish, the following study must be carried out during the use of Goal under this exemption:

a. 15 young-of-year fish must be analyzed for oxyfluorfen residues two weeks before and two weeks after application. Fish should be from a limnetic or estuarine habitat adjacent to a treated field; they should be of the same species and approximately of the same size;

b. Oxyfluorfen must be measured in the water and hydrosol of the fish habitat;

10. Crops, other than soybeans, may not be rotated to treated corn fields within 12 months of last application;

11. Corn treated in accordance with the above provisions should not have residues of oxyfluorfen in excess of 0.05 ppm. Corn with residues of oxyfluorfen which do not exceed this level may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action;

12. All label restrictions and precautions shall be observed;

13. The EPA shall be informed immediately of any adverse effects to man or the environment resulting from this program; and

14. A final report summarizing the results of this program shall be submitted to EPA by December 31, 1979.

Statutory Authorities: Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 [92 Stat. 819; 7 U.S.C. 136].

Dated: June 27, 1979.

James M. Conlon,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-20333 Filed 7-2-79; 8:45 am]

BILLING CODE 6560-01-M

[OPP-180322; FRL 1263-5]

**Delaware Department of Agriculture;
Issuance of Specific Exemption to Use
Azinphos Methyl on Carrats to Control
Carrot Weevil**

AGENCY: Environmental Protection Agency (EPA), Office of Pesticide Programs.

SUMMARY: EPA has granted a specific exemption to the Delaware Department of Agriculture (hereafter referred to as the "Applicant") to use Guthion (azinphos methyl) on 700 acres of carrots in Delaware to control the carrot weevil. The specific exemption expires on August 31, 1979.

FOR FURTHER INFORMATION CONTACT: Emergency Response Section, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Room: E-124, Washington, D.C. 20460, Telephone: 202/426-2691. It is suggested that interested persons telephone before visiting EPA Headquarters, so that the appropriate files may be made conveniently available for review purposes.

SUPPLEMENTARY INFORMATION: In the larval stage, the carrot weevil is a fat, legless grub causing irregular zigzag dark grooves over the surface of carrots or tunnels through the roots of carrots. According to the Applicant, the carrot weevil injures seedling carrots and renders mature carrots unacceptable for marketing. When carrots are placed in cold storage, additional damage to the carrots may be caused by fungal organisms that enter through weevil feeding injuries. There are neither registered pesticides for control of the carrot weevil nor nonchemical methods of control available.

Without an effective means of control, the Applicant estimates an economic loss of \$150,000 or more on 700 acres of carrots.

The Applicant proposed to use Guthion 2S or Guthion 50WP on carrots at a rate of one-half pound active ingredient (a.i.) per acre. Data are available to indicate that azinphos methyl is efficacious in controlling the carrot weevil at this rate.

EPA has determined that residues of azinphos methyl are not expected to exceed 0.5 part per million (ppm) on carrots. This level has been judged adequate to protect the public health. No unreasonable adverse effect to the environment is anticipated from this program.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of the carrot weevil has occurred or is likely to occur; (b) there is no pesticide presently registered and available for use to control the carrot weevil in Delaware; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the carrot weevil is not controlled; and (e) the time available for action to mitigate

the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until August 31, 1979, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following restrictions:

1. The products Guthion 2S, EPA Reg. No. 3125-123, or Guthion 50WP, EPA Reg. No. 3125-193, manufactured by Chemagro, are authorized;
2. Application may be made at a rate of one-half pound a.i. (azinphos methyl) per acre in thirty to fifty gallons of water by ground or in five gallons by air;
3. A maximum of six applications may be made;
4. A maximum of 700 acres of carrots may be treated;
5. A maximum of 2,100 pounds a.i. may be applied;
6. A 35-day pre-harvest interval must be observed;
7. Applications may be made by private commercial applicators;
8. Personnel of the Delaware Cooperative Extension Service shall monitor the program weekly and will notify applicators of dosages and other program criteria. These personnel shall make all recommendations of pesticide applications;
9. A label restriction shall prohibit the use of treated carrot tops for food or feed;
10. Residues of azinphos methyl not exceeding 0.5 ppm in or on carrots have been determined as adequate to protect the public health. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action;
11. All precautions, directions, and restrictions on the product label must be adhered to;
12. The EPA shall be immediately informed of any adverse effects to man or the environment resulting from this program;
13. The Applicant is responsible for ensuring that all provisions of the specific exemption are followed; and
14. A final report summarizing the results of this program must be submitted to EPA by December 31, 1979.

Statutory Authority: Section 18 of the Federal Insecticide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

Dated: June 27, 1979.

James M. Coalson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-20530 Filed 7-2-79; 8:45 am]

BILLING CODE 6560-91-M

[OPP-180317; FRL 263-3]

Louisiana; Issuance of Specific Exemption to Use Blazer 2S on Soybeans to Control Hemp Sesbania

AGENCY: Environmental Protection Agency (EPA), Office of Pesticide Programs.

ACTION: Issuance of a specific exemption.

SUMMARY: EPA has granted a specific exemption to the State of Louisiana (hereafter referred to as the "Applicant") to use Blazer 2S on 80,000 acres of soybeans to control hemp sesbania in Louisiana. The specific exemption expires on September 15, 1979.

FOR FURTHER INFORMATION CONTACT: Emergency Response Section, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Room: E-124, Washington, D.C. 20460, Telephone: 202/426-2691. It is suggested that interested persons telephone before visiting EPA Headquarters, so that the appropriate files may be made conveniently available for review purposes.

SUPPLEMENTARY INFORMATION: According to the Applicant, hemp sesbania has been a serious problem in soybeans for as long as the crop has been grown in the State. Hemp sesbania is an erect annual weed that grows six to eight feet tall in Louisiana. It normally emerges with the soybeans and grows under the soybean plants until late July or early August when the weed grows through the soybean canopy. At this stage of development, the hemp sesbania shades the crop and competes with soybeans for soil nutrients during the critical pod-filling period.

Although sesbania is a problem throughout the State, emergency conditions exist primarily in the southwestern area where soybeans are grown in solid seed culture. The most desirable method of controlling the weed is with pre-emergence herbicides. The Applicant recommends the use of metribuzin (Sencor/Lexone), which is effective under normal conditions for hemp sesbania control; however, metribuzin has a history of occasional injury to soybeans, particularly in the southwestern part of the State which is

subject to flooding. According to the Applicant, metribuzin is not widely used in this area, and the only feasible method of applying post-emergence herbicides is by aerial application. All of the registered post-emergence herbicides are limited to application with ground equipment. Lorox or Lorox DB are recommended as alternatives to metribuzin in these areas, but normally do not provide effective control as a pre-emergence treatment. Amiben and paraquat are also registered for post-emergence control of sesbania but are not recommended by the Louisiana Extension Service. Until 1976, 2,4-D was used under a State registration as a late season salvage treatment to control sesbania; since then 2,4-D has been used under specific exemptions. This year, the Applicant has proposed the use of Blazer, which contains the active ingredient (a.i.) sodium 5-[2-chloro-4-(trifluoromethyl)-phenoxy]-2-nitrobenzoate, since it can be applied earlier in the season than 2,4-D and, according to the Applicant, poses fewer risks to non-target crops.

Soybeans are Louisiana's most important cash crop. According to the Applicant, losses from hemp sesbania could be as high as \$5,200,000, without an effective control program.

EPA has determined that the residue levels established by the temporary tolerances established in connection with an experimental use permit for residues of the active ingredient and its metabolite, the corresponding acid, in or on soybeans are not expected to be exceeded by the proposed use of Blazer 2S. These levels are 0.1 part per million (ppm) in or on soybeans, and 0.01 ppm in milk, eggs, liver and kidney of cattle, goats, hogs, horses, and sheep and the meat, fat and meat byproducts of poultry. These levels have been judged adequate to protect the public health. EPA has also determined that the proposed use of Blazer 2S will not pose an unreasonable hazard to avian and mammalian species which reportedly utilize soybean fields.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of hemp sesbania has occurred or is likely to occur this year in soybeans; (b) there is no effective pesticide presently registered and available for use to control hemp sesbania in Louisiana; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the pest is not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be

registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until September 15, 1979, to the extent and in the manner set forth in the application. The specific exemption is subject to the following conditions:

1. A single post-emergence application of Blazer 2S (distributed by Rohm and Haas Company) may be made at a rate of 0.25 to 0.50 lb. a.i. per acre;

2. Application may be made with ground equipment using a minimum of 20 gallons of water per acre or aerial equipment using a minimum of 10 gallons of water per acre;

3. A maximum of 80,000 acres may be treated;

4. This specific exemption authorizes a maximum of 40,000 pounds a.i.;

5. Application should be made when the hemp sesbania is less than 8 inches in height. Based on available efficacy data, the 0.25 pound rate should be recommended at this stage of growth;

6. All applications will be made by State-certified private and commercial applicators;

7. Authorization for use of Blazer 2S to control hemp sesbania in soybean fields will be restricted to situations which meet one of the following criteria:

a. Fields planted in solid seeded culture where herbicides recommended by the Louisiana Extension Service have not provided economically effective control;

b. Fields planted in rows where recommended pre-emergence and post-emergence herbicides have not provided economically effective control; and

c. Fields where excessive soil moisture prohibits the use of recommended herbicides.

8. The Louisiana Department of Agriculture will recommend the use of registered herbicides where applications are practical and effective control can be reasonably expected;

9. Residue levels of the active ingredient and its metabolite, the corresponding acid, are not expected to exceed 0.1 ppm in or on soybeans and 0.01 ppm in milk, eggs, liver and kidney of cattle, goats, hogs, horses, and sheep, and the meat, fat and meat byproducts of poultry. Raw agricultural commodities with residues which are not in excess of these levels may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action;

10. A restriction prohibiting the use of treated plants for feed or forage is imposed;

11. A 50-day pre-harvest interval will be observed;

12. Only soybeans may be replanted on areas treated with Blazer 2S for six months following application;

13. Blazer 2S will not be applied when weather conditions favor run-off or drift from treated areas;

14. All applicable directions, restrictions, and precautions on the product label must be adhered to;

15. The EPA shall be immediately informed of any adverse effects resulting from use of Blazer 2S in connection with this exemption;

16. Distributors and/or retailers will be required to maintain records for purchases of Blazer 2S. These records will be provided to the Louisiana Department of Agriculture, which will monitor the application of Blazer as needed, to determine that the provisions of the specific exemption are being followed; and

17. The Louisiana Department of Agriculture will submit a report summarizing the results of this program by February 1, 1980.

Statutory Authority: Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

Dated: June 27, 1979.

James M. Conlon,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-20532 Filed 7-2-79; 8:45 am]

BILLING CODE 6560-01-M

[OPP-180297; FRL 1263-1]

**Michigan Department of Agriculture;
Issuance of Specific Exemption to Use
Permethrin to Control Cutworms on
Grapes**

AGENCY: Environmental Protection Agency (EPA), Office of Pesticide Programs.

ACTION: Issuance of a specific exemption.

SUMMARY: EPA has granted a specific exemption to the Michigan Department of Agriculture (hereafter referred to as the "Applicant") to use permethrin to control cutworms on 5,000 acres of grapes in Michigan. The specific exemption expires on June 30, 1979.

FOR FURTHER INFORMATION CONTACT: Emergency Response Section, Registration Division (TS-767), Office of Pesticide, Programs, EPA, 401 M Street S.W., Room: E-315, Washington, D.C. 20460, Telephone: 202/755-4851. It is suggested that interested persons telephone before visiting the EPA Headquarters, so that the appropriate

files may be made conveniently available for review purposes.

SUPPLEMENTARY INFORMATION:

According to the Applicant, cutworms (spotted cutworm, brown cutworm, spotted-sided cutworm, dark-sided cutworm, and *Amathes smithii*) have become serious pests of grapes since the loss of the chlorinated hydrocarbons for soil treatment. Cutworms adversely affect crop yield by damaging the young developing buds. There are currently no registered pesticides for control of cutworms on grapes. Permethrin has traditionally shown high biological activity against lepidoptera.

The Applicant proposed to use the product Ambush, which contains the active ingredient (a.i.) permethrin in the counties of Allegan, Berrien, Cass, Grand Traverse, Kalamazoo, Leelanow, and Van Buren. Although cutworm damage reportedly affects fifty percent of Michigan's 15,800 acres of grapes, a maximum of 5,000 acres are expected to require treatment. The Applicant estimates the loss of 2,650 tons of grapes without the use of permethrin, a monetary loss of \$522,050.

EPA has determined that residues of permethrin in grapes are not likely to exceed 0.5 per million (ppm) from this use. Residues of permethrin in raisins are not expected to exceed 2.0 ppm. These levels have been judged adequate to protect the public health. The proposed use is not expected to have unreasonable adverse effect on the environment.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of cutworms has occurred or is likely to occur; (b) there are no pesticides currently registered and available for this use in Michigan; (c) there are no alternative means of control taking into account the efficacy and hazard; (d) significant economic problems may result if cutworms are not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticide noted above until June 30, 1979, in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. Up to two applications of permethrin (Ambush) insecticide may be made at a maximum rate of 0.2 pound a.i. per acre;

2. Application will be limited to ground equipment;

3. A maximum of 5,000 acres may be treated;

4. This specific exemption authorizes the application of a maximum of 2,000 pounds of active permethrin;

5. All applications will be made by State-certified private or commercial applicators;

6. Applications will be made prior to bloom stage of development;

7. This product is toxic to fish. It must be kept out of lakes, streams or ponds. Water must not be contaminated by the cleaning of equipment or disposal of wastes. It may not be applied when weather conditions favor drift from target area;

8. Residue levels of permethrin are not expected to exceed 0.5 ppm in grapes and 2.0 ppm in raisins. Grapes and raisins with residues which are not in excess of these levels may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action;

9. All directions, restrictions, and precautions on the product label must be followed;

10. The Applicant is responsible for assuring that all of the provisions of this specific exemption are met and must submit a report summarizing the results of this program by February 1, 1980; and

11. The EPA shall be immediately informed of any adverse effects resulting from the use of permethrin in connection with this exemption.

Statutory Authority: Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 818; 7 U.S.C. 136).

Dated: June 27, 1979.

James M. Conlon,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-20534 Filed 7-2-79; 8:45 am]
BILLING CODE 6560-01-M

[OPP-180320; FRL 1263-4]

Pennsylvania Department of Agriculture; Issuance of Specific Exemption To Use Permethrin and Fenvalerate To Control Colorado Potato Beetle on Potatoes

AGENCY: Environmental Protection Agency (EPA), Office of Pesticide Programs.

ACTION: Issuance of a specific exemption.

SUMMARY: EPA has granted a specific exemption to the Pennsylvania Department of Agriculture (hereafter referred to as the "Applicant") to use

permethrin and fenvalerate for control of the Colorado potato beetle on 15,000 acres of potatoes in Pennsylvania. This exemption expires on September 30, 1979.

FOR FURTHER INFORMATION CONTACT: Emergency Response Section, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Room: E-124, Washington, D.C. 20460, Telephone: 202/426-2691. It is suggested that interested persons telephone before visiting EPA Headquarters, so that the appropriate files may be made conveniently available for review purposes.

SUPPLEMENTARY INFORMATION: The potato beetle is perhaps the best known beetle in the United States. Both the larvae and the adults feed on the leaves of potato plants. This feeding may result in defoliation of the vines which prevents development of tubers or greatly reduces yield.

According to the Applicant, the Colorado potato beetle has historically been a problem in the mid-Atlantic area. Although Guthion, Imidan, methoxychlor, Monitor, parathion, Furadan, and Thiodan are registered for use on potatoes to control this pest, the Applicant claims that these pesticides are unsatisfactory for Colorado potato beetle control due to pesticidal resistance. Temik is registered for an at planting use and will only control beetles at planting and their first brood. Last year Vydate was registered for control of the beetle on potatoes; however data indicate that Vydate is effective against the larvae only, not the adult, and that it is not so effective as permethrin. The Applicant estimates a loss of six million dollars due to the Colorado potato beetle, if an effective program is not carried out.

The Applicant proposed to use permethrin, manufactured by FMC Corporation under the trade name Pounce, and by ICI Americas, Inc., under the trade name Ambush, and Pydrin, manufactured by Shell Chemical Co., at a rate of 0.1 to 0.2 pound active ingredient (a.i.) per acre per application, observing a 7-day pre-harvest interval, using ground or air equipment. State-certified private or commercial applicators will make a maximum of six applications. Data submitted for this use indicate that permethrin and fenvalerate are effective against the Colorado potato beetle (adult and larvae) at the proposed rates.

EPA has determined that residues of permethrin on potatoes would not be expected to exceed 0.1 part per million (ppm) as a result of the proposed use.

provided that no more than six applications of permethrin are made and a 7-day pre-harvest interval is observed. Residues of fenvalerate resulting from the proposed use are not expected to exceed 0.02 ppm in or on potatoes, meat, and milk. These residue levels have been judged to be adequate to protect the public health.

Since permethrin and fenvalerate are highly toxic to bees and aquatic vertebrates and invertebrates, EPA has imposed appropriate restrictions to protect them. No unreasonable hazard to the environment is expected from this program.

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of Colorado potato beetle has occurred; (b) there is no effective pesticide presently registered and available for use to control the Colorado potato beetle in Pennsylvania; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the Colorado potato beetle is not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the Applicant has been granted a specific exemption to use the pesticides noted above until September 30, 1979, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The products Ambush, manufactured by ICI Americas, Inc., Pounce, manufactured by FMC Corporation, and Pydrin, manufactured by Shell Chemical Co., may be applied;

2. These pesticides may be applied at a rate of 0.1 to 0.2 pound a.i. per acre;

3. A maximum of six applications of either permethrin or fenvalerate may be made. No field may be treated with both fenvalerate and permethrin. A pre-harvest interval of seven days is imposed.

4. A maximum of 15,000 acres may be treated;

5. Applications will be made with air or ground equipment;

6. Spray mixture volumes of 40-100 gallons of water will be applied by ground equipment, 5-10 gallons by aircraft;

7. Applications will be made by State-certified private or commercial applicators or persons under the direct supervision of a State-certified applicator;

8. Ambush, Pounce, and Pydrin are toxic to fish, birds, and other wildlife. They must be kept out of any body of water. They must not be applied where

run-off is likely to occur. They may not be applied when weather conditions favor drift from treated areas. Care must be taken to prevent contamination of water by cleaning of equipment or disposal of wastes;

9. In order to minimize spray drift, the following restrictions will be observed for applications of permethrin and Pydrin:

a. Aerial applications will not be made when wind speed exceeds five miles per hour;

b. A buffer zone of 200 feet (horizontal distance) between treated areas and aquatic areas will be observed; and

c. Aerial applications should be staggered in time in areas where fish and shellfish are important resources.

10. Permethrin and fenvalerate are highly toxic to bees exposed to direct treatment or residues on crops or weeds. They may not be applied or allowed to drift to weeds in bloom on which an economically significant number of bees are actively foraging. Protective information may be obtained from the State Cooperative Agricultural Extension Service;

11. Potatoes treated according to the above provisions will not have residues of permethrin in excess of 0.1 ppm, or residues of fenvalerate in excess of 0.02 ppm. Residues of fenvalerate in meat and milk will not exceed 0.02 ppm. Potatoes with residues of permethrin or fenvalerate which do not exceed these levels may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health, Education and Welfare, has been advised of this action;

12. A 60-day crop rotation restriction is imposed for permethrin. For fenvalerate: (a) a 12-month root crop rotation restriction is imposed, and (b) a 60-day crop rotation restriction for any crop is imposed;

13. The EPA will be immediately informed of any adverse effects resulting from the use of permethrin or fenvalerate in connection with this exemption; and

14. The Applicant is responsible for assuring that all of the provisions of this specific exemption are met and must submit a report summarizing the results of this program by February 28, 1980.

Statutory authority: Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

Dated: June 27, 1979.

James M. Conlon,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-20531 Filed 7-2-79; 8:45 am]

BILLING CODE 6560-01-M

[OPP-180206; FRL 1263-6]

**Texas Department of Agriculture;
Issuance of Specific Exemption To
Use Avitrol To Control Blackbird
Depredation on Newly Seeded Rice
Fields**

AGENCY: Environmental Protection Agency (EPA), Office of Pesticide Programs.

ACTION: Issuance of a specific exemption.

SUMMARY: EPA has issued a specific exemption to the Texas Department of Agriculture (hereinafter referred to as the "Applicant") to use Avitrol to control blackbird depredation on 5,000 acres of newly seeded rice fields. The specific exemption expires on June 30, 1979.

FOR FURTHER INFORMATION CONTACT: Emergency Response Section, Registration Division (TS-767), EPA, 401 M Street, SW., Room: E-124, Washington, D.C. 20460, Telephone: 202/426-2691.

SUPPLEMENTARY INFORMATION: On May 8, 1978, EPA granted the Applicant a specific exemption for the use of Avitrol to control blackbird depredation on newly planted rice fields. Because of the critical timing involved, the exemption came too late for Texas to make use of it for the 1978 growing season. At the Applicant's request, EPA agreed to amend the specific exemption to apply to the 1979 growing season starting on February 15, 1979, provided that emergency conditions recurred and no other conditions arose. Texas notified EPA on March 28, 1979 that emergency conditions existed and that applications of Avitrol would begin immediately.

According to the Applicant, blackbird depredation of small grains is a recurring problem in Texas. Although the problem is usually associated with maturing grain, in the case of rice, blackbirds consume the newly planted rice seeds and seedlings. Significant yield losses result from the activity of large flocks of blackbirds which roost in these areas or stop to feed as they migrate northward.

Aerial broadcast seeding, a common agricultural practice in Texas, has contributed to the problem. The exposed seed grain is vulnerable to blackbird

attack from seed stage until such time as the seedlings become established. There is a 6-8 week critical period, depending on moisture conditions. The Applicant reported that blackbird damage causes not only a significant reduction of yield at harvest, but also necessitates reseeded.

Prior to the suspension of most aldrin/dieldrin uses, seed rice was treated with aldrin, primarily against rice weevil larvae. According to the Applicant, aldrin also served as a bird repellent. In 1976, with aldrin-treated seed no longer available, blackbird depredation of rice fields became a serious problem. There are no available pesticides registered for bird damage control in rice. Alternatives to chemical control include noise devices, late planting and drill seeding. The Applicant claimed that noise devices become ineffective with their continued use as the birds become accustomed to them, reduced yields and frost damage may result from late planting, and drill seeding is not an acceptable alternative due to soil conditions at time of planting since rice fields are flooded until seeding. In addition, blackbirds attack seedlings as they break through the surface of the ground.

The Applicant proposed to apply aerially one pound of Avitrol Corn Chops-99 (EPA Reg. No. 11649-12), which is equal to 0.03 percent active 4-aminopyridine, per acre, sixty-foot swaths with a 120-foot swath between treated areas. The actual application rate would be three pounds of product per acre of treated swaths. According to the Applicant, two to three applications may be necessary in some areas should reinfestation occur. However, if additional treatments are necessary, they would be applied to untreated swaths to prevent double treatment of the same land. The following coastal counties of Texas are involved: Austin, Brazoria, Calhoun, Chambers, Colorado, Fort Bend, Galveston, Hardin, Harris, Jackson, Jefferson, Lavaca, Liberty, Matagorda, Newton, Orange, Victoria, Waller, and Wharton.

Avitrol Corn Chops-99 is EPA-registered for bird damage control in corn fields in twelve states. Avitrol is not registered for bird damage control in rice. EPA has determined that the greatest potential hazard associated with the use of Avitrol is to non-target avian species (migratory and native waterfowl, upland game birds, shorebirds, songbirds, and Attwater's prairie chicken, an endangered species). However, the program to be used includes monitoring (pre- and post-treatment) for effects on non-target

species by State and Federal personnel, and the EPA is to be informed immediately of any adverse effects resulting from this use of Avitrol. Restrictions have been imposed on the use of Avitrol near areas utilized by Attwater's prairie chicken. These restrictions are considered necessary to insure that the continued existence of the Attwater's prairie chicken is not jeopardized and that habitat essential to their survival is not adversely modified.

A tolerance of 0.1 part per million (ppm) has been established for negligible residues of the bird repellent 4-aminopyridine in or on the raw agricultural commodities corn grain, forage and fodder, and sunflower seeds. EPA has determined that residues in or on rice grain or straw would not be expected to exceed 0.1 ppm under this use.

After reviewing the application and other available information, EPA has determined that (a) bird depredation of seeded rice in Texas has occurred; (b) there is no pesticide presently registered and available for use to control bird damage to rice crops; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the birds are not controlled; and (e) the time available for action to mitigate the problems posed is insufficient for a pesticide to be registered for this use. Accordingly, the specific exemption granted to the Applicant on May 2, 1978 has been amended to allow the use of the pesticide noted above until June 30, 1979, to the extent and in the manner set forth in the application. Some of the conditions in the original specific exemption have been changed. The exemption is now subject to the following conditions:

1. The EPA-registered product, Avitrol Corn Chops-99 (EPA Reg. No. 11649-12), will be applied at a maximum rate of three pounds of product per acre of treated swaths. Avitrol will be applied in 60-foot swaths with a 120-foot swath between treated areas;

2. A maximum of three applications may be made. The second and third applications, if necessary, will be made to untreated swaths to prevent double treatment of the same land;

3. A maximum of 15,000 pounds of Avitrol Corn Chops-99 may be applied to 5,000 acres;

4. This product is extremely toxic to wildlife. Care must be taken to keep it out of lakes, streams or ponds and to prevent contamination of water by the cleaning of equipment or disposal of waste. It may not be applied to any off-

targeted sites (roads, roadside ditches, fence rows, tree lines, etc.);

5. All applicable directions, restrictions, and precautions on the EPA-accepted label must be observed;

6. Applications will be limited to State-licensed commercial applicators. Records of sale and distribution must be maintained;

7. A residue level not to exceed 0.1 ppm 4-aminopyridine in or on rice grain or straw has been deemed adequate to protect the public health. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action;

8. The Applicant should recommend late seeding, drill seeding, trapping, and scare devices as means of mitigating blackbird damage when efficacious and practical;

9. Applicators must report the time and place of application to the appropriate Texas Department of Agriculture District Office prior to application. Accurate records of these reports must be maintained and this information must be made available to those responsible for supervising applications of Avitrol;

10. A sufficient number of qualified personnel from the Texas Department of Agriculture, Extension Service, Texas Parks and Wildlife Department, and the U.S. Fish and Wildlife Service must be made available to conduct surveillance and monitoring required under this exemption. These personnel will be responsible for both pre- and post-treatment surveillance and monitoring of applications of Avitrol;

11. On-site surveillance of all applications will be conducted. The purpose of the surveillance will be to:

- a. Determine that there is a need for the treatment to prevent damage to newly seeded rice fields and that alternative methods of control (trapping and scare devices) are not efficacious or practical, or that bird population densities are so great that alternative methods will not work;

- b. Prohibit the application of Avitrol in areas where high populations of migratory birds (aside from those specified on the label) are found;

- c. Confirm that treatment was made in accordance with label precautions and directions and the requirements of the specific exemption;

12. Post-treatment monitoring will be conducted on no less than fifty acres. The purpose of post-treatment monitoring will be to:

- a. Make observations concerning the effectiveness of the treatment in controlling blackbird damage; and

b. Determine by observation and thorough search of the treated fields and adjacent areas whether non-target species have been affected.

The Fish and Wildlife Service, USDI, Albuquerque, New Mexico, has identified the following endangered or threatened species as occurring within the proposed Avitrol use area:

Attwater's prairie chicken, American alligator, Arctic peregrine falcon, bald eagle, Houston toad, red wolf, and whooping crane. The proposed use of Avitrol is not likely to jeopardize the continued existence of the American alligator, Arctic peregrine falcon, bald eagle, Houston toad, and red wolf, nor adversely affect habitats essential to their survival.

In addition to the restrictions and precautions listed above, the following restrictions, which were recommended by the Fish and Wildlife Service, will be strictly enforced to assure that the proposed use of Avitrol does not adversely affect the whooping crane and Attwater's prairie chicken and their critical habitat.

13. Critical habitat for the whooping crane has been designated (Federal Register, May 15, 1978) and includes a portion of Calhoun County. Avitrol application will be strictly prohibited within the designated critical habitat and within a one-mile buffer zone adjacent to the designated critical habitat from March 1 through May 1, 1979;

14. The Attwater's prairie chicken, and endangered species, occurs in ten of the nineteen rice-growing counties for which applications of Avitrol are proposed (Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Harris, Victoria, Waller, and Wharton). Although Attwater's prairie chickens are known to utilize rice fields and adjacent areas, the USDI has determined that it is unlikely that an adult prairie chicken would consume a lethal dosage of Avitrol-treated particles. USDI has determined, however, that the following additional precautions are necessary to protect the chicks of the year and to protect booming males and breeding females. These restrictions apply to use of Avitrol in the ten counties listed above.

a. The Fish and Wildlife Service has agreed to participate in the map designation of areas known and suspected to be inhabited by the Attwater's prairie chicken and buffer zones extending one mile outside of the designated areas. The use of Avitrol is prohibited within the designated areas and the buffer zones beginning April 15,

1979. The purpose of this restriction is to protect the chicks of the year;

b. To afford protection to both booming males and breeding females, Avitrol will not be placed within 300 feet of rice field edges within the designated known and suspected Attwater's prairie chicken habitat. This restriction is applicable from March 1 to April 15, 1979;

c. Because occasional prairie chicken booming and breeding will occur on newly planted rice fields removed from their contiguous habitat, additional satellite designations will be provided by the Fish and Wildlife Service. The satellite areas will be delineated on appropriate maps. Application of Avitrol is prohibited within one mile of such areas;

d. The Applicant's Austin office will immediately notify the Fish and Wildlife Service, Austin office, when Avitrol application is in fields adjacent to prairie chicken areas (prior to April 15) or within the one-mile buffer zone (after April 15);

e. The Texas Parks and Wildlife Department must assist the Fish and Wildlife Service to spot monitor application areas adjacent to Attwater's prairie chicken habitat. Both agencies will jointly determine these monitoring areas; and

f. Upon completion of Avitrol application in the above ten counties, the Applicant will provide the Fish and Wildlife Service with maps of the treated areas;

15. The EPA shall be immediately informed of adverse effects resulting from this use of Avitrol; and

16. A full report must be submitted to EPA by December 1, 1979.

Statutory Authority: Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

Dated: June 26, 1979.

James M. Conlon,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-20529 Filed 7-2-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1262-2; OPP-00099]

Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel; Open Meeting

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel from 9:00 a.m. to 4:30 p.m. on Thursday, and Friday, July 19, and 20, 1979. The meeting will be held in Salon F, Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Va., and will be open to the public.

FOR FURTHER INFORMATION CONTACT: Dr. H. Wade Fowler, Jr., Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS-766), EPA, Room 803, Crystal Mall, Building No. 2, 1921 Jefferson Davis Highway, Arlington, Va. 20460, Telephone: 703/557-7560.

SUPPLEMENTARY INFORMATION: In accordance with section 25(d) of the amended FIFRA, the Scientific Advisory Panel will comment on the impact of regulatory actions under sections 6(b) and 25(a) on health and the environment prior to implementation. On the agenda for this meeting are:

1. Formal review and conclusions by the Panel on proposed rule-making relative to the following subparts of the Guidelines for registering Pesticides in the United States:

a. Subpart G, Product Performance;
b. Subpart I, Experimental Use Permits;

c. Subpart J, Hazard Evaluation; Non-Target Plant Microorganisms; and

2. In addition, the Agency may present status reports on other ongoing programs of the Office of Pesticide Programs.

Copies of draft documents may be obtained by contacting Dr. William Preston, Hazard Evaluation Division (TS-769), Room 800, Crystal Mall, Building No. 2, at the address given above, Telephone: 703/557-1405.

Any member of the public wishing to attend or submit a paper should contact Dr. H. Wade Fowler, Jr., at the address or phone listed above to be sure that the meeting is still scheduled and confirm that the Panel will review all of the agenda items. Interested persons are permitted to file written statements before or after the meeting, and may, upon advance notice to the Executive Secretary, present oral statements to the extent that time permits. Written or oral statements will be taken into consideration by the Panel in formulating comments or in deciding to waive comments. Persons desirous of making oral statements must notify the Executive Secretary and submit the required number of copies of a summary no later than July 16, 1979.

Individuals who wish to file written statements are advised to contact the Executive Secretary in a timely manner to be instructed on the format and the number of copies to submit to ensure appropriate consideration by the Panel.

The tentative date for the next Scientific Advisory Panel meeting is August 15, and 16, 1979.

[Section 25(d) of FIFRA, amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136) and Sec. 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770).]

Dated: June 23, 1979.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-20551 Filed 7-2-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1261-8; OPP-30148B]

Pesticide Programs; Approval of Application to Register Pesticide Product Containing New Active Ingredient

On May 18, 1978, notice was given (43 FR 21505) that Rohm and Haas, Independence Mall West, Philadelphia, PA 19105, had filed an application (EPA File Symbol 707-RUE) with the Environmental Protection Agency (EPA) to register the pesticide product GOAL 2E HERBICIDE containing 23.5% of the active ingredient oxyfluorfen (2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl) benzene which was not previously registered at the time of submission. Notice of this registration is given in accordance with 40 CFR 162.7(d)(2).

This application was approved May 17, 1979 and the product has been assigned EPA Registration No. 707-145. GOAL 2E HERBICIDE is classified for general use for preemergence control of certain annual grass and broadleaf weeds. A copy of the approved label and list of data references used to support registration are available for public inspection in the Product Manager's (PM-25) office, Room E-359, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M St., SW, Washington, DC 20460, telephone number 202/755-2196. The data and other scientific information used to support registration, except for the material specifically 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) will be available for public inspection in accordance with section 3(c)(2) of FIFRA. Requests for data must be made in accordance with the provisions of the Freedom of

Information Act and must be addressed to the Freedom of Information Office (A-101), EPA, at the above address. Such requests should: 1) identify the product by name and registration number and 2) specify the data or information desired.

Dated: June 23, 1979.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-20549 Filed 7-2-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1262-1; OPP-30160A]

Pesticide Programs; Approval of Application to Register Pesticide Product Containing New Active Ingredient

On February 13, 1979, notice was given (44 FR 9419) that Ciba-Geigy Corp., PO Box 11422, Greensboro, NC 27409, had filed an application (EPA File Symbol No. 100-ANR) with the Environmental Protection Agency (EPA) to register the pesticide product CGA-48988 TECHNICAL containing 90% of the active ingredient metalaxyl (N-(2,6-dimethylphenyl)-N-(methoxyacetyl) alanine methyl ester) which was not previously registered at the time of submission. The application was subsequently amended to change the product name from CGA-48988 TECHNICAL to CIBA-GEIGY METALAXYL TECHNICAL. Notice of this registration is given in accordance with 40 CFR 162.7(d)(2).

This application was approved June 12, 1979 and the product has been assigned EPA Registration No. 1-601. CIBA-GEIGY METALAXYL TECHNICAL is used as a technical chemical for formulating fungicides. A copy of the approved label and list of data references used to support registration are available for public inspection in the Product Manager's (PM-21) office, Room E-305, Registration Division (TS-767), Office of Pesticide Programs, 401 M St., SW, Washington, DC 20460, telephone number 202/755-2562. The data and other scientific information used to support registration, except for the material specifically 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) will be available for public inspection in accordance with section 3(c)(2) of FIFRA, within 30 days after the registration date of June 12, 1979. Requests for data must be made in accordance with the provisions of the

Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), EPA, at the above address. Such requests should: 1) identify the product by name and registration number and 2) specify the data or information desired.

Dated: June 23, 1979.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-20550 Filed 7-2-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1261-4; PP 7G1932/T213]

Pesticide Programs; Renewal of Temporary Tolerances 3,5-Dimethyl-4-(Methylthio)Pheny Methylcarbamate

On July 10, 1978, the Environmental Protection Agency (EPA) gave notice (43 FR 29619) that in response to a pesticide petition (PP 7G1932) submitted to the Agency by Mobay Chemical Corp., Chemagro Agricultural Div., P.O. Box 4913, Hawthorn Road, Kansas City, MO 64120, temporary tolerances were established for combined residues of the bird repellent 3,5-dimethyl-4-methylthio)phenyl methylcarbamate and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodities grapes at 15 parts per million (ppm); the meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 ppm; the eggs and the meat, fat, and meat byproducts of poultry at 0.02 ppm; and in milk at 0.01 ppm. (A related document renewing food and feed additive regulations for residues of the subject pesticide in or on raisins, raisin waste, and grape pomace appears elsewhere in today's Federal Register.) These temporary tolerances expired June 30, 1979.

Mobay Chemical Corp. has requested a one-year renewal of these temporary tolerances both to permit continued testing to obtain additional data and to permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of an experimental use permit (3125-EUP-140) that is being extended concurrently under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and all other relevant material have been evaluated, and it has been determined that renewal of the temporary tolerances will protect the public health. Therefore, the temporary tolerances are being renewed on condition that the pesticide is used in accordance with the

experimental use permit with the following provisions:

1. The total amount of the pesticide to be used must not exceed the quantity authorized by the experimental use permit.

2. Mobay Chemical Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The firm must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These temporary tolerances expire June 30, 1980. Residues not in excess of 15 ppm remaining in or on grapes; 0.05 ppm remaining in the meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep; 0.02 ppm remaining in eggs and the meat, fat, and meat byproducts of poultry; and 0.01 ppm remaining in milk after this expiration date will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the experimental use permit and temporary tolerances. These temporary tolerances may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicate such revocation is necessary to protect the public health. Inquiries concerning this notice may be directed to Mr. William Miller, Product Manager 16, Registration Division (TS-767), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460 (202/755-9458).

[Section 408(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348a(j)).]

[FR Doc. 79-20548 Filed 7-2-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1263-7]

Science Advisory Board Executive Committee; Open Meeting

As required by Pub. L. 92-463, notice is hereby given that a meeting of the Executive Committee of the Science Advisory Board will be held beginning at 9 a.m., July 23 and 24, 1979, in Room 1101, West Tower, U.S. Environmental Protection Agency, Waterside Mall, 401 M Street S.W., Washington, D.C.

The agenda for the meeting includes a discussion on: the IRLG Risk Assessment Document, legal issues affecting EPA's ability to acquire scientific advice, SAB approach in reviewing Hazardous Air Pollutants, HEW Recombinant DNA guidelines, ORD Strategic Analysis Group for Environmental planning, and items of member interest.

The meeting is open to the public. Any member of the public wishing to attend or obtain additional information should contact Dr. Richard M. Dowd, Staff Director, Science Advisory Board, 202-755-0263, by close of business July 16, 1979.

Dated: June 28, 1979.

Burton Levy,
Acting Deputy Director, Science Advisory Board.

[FR Doc. 79-20552 Filed 7-2-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1264-2; OTS-52000]

Office of Toxic Substances; Extension of Premanufacture Notification Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of premanufacture notification period.

SUMMARY: On April 5, 1979, EPA received premanufacture notification (PMN) from the American Cyanamid Company regarding four new chemical substances (PMN Numbers 5AHQ0479-0002-1 through 4). The Agency's review period was scheduled to close on July 4, 1979. EPA has concluded that because of concerns raised by the Agency's review and the need for more time and information to resolve these concerns, there exists good cause under section 5(c) of the Toxic Substances Control Act (TSCA) to extend the review period for an additional 60 days.

DATE: The review period is extended an additional 60 days and will close on September 2, 1979. To be most useful to EPA, comments regarding these premanufacture notices should be filed before August 6, 1979.

ADDRESS: Written comments should bear the PMN number of the particular substance for which comments are submitted and should be submitted in triplicate to the Document Control Officer (TS-793), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Non-confidential portions of the notice, non-confidential summaries of correspondence between American Cyanamid and EPA, and other non-confidential written materials are available in the public record and can be viewed in Room 447, East Tower, at the address above. The public record will be open from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: Robert Smith, Premanufacturing Review

Division, Office of Toxic Substances, (TS 794) Environmental Protection Agency, Washington, D.C. 20460, (202) 426-8816.

SUPPLEMENTARY INFORMATION:

Background

Under section 5 of TSCA, any person who intends to manufacture or import a new chemical substance for commercial purposes in the United States must submit a notice to EPA at least 90 days before he begins such manufacture or import. In general, EPA must review such a notice within 90 days from the date it is received (section 5(a)(1) of TSCA). However under section 5(c), EPA may for good cause extend the review period for up to an additional 90 days.

On April 5, 1979, EPA received four premanufacture notices from American Cyanamid Company (Cyanamid) for the following substances (generic names used):

PMN No. 5AHQ 0479-0002-1—Isobutyric acid, carbomonocyclic ester
PMN No. 5AHQ 0479-0002-2—Propiophenone, ring substituted-2-methyl
PMN No. 5AHQ 0479-0002-3—Butyronitrile, 2-(substituted phenyl)-3-methyl
PMN No. 5AHQ 0479-0002-4—Benzyl alcohol, ring substituted-alpha-isopropyl

Pursuant to section 5(d)(2) of TSCA, EPA published summaries of the notices in the Federal Register (44 FR 23310, April 19, 1979).

After reviewing the PMNs and finding they contained only limited information on the new substances, EPA sent a letter to Cyanamid on May 9, 1979, requesting additional information regarding potential exposures, possible uses, and health and safety studies which Cyanamid had indicated were being performed. In that letter, the Agency also asked that representatives of Cyanamid meet with EPA to discuss the Agency's concerns.

While waiting for further information from Cyanamid, EPA technical staff continued their review of the notices. This review included searching the scientific literature to identify journal articles that contain information on the new substances. EPA staff also used structure-activity relationships to identify existing chemicals which are considered to be analogous to the new substances. The analogues differ from the new substances by one to three carbon atoms in the sidechain (e.g., for the new substances isobutyric acid, carbomonocyclic ester, the analogue was the corresponding acetic acid, carbomonocyclic ester, differing by two carbon atoms only).

EPA evaluated the health effects information available for each analogue and considered the likelihood that the new substance would produce similar effects. An analogue indicates that the carbomono-cyclic ester of isobutyric acid may alter sodium permeability in red blood cells, and may have cholinergic effects (i.e. smooth muscle contraction). An analogue indicates that ring substituted 2-methyl propiophenone may have estrogenic activity and may cause cancer or reproductive effects. Analogues indicate that 2-(substituted phenyl)-3-methyl butyronitrile may have relatively high acute toxicity due to its cyanide-like activity and might cause chronic neurological damage. An analogue indicates that ring substituted alpha-isopropyl benzyl alcohol may have the same effects as ring substituted-2-methyl propiophenone.

On June 8, 1979, EPA representatives met with Cyanamid representatives at Agency headquarters in Washington, D.C. (EPA has placed a non-confidential summary of that meeting in the public record). At that meeting, Cyanamid submitted health effects information which had been developed after submittal of the PMNs. The information included Ames mutagenicity tests, and acute oral, acute dermal, and skin and eye irritation studies. EPA has placed non-confidential summaries of the health effects information in the public record.

To date, Cyanamid has not provided satisfactory information in response to EPA's other requests for information contained in the May 9 letter; these other requests were primarily related to the substances' potential for exposure. To follow up on the June 8 meeting, EPA has sent Cyanamid a new letter repeating in more detail EPA's May 9 information request.

Reasons for Extension

Upon review of all the information available to it, EPA has determined that good cause exists to extend the notification period. The reason for extending the review period is that the Agency is concerned about the new substances' possible toxic effects. These concerns might be mitigated if the Agency was confident that there would be limited exposure to the new substances. But the PMNs do not contain sufficient information to evaluate potential exposures to the substances during their production and use. The preliminary assessment of health effects for the four new substances indicates that each of the new substances has the potential for adversely affecting human health. The

preliminary assessment is based primarily on analysis of structure-activity relationships (SAR), because the health effects information provided on June 8, 1979 was not available at the time EPA conducted the preliminary assessment. Based on the results of the preliminary assessment, and until further health effects information is found or EPA completes its assessments for these four substances, the Agency will use the working assumption that the substances have the potential for adversely affecting human health.

Therefore, given these preliminary assessments of potentially adverse health effects, the Agency's analysis is proceeding on two fronts: (a) More precise determination of the toxicity of the substances; and (b) determination of possible types and levels of exposure to the substances.

The EPA will use the health effects data submitted by Cyanamid on June 8 to help determine the toxic potential of the four new substances. The Agency's initial review of the June 8 data has raised some questions with regard to those data. Specifically, the questions relate to (1) an apparent error in reporting the results of one of the acute tests and (2) the lack of explanation for an unexpected result in one of the acute tests—more animals died at low dose levels than at high dose levels. EPA does not believe that it can adequately resolve these questions and assess the toxic potential of the substances in the limited time remaining in the notice period.

In addition, as indicated above, the Cyanamid notices did not contain sufficient data to evaluate the potential exposures to the substances during their production and use. To date, Cyanamid has not provided exposure data that are sufficiently specific to help EPA in evaluating the substances' potential risks. EPA anticipates that extension of the review period will allow Cyanamid to submit additional exposure data for EPA evaluation, or for the Agency to prepare worst case estimates if further information is not forthcoming from Cyanamid.

For the above reasons, EPA has decided to extend the comment period on all four substances for an additional 60 days, that is until September 2, 1979. The 60 day extension should provide sufficient time for:

- a. Cyanamid to provide additional exposure information;
- b. EPA to incorporate that information into its assessment of the new substances; and

c. EPA to take any necessary action under TSCA to control the production or use of the new substances.

An added benefit of extending the review period is that interested parties will have additional time to perform their own assessments and to provide comments to EPA. EPA repeatedly has stated its belief that Congress intended that health and safety data be made available (with limited exceptions) to the public, to enable the public to perform its own assessments of new substances. This intention is made explicit in § 5(d)(1) of TSCA: "Such a notice (PMN and related test data) shall be made available, subject to Section 14, for examination by interested persons." Cyanamid provided non-confidential summaries of the data it submitted on June 8. These summaries have been placed in the public record. However, EPA does not believe that these summaries, which only give the results of the tests, provide sufficient information for the public to perform an assessment of the new substances. Although Cyanamid has agreed to provide EPA complete versions of the health and safety studies, with generic names substituted for specific chemical names, it is unlikely that the studies will be available in the public record before the close of the initial review period. Extension of the notice period will allow the public a reasonable time to review the health and safety data and to submit comments for EPA's consideration in its evaluation of these substances.

EPA recognizes that it may not be able to complete its assessment by September 2, 1979. Under § 5(c), EPA may determine that a further extension of the comment period is necessary. However, the total extensions may not exceed 90 days beyond the close of the original notice period on July 4, 1979. If EPA decides to extend the notice period again, a notice will be published in the Federal Register to that effect.

Extension Will Not Affect Cyanamid's Production Plans

At the June 8, 1979, meeting, EPA asked Cyanamid if extending the notice period would affect their production plans. Cyanamid responded that for reasons independent of EPA's actions, their production plans had been set back and that an extension of 90 days would not affect them; Cyanamid confirmed this response in a June 15, 1979 telephone conversation with EPA.

EPA Has Made No Decision Regarding the Need To Control the New Substances

At this time, EPA has not made any decision concerning the need to regulate these substances under TSCA. The Agency will continue to gather and evaluate information regarding the substances' health and environmental effects and potential for expose to determine what further actions should be taken on the four substances.

(Sec. 5, Toxic Substances Control Act (90 Stat. 2012; (15 U.S.C. 2604).)

Dated June 29, 1979.

Barbara Blum,
Acting Administrator.

[FR Doc. 79-20708 Filed 7-2-79; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL COMMUNICATIONS COMMISSION

Radio Technical Commission for Marine Services; Schedule of Future Meetings

In accordance with Public Law 92-463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine services (RTCM) meetings is as follows:

Executive Committee Meeting

The next Executive Committee Meeting will be on Thursday, July 19, 1979, 9:30 a.m. Conference Room 7200, Nassif Building, 400 Seventh, Street, S.W. (at D street), Washington, D.C.

Agenda

1. Approval of Terms of Reference revision for Special Committee No. 70.
2. Adoption of Budget/Finance Working Group proposed Budget for FY-1980.
3. Review of Auditor Selection procedures.

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are preferred, but by previous arrangement oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meeting(s) may contact either the designated chairman or the RTCM Secretariat (phone: (202) 632-6490).

Federal Communications Commission,
William J. Tricarico,
Secretary.

[FR Doc. 79-20450 Filed 7-2-79; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Independent Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916, (Stat. 422 and 46 U.S.C. 841(b)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

A. B. International Forwarders, Inc., 5316 West Imperial Highway, Los Angeles, CA 90045. Officers: Alexander Ilich, President; Maura O'Connor Ilich, Secretary/Treasurer.

T. International Freight Forwarders, Inc., 7465 N.W. 8th Street, Miami, FL 33128. Officer: Reinaldo A. Torrente, President.

R. P. C. Shipping Co., 954 SE 3rd Place, Hialeah, FL 33010. Officer: Maria F. Rodriguez, President/Sole stockholder. Stavers Corporation, 84 Congress Road, Emerson, NJ 07630. Officers: Peter T. De Fabiis, President; Veronica M. De Fabiis, Vice President.

McKinney International Forwarders, Inc., 418 East Gaston Street, Savannah, GA 31401. Officers: John Allan McKinney, President/Director; Edward J. Burns, Jr., Vice President; David B. McKinney, Secretary/Treasurer/Director; Franklyn C. McKinney, Director.

Simac Forwarding Co. (Clyde L. McGuire, d.b.a.), 8101 Amelia, #204, Houston, TX 77055.

Action Forwarding (Enrique Manfrediz, d.b.a.), 1692 W. 72 Street, Hialeah, FL 33014.

Harry Nicholas Patronik, Jr., 5453 King Arthur Circle, Baltimore, MD 21237.

By the Federal Maritime Commission.
Dated: June 28, 1979.

Francis C. Hurney,
Secretary.

[FR Doc. 79-20506 Filed 7-2-79; 8:45 am]

BILLING CODE 6730-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report proposal

The following request for clearance of a report intended for use in collecting

information from the public was received by the Regulatory Reports Review Staff, GAO, on June 22, 1979. See 44 U.S.C. 3512(c) and (d). The purpose of publishing this notice in the Federal Register is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed CAB request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before July 23, 1979, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Civil Aeronautics Board

The CAB requests clearance of the following notice, recordkeeping and reporting requirements contained in Part 208 of the Board's Economic Regulations, "Terms, Conditions, and Limitations of Certificates to Engage in Supplemental Air Transportation". Section 208.3a sets forth the conditions whereby a carrier can request waiver of the provisions of Part 208. Section 208.4 requires each air carrier to obtain and retain certain records in accordance with Part 249. Section 208.7 provides that a supplemental air carrier may with the written consent of the charterer utilize any unused space for the transportation of certain carrier personnel or certain personnel of the carrier's affiliate. Section 208.36 permits a carrier to furnish substitute transportation in cases of emergency and requires the carrier to submit a report to CAB setting forth the circumstances of the carriage within 30 days thereafter. Section 208.201(b) requires a carrier to notify CAB within 5 days after a charter contract has been executed that its execution took place within 15 days of the flight date. Section 208.202a sets forth requirements that shall be met by the carrier, travel agent and charterer prior to performing a charter flight. Section 208.202b sets forth requirements pertaining to timely payment to carriers performing departing and return flights of the

charter price. Section 208.204 requires that travel agents shall execute and file with the air carrier section A of part II of the "Statement of Supporting Information" at such time as required by the carrier to afford it due time for review thereof. The CAB estimates that respondents will be approximately 88 supplemental air carriers and that the estimated average number of hours required per respondent for § 208.3a will be 1 hour; for § 208.4, no burden; for § 208.7, 15 minutes; for § 208.36, 15 minutes; for § 208.201(b), 15 minutes; for § 208.202a, 15 minutes per report; for § 208.202b, 15 minutes per report; and for § 208.204, 15 minutes per report.

Norman F. Heyl,

Regulatory Reports Review Officer.

[FR Doc. 79-20521 Filed 7-2-79; 8:45 am]

BILLING CODE 1610-01-M

Regulatory Reports Review; Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on June 22, 1979. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the Federal Register is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed OSM request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before July 23, 1979, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

Office of Surface Mining

The Office of Surface Mining (OSM), Department of the Interior, requests clearance of a form requiring reporting of information by laboratories wishing to qualify to perform work under OSM's Small Operator Assistance Program. The regulations requiring reporting of this information were published with

OSM's initial regulatory program (42 FR 62710), December 13, 1977 (see 30 CFR 795.17 and 30 CFR 795.13-14), and approved by GAO on February 3, 1978. The Office of Surface Mining has determined that such information is necessary to perform its responsibilities under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et. seq. and must be collected.

The proposed Questionnaire to be completed by laboratories wishing to be qualified to perform work under OSM's Small Operator Assistance Program will require approximately 500 laboratories to answer questions regarding their facilities, personnel, financial backing, equipment and general capabilities. OSM estimates each laboratory will require approximately 3 hours to complete the questionnaire with a total burden of 1500 hours. Each laboratory will be required to file only once.

Norman F. Heyl,

Regulatory Reports Review Officer.

[FR Doc. 79-20522 Filed 7-2-79; 8:45 am]

BILLING CODE 1610-01-M

GENERAL SERVICES ADMINISTRATION

[Federal Property Management Regulations; Temporary Regulation D-64]

Environment Protection Agency; Delegation of Authority

1. *Purpose.* This delegation continues in effect the authority delegated to the Administrator of the Environmental Protection Agency to perform all functions in connection with the leasing of 70,000 square feet of additional special purpose space at Research Triangle Park, North Carolina.

2. *Effective date.* This regulation is effective immediately.

3. *Expiration date.* This regulation shall expire upon termination of the lease, which will not extend beyond September 20, 1990.

4. *Background.* This regulation reflects the delegation of authority which was granted by letter of August 12, 1977, to the Administrator of the Environmental Protection Agency by the Administrator of General Services.

5. *Delegation.* a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, authority is hereby delegated to the Administrator of the Environmental Protection Agency to perform all functions in connection with the leasing of approximately 70,000 square feet of additional space at Research Triangle Park, North Carolina.

b. This authority shall extend to leasing space under authority in section 210(h)(1) of the above-cited act (40 U.S.C. 490(h)(1)) for a lease term not to extend beyond September 20, 1990.

c. The Administrator of the Environmental Protection Agency may redelegate this authority to any official or employee of the Environmental Protection Agency.

d. This authority shall be exercised in accordance with the applicable limitations and requirements of the above-cited act, section 322 of the Act of June 30, 1932 (40 U.S.C. 278a), as amended, other applicable statutes and regulations, and policies, procedures, and controls prescribed by the General Services Administration.

6. *Effect on other issuances.* This temporary regulation cancels the letter dated August 12, 1977, from the Administrator of General Services to the Administrator of the Environmental Protection Agency.

Dated: June 22, 1979.

Paul E. Goulding,

Acting Administrator of General Services.

[FR Doc. 79-20520 Filed 7-2-79; 8:45 am]

BILLING CODE 6820-23-M

[Federal Property Management Regulations; Temporary Regulation F-489]

Department of Defense; Delegation of Authority

1. *Purpose.* This regulation delegates authority to the Secretary of Defense to represent the interests of the executive agencies of the Federal Government in a telecommunications rate proceeding.

2. *Effective date.*—This regulation is effective immediately.

3. *Delegation.*—a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the executive agencies of the Federal Government before the Kansas State Corporation Commission involving the application of the Southwestern Bell Telephone Company for an increase in its intrastate telecommunications service rates.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration,

and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

Dated: June 22, 1979.

Paul E. Goulding,

Acting Administrator of General Services.

[FR Doc. 79-20485 Filed 7-2-79; 8:45 am]

BILLING CODE 6820-25-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

National Advisory Committee on the White House Conference on Families; Meeting

The National Advisory Committee on the White House Conference on Families was established to advise the Secretary, the Chair of the Conference, and the Conference staff on matters pertaining to the Conference, including the development, implementation and execution of overall plans and procedures for the Conference.

In accordance with Pub. L. 92-463, notice is hereby given of a meeting to be held Thursday, July 19, 1979, at 9:00 a.m., and Friday, July 20, 1979, at 8:30 a.m., in Room 800 of the Hubert H. Humphrey Building, located at 200 Independence Avenue, S.W., in Washington, D.C.

The first day's agenda will include an introduction of members, an overview, and orientation to be presented by the Conference Chair; followed by a swearing-in ceremony by the Secretary; and a discussion of goals and the Conference process. The second day's agenda will include the continuation of the discussion on Conference process, and a discussion of a framework for the identification and generation of issues to be addressed by the Conference.

All sessions will be open to the public; however, seating capacity will be limited.

Further information on the meeting may be obtained from the White House Conference on Families at 330 Independence Avenue, S.W., Washington, D.C., 20201; telephone number: 202-245-6073.

Dated: June 29, 1979.

Laura A. Miller,

Special Assistant to the Secretary.

[FR Doc. 79-20654 Filed 7-2-79; 8:45 am]

BILLING CODE 4110-12-M

Center for Disease Control

Grants For Health Education-Risk Reduction; Announcement of Request for Applications for Grants

The Center for Disease Control announces that State and local health authorities are requested to apply for fiscal year 1979 Health Education-Risk Reduction grants to assist them in developing and implementing health education programs for their populations. This new grant program is authorized under Section 1703(a) of the Public Health Service Act (42 U.S.C. 300u-2(a)).

The purpose of the Health Education-Risk Reduction grants program is to assist State and local health agencies in initiating, strengthening, and delivering health education programs, and to establish the State health agency as the lead organization in coordinating the grant activities in the State. The grants will encourage participation and coordination of efforts by all agencies, public and private, involved in health education programs, and will emphasize personal choice health behavior education to reduce premature death and disability associated with cigarette smoking, obesity, hypertension, and other chronic and preventable health conditions and diseases affecting the American people. Surveillance systems for risk factors related to chronic and preventable disease will be established by the grantees for continued monitoring of program impact and for further refinement and development of future Health Education-Risk Reduction programs.

The Center for Disease Control has allocated \$3.5 million for Health Education-Risk Reduction grant awards during fiscal year 1979. Eligible applicants are State health agencies; health agencies of U.S. Territories and Possessions, the Commonwealth of Puerto Rico, and the District of Columbia; and local health agencies, provided their applications are submitted through and receive the concurrence of the State health agency.

Regulations concerning implementation of Health Education-Risk Reduction grant programs will be forthcoming. Until regulations are issued, all information and guidance provided are subject to the qualification that they reflect preliminary policies only. Applications should be submitted simultaneously to the appropriate planning agency designated by the Secretary under Title XV of the Public Health Service Act and to the Center for Disease Control. Grant applications

must be received at the Center for Disease Control by July 16, 1979. Applications received after July 16, 1979, will be considered as late applications, and time constraints may prevent awarding the grants this fiscal year.

Application kits, instructions, and related information may be obtained from and grant applications mailed to: Grants Management Officer, Procurement and Grants Office, Center for Disease Control, 255 East Paces Ferry Road, N.E., Room 319, Atlanta, Ga. 30305.

Consultation and technical assistance regarding the development of an application are available by contacting the Bureau of Health Education, Center for Disease Control, Atlanta, Ga. 30333, or the appropriate Department of Health, Education, and Welfare Regional Office listed below.

Dated: June 26, 1979.

William C. Watson, Jr.,

Acting Director, Center for Disease Control.

Department of Health, Education, and
Welfare

REGIONAL HEALTH ADMINISTRATORS

Edward J. Montminy
Regional Health Administrator (Acting)

DHEW—Region I

John F. Kennedy Federal Building

Boston, Massachusetts 02203

(617) 223-6827

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 [FR Doc. 79-20495 Filed 7-2-79; 8:45 am]
 BILLING CODE 4110-86-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

California Desert Conservation Area Advisory Committee; Meeting

Notice is hereby given in accordance with Pub. L. 92-463 and Pub. L. 94-579 that the California Desert Conservation Area Advisory Committee to the Bureau of Land Management, Department of the Interior, will meet August 3-4, 1979, in Riverside, California. The purpose of the meeting is for the Bureau of Land Management Desert Plan Staff to review with the committee and the public components of the draft California Desert Plan scheduled for release to the public on January 1, 1980. The preview is intended to assist the committee in developing a public review and involvement program for the draft plan, to identify critical areas which should be included in the committee's itinerary for field review, and to give the public an indication of the process leading to development of the scope and content of the draft comprehensive plan and alternatives under consideration for the public lands of the California Desert Conservation Area.

The meeting on Friday, August 3, will be devoted to a review of progress on development of the elements and components of the draft plan. The session Saturday, August 4, will include meetings of the Public Participation and Plan Implementation subcommittees, following by a workshop to prepare the itinerary for the committee's field reviews of critical areas within the Desert. The final session will be devoted to a business meeting, including review

of the minutes of the May meeting, subcommittee reports and reports on the results of the workshops.

The meetings will be held in Raincross Square, 3443 Orange Street, Riverside, California 92501. The meetings will begin at 8:00 a.m., Friday, August 3, and 8:00 a.m., Saturday, August 4, 1979. The meeting is open to the public and interested persons may attend and file statements with the advisory committee. Further information, including the agenda, may be obtained from Chairman Genny Smith, California Desert Conservation Area Advisory Committee, c/o Desert Plan Staff, Bureau of Land Management, 3610 Central Avenue, Suite 402, Riverside, California 92506.

Ed Hastey,
 State Director.

[FR Doc. 79-20489 Filed 7-2-79; 8:45 am]
 BILLING CODE 4310-84-M

[NM 37066 and 37178]

New Mexico; Applications

June 26, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 578), El Paso Natural Gas Company has applied for two 4½-inch natural gas pipeline rights-of-way across the following lands:

New Mexico Principal Meridian, New Mexico

T. 9 S., R. 30 E.,
 Sec. 29, SE¼SE¼.
 T. 21 S., R. 36 E.,
 Sec. 18, Lot 2.

These pipelines will convey natural gas across 0.325 of a mile of public lands in Chaves and Lea Counties, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

Fred. E. Padilla,
 Chief, Branch of Lands and Minerals
 Operations.

[FR Doc. 79-20496 Filed 7-2-79; 8:45 am]
 BILLING CODE 4310-84-M

Salt Lake District; Tooele and Box Elder Counties, Utah; Extension of Off-Road Vehicle Temporary Closure Puddle Valley Area

Notice is hereby given that in furtherance of the purpose of Executive Order 11644 (37 FR 2877, February 9, 1972) relating to the use of off-road vehicles on public lands and by authority of regulations under 43 CFR 6290 implementing Executive Order 11644, the following described lands under the administration of the Bureau of Land Management are designated as closed to off-road motorized vehicles and motorized vehicle use excepting emergency, law enforcement, and other federal or government vehicles for official or emergency purposes.

The purpose for the temporary closure is to provide conditions that will maximize antelope protection until the introduced herd is well established. The action will result in the extension of the expired 1976 ORV closure in Puddle Valley for an additional two years and extend the present boundaries to include all public lands within portions of the following Townships and Ranges.

Salt Lake Meridian

T. 3N., R. 8, 9, 10, 11 W.
 T. 2N., R. 7, 8, 9, 10, 11 W.
 T. 1N., R. 7, 8, 9, 10, 11 W.
 T. 1S., R. 8, 11 W.

The described area is approximately 181,900 acres of public land in Tooele County and about 15,560 acres in Box Elder County.

This notice and further closure shall become effective July 1, 1979 and will remain active until July 1, 1981. The closed area will be defined with signs along access points. Maps showing the boundaries are available from the Bureau of Land Management located at 2370 South 2300 West, Salt Lake City, Utah 84119.

Dated: June 15, 1979.

Frank W. Snell,
 District Manager.

[FR Doc. 79-20497 Filed 7-2-79; 8:45 am]
 BILLING CODE 4310-84-M

Geological Survey

Oil and Gas and Sulphur Operations in the Outer Continental Shelf (OCS)

AGENCY: Geological Survey, U.S.
 Department of the Interior.

ACTION: Announce the prohibition of the use of halogenated phenols in accordance with authorities prescribed in 30 CFR 250.11 and 30 CFR 250.43.

FOR FURTHER INFORMATION CONTACT: E. P. Danenberger, U.S. Geological Survey, National Center, Mail Stop 620, Reston, Va. 22092, 703-860-7549.

Notice to Lessees and Operators

Ban on the Use of Halogenated Phenols in OCS Oil and Gas Operations

Halogenated phenols are one of several general classes of bactericides which are used by the petroleum industry to prevent microbial degradation and suppress the formation of hydrogen sulfide by sulfate reducing bacteria.

Halogenated phenols are far more toxic than a number of alternate bactericides. They have also demonstrated a persistence in the environment and a potential for bioaccumulation or the formation of more toxic compounds.

Effective October 1, 1979, the use of halogenated phenols as additives in drilling muds, completion fluids, saltwater disposal and water injection systems, workover fluids, surface production equipment, and other OCS oil and gas operational systems is prohibited.

The ban does not apply to well fluids emplaced prior to the effective date. Also, operators are not required to remove halogenated phenols which are already contained in existing production systems. However, the addition of halogenated phenols to such well fluids or production systems is prohibited after the effective date.

Dated: June 22, 1979.

J. R. Balsley,

Acting Director

[FR Doc. 79-20498 Filed 7-2-79; 8:45 am]

BILLING CODE 4310-31-M

Heritage Conservation and Recreation Service

National Register of Historic Places; Notification of Pending Nominations

Correction

In FR Doc. 79-19429 appearing at page 37337 in the issue for June 26, 1979, make the following correction: On page 37339, in the first column, under the main heading "Rhode Island," minor heading "Washington County," and the entry for Kingstown vicinity, and above the minor heading, "Brookings County," insert the main heading, "South Dakota".

BILLING CODE 1505-01-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before June 22, 1979. Pursuant to section 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, Office of Archeology and Historic Preservation, U.S. Department of the Interior, Washington, D.C. 20240. Written comments or a request for additional time to prepare comments should be submitted by July 13, 1979.

Charles A. Herrington,
Acting Keeper of the National Register.

CALIFORNIA

Calaveras County

Altaville, *Altaville Grammar School*, 125 N. Main St.

Los Angeles County

Los Angeles, *Venice Canal District*, roughly bounded by N. Venice Blvd., Washington St., Pacific and Ocean Aves.

Merced County

Los Banos, *Bank of Los Banos Building*, 836, 840, 842 and 848 6th St.

Napa County

St. Helena vicinity, *Nichelini Winery*, E of St. Helena at 2950 Sage Canyon Rd.

San Luis Obispo County

Cambria, *Guthrie House*, Burton and Center Sts.

Siskiyou County

Yreka, *Falkenstein, Lewis, House*, 401 S. Gold St.

Sonoma County

Geyserville, *Geyserville Union School*, Main St.

CONNECTICUT

Hartford County

Avon, *Pine Grove Historic District*, CT 167. Hartford, *Barbour, Lucius, House*, 130

Washington St. Hartford, *Union Baptist Church* (St. Thomas's Church) 1913 and 1921 Main St. Hazardville and vicinity, *Hazardville Historic District*, CT 190 and CT 192. West Hartford, *Hooker, Sarah Whitman, House*, 1237 N. Britain Ave.

Litchfield County

Roxbury, *Roxbury Iron Mine and Furnace Complex*, Hodge and Mine Hill Rds.

New Haven County

Milford, *St. Peter's Episcopal Church*, 61, 71, and 81 River St. Milford, *Taylor Memorial Library*, 5 Broad St. North Haven, *Rising Sun Tavern*, Old Tavern Lane.

New London County

East Lyme, *Avery, Thomas, House, Society R.* Mystic, *Mystic Bridge Historic District*, U.S. 1 and CT 27. West Mystic, *Mystic River Historic District*, U.S. 1 and CT 215.

Windham County

Wauregan, *Wauregan Historic District*, CT 205.

DELAWARE

New Castle County

Newport vicinity, *Wooddale Historic District*, NW of Newport on Wooddale Rd.

Sussex County

Georgetown, *Richards Mansion*, N. Bedford St.

GEORGIA

Troup County

LaGrange, *Ferrell-Holder House*, 1042 Vernon Rd.

Warren County

Warrenton, *Roberts-McGregor House*, Depot St.

IDAHO

Ada County

Boise, *Artesian Water Co. Pumphouse and Wells*, off ID 21.

INDIANA

Fulton County

Rochester, *Smith, John W., House*, 730 Pontiac St.

LOUISIANA

West Feliciana Parish

Hardwood, *Oaks, The*, U.S. 61.

MICHIGAN

Leelanau County

Glen Haven, *Sleeping Bear Inn*, MI 209.

NEW JERSEY

Bergen County

Bergenfield, *South Church Manse*, 138 W. Church St.

Burlington County

Wrightstown vicinity, *Upper Springfield Meetinghouse*, W of Wrightstown.

Mercer County

Trenton, *Adams and Sickles Building*, 1 West End Ave.

Trenton, *Kuser, Rudolph V., Estate*, 315 W. State St.

Middlesex County

Highland Park vicinity, *Raritan Landing Archeological District*.

Monmouth County

Holmdel vicinity, *Longstreet Farm*, N of Holmdel on Longstreet Rd.

Sussex County

Branchville vicinity, *Foster-Armstrong House*, N of Branchville, on River Rd.

Wallpack Center vicinity, *Gunn, Cornelius, House*, SW of Wallpack Center on Ridge Rd.

Wallpack Center vicinity, *Layton, Richard, House*, SW of Wallpack Center.

Wallpack Center vicinity, *Shoemaker-Houck Farm*, S of Wallpack Center on Heney's Mill-Walpack Center Rd.

Wallpack Center vicinity, *Snable, Andrew, House*, NE of Wallpack Center on Sandyston-Haney's Mill Rd.

Union County

Springfield, *Sayre Homestead*, Sayre Homestead Lane

NEW MEXICO**Bernalillo County**

Albuquerque, *San Ignacio Church*, 1300 Walter St., NE.

NEW YORK**Columbia County**

Claverack, *van Hoesen, Jan, House*, NY 66.

Nassau County

Lattingtown, *Aldred, John E., Estate (Ormston)* Lattingtown Rd.

Onondaga County

Delphi Falls, *Delphi Baptist Church*, Oran-Delphi Rd.

Syracuse, *Montgomery Street-Columbus Circle Historic District*, E. Jefferson, E. Onondaga, Montgomery and E. Fayette Sts.

Rensselaer County

Rensselaer, *Pruyn, Casparus, House and Office*, 15 Forbes Ave.

Ulster County

Kingston, *Rondout-West Strand Historic District*, U.S. 9W.

OREGON**Curry County**

Gold Beach, *Hume, Mary D. (freighter)* Port of Gold Beach.

PENNSYLVANIA**Allegheny County**

Pittsburgh, *West End Bridge*, Western Ave. and Carson St.

Chester County

West Chester, *Everhart, William, Building*, 28 W. Market St.

Monroe County

Monroe vicinity, *Cold Spring Farm Springhouse*, NE of Monroe.

Stroudsburg vicinity, *Turn, John, Farm*, NE of Stroudsburg.

Pike County

Bushkill, *Bushkill Gristmill*, U.S. 209.

Bushkill, *Peters House*, U.S. 209.

Bushkill vicinity, *Brodhead Farm (Wheat Plains)* NE of Bushkill on U.S. 209.

Bushkill vicinity, *Nyce Farm (Van Gordon House)*, NW of Bushkill on U.S. 209.

Dingman's Ferry, *Dingman's Ferry Dutch Reformed Church*, U.S. 209.

Milford, *Callahan House*, U.S. 209.

Milford vicinity, *Zimmerman, Marie, Farm*, SW of Milford on U.S. 209.

TENNESSEE**Shelby County**

Memphis, *Patton-Bejach House*, 1085 Poplar.

UTAH**Salt Lake County**

Salt Lake City, *Salt Lake City Public Library*, 15 S. State St.

Utah County

Provo, *Hotel Roberts*, 192 S. University Ave.

WISCONSIN**Douglas County**

Superior vicinity, *Davidson Windmill*, SE of Superior on WI 13.

La Crosse County

La Crosse, *Waterworks Building*, 119 King St.

Milwaukee County

Milwaukee, *Graham Row*, 1501, 1503 and 1507 N. Marshall St.

Milwaukee, *Quarles, Charles, House*, 2531 N. Farwell Ave.

Racine County

Racine, *St. Luke's Episcopal Church, Chapel, Guildhall and Rectory*, 614 S. Main St.

[FR Doc. 79-20131 Filed 7-2-79; 8:45 am]

BILLING CODE 4310-03-M

National Register of Historic Places; Additions, Deletions, and Corrections

By notice in the Federal Register of February 7, 1978, Part II, there was published a list of the properties included in the National Register of Historic Places. Further notice is hereby given that certain amendments or revisions in the nature of additions, deletions, or corrections to the previously published list are adopted as set out below.

It is the responsibility of all Federal agencies to take cognizance of the properties included in the National Register as herein amended and revised in accordance with section 106 of the National Historic Preservation Act of 1966, 80 Stat. 16 U.S.C. 470 et seq. (1970 ed.), and the procedures of the Advisory

Council on Historic Preservation, 36 CFR Part 800.

Charles A. Herrington,
Acting Keeper of the National Register.

ALABAMA**Perry County**

Marion, *Green Street Historic District*, 203—751 W. Green St. (5-30-79).

ALASKA**Anchorage Division**

Anchorage, *Campus Center*, Wesley Dr. (6-22-79).

Fairbanks Division

Nabesna, *Nabesna Gold Mine Historic District*, base of White Mountain (5-25-79).

Kobuk Division

Point Hope, *Ipiutak Archeological District* (5-25-79).

Sitka Division

Sitka, *Cable House and Station*, Lincoln St. (6-4-79).

Valdez-Chitina-Whittier Division

Chitina, *Chitina Tin Shop*, Main St. (6-11-79).

ARIZONA**Pinal County**

Oracle vicinity, *American Flag Post Office Ranch*, 5 mi. SE of Oracle (6-20-79).

ARKANSAS**Faulkner County**

Conway, *Harton House*, 1821 Robinson Ave. (5-25-79).

CALIFORNIA**Alameda County**

Oakland, *M. V. Santa Rosa (ferryboat)* Howard Terminal (5-23-79).

Lake County

Anderson Springs vicinity, *Archeological Site No. CA-LAK-711* (5-25-79).

Mariposa County

Yosemite Village vicinity, *McGurk Cabin*, S of Yosemite Village (6-4-79).

Orange County

Laguna Beach vicinity, *Crystal Cove Historic District*, NW of Laguna Beach (6-15-79).

Sacramento County

Sacramento, *Hotel Senator*, 1121 L St. (5-30-79).

San Francisco County

San Francisco, *Mish House*, 1153 Oak St. (5-21-79).

San Francisco, *Old Ohio Street Houses*, 17—55 Osgood Pl. (5-31-79).

Santa Cruz County

Santa Cruz, *Hotel Metropole*, 1111 Pacific Ave. (5-23-79).

Solano County

Benicia, *Fischer, Joseph, House*, 135 G St. (5-24-79).

COLORADO*Otero County*

La Junta, *Hart, Wilson A., House*, 802 Raton Ave. (5-31-79).

Park County

Fairplay, *Park County Courthouse and Jail*, 418 Main St. (5-25-79).

CONNECTICUT*Fairfield County*

Stamford, *Cove Island Houses*, Cove Rd. and Weed Ave. (5-22-79).

Hartford County

East Hartford, *Brewer, Selden, House*, 137 High St. (6-4-79).

Enfield, *Enfield Shakers Historic District*, Shaker, Taylor and Cybulski Rds. (5-21-79).

West Hartford, *Spanish House, The (Grace M. Spear Lincoln House)* 46 Fernwood Rd. (6-14-79).

Litchfield County

Canaan, *Falls Village District*, CT 126 (6-14-79).

New Haven County

New Haven, *New Haven Jewish Home for the Aged*, 169 Davenport Ave. (6-19-79).

New London County

East Lyme, *Smith, Samuel, House*, 82 Plants Dam Rd. (6-4-79).

Lebanon, *Lebanon Green Historic District*, CT 87 and W. Town St. (6-4-79).

Mystic, *Pequotsepos Manor (Denison Homestead)*, Pequotsepos Rd. (6-15-79).

Sprague, *Ashlawn (Joshua Perkins House)*, 1 Potash Hill Rd. (6-15-79).

Stonington, *Stanton, Robert, House (Davis Homestead)*, Green Haven Rd. (6-4-79) HABS.

Tolland County

Mansfield, *Mansfield Hollow Historic District*, 86-127 Mansfield Hollow Rd. (5-21-79).

Windham County

Windham, *Windham Center Historic District*, CT 14 and CT 203 (6-4-79).

DELAWARE*Kent County*

Bowers vicinity, **ST. JONES NECK MULTIPLE RESOURCE AREA** (Partial Inventory). This area includes: *Byfield Historic District*, off SR 352; *Lower St. Jones Neck Historic District*, off DE 9 along St. Jones River; *Archeological Sites K-873 (7K-D-35, A, B, and D); K-875 (7K-D-37, C); K-876 (7K-D-38, C); K-880 (7K-D-42, F); K-891 (7K-D-45, A and B); K-913 (7K-D-47, C, D and E); K-914 (7K-D-48, F and G); K-915 (7K-F-86, C) K-916 (7K-D-49, C); K-920 (7K-D-52, and C); Logan School House*, Troy Mobile Home Park (5-22-79).

New Castle County

Wilmington, *U. S. Post Office, Courthouse, and Customhouse*, 11th and Market Sts. (6-14-79).

FLORIDA*Escambia County*

Pensacola, *Louisville and Nashville Passenger Station and Express Building*, 239 N. Alcaniz St. (6-11-79).

Pinellas County

Clearwater, *South Ward School*, 610 S. Fort Harrison Ave. (6-18-79).

GEORGIA*Baldwin County*

Milledgeville vicinity, *Woodville*, 3 mi. (4.8 km) S of Milledgeville on GA 243 (6-22-79).

Clarke County

Athens, *Crane, Ross, House*, 247 Pulaski St. (6-18-79) HABS.

Whitehall, *White Hall*, Whitehall and Simonton Bridge Rds. (6-18-79).

Dougherty County

Albany, *U. S. Post Office and Courthouse*, 337 Broad Ave. (6-22-79).

Monroe County

Forsyth, *Hil'ardin (Sharp-Hardin-Wright House)*, 212 S. Lee St. (6-22-79).

Richmond County

Augusta, *Fruitlands (Augusta National Golf Club)* 2604 Washigton Rd. (5-25-79).

Whitfield County

Dalton, *Crown Mill Historic District*, U.S. 41 (5-30-79).

HAWAII*Hawaii County*

Honolulu, *St. Benedict's Catholic Church*, off HI 11 (5-31-79).

Kauai County

Lihue, *Wilcox, Albert Spencer, Building (Kaua 'i Museum)* 4420 Rice St. (5-31-79).

IDAHO*Ada County*

Boise vicinity, *Bown, Joseph, House*, 2020 E. Victory Rd. (6-18-79).

Bonneville County

Idaho Falls, *U.S. Post Office*, 581 Park Ave. (5-31-79).

Canyon County

Caldwell, *Caldwell Carnegie Library*, 1101 Cleveland Blvd. (6-18-79).

Idaho County

Cottonwood vicinity, *St. Gertrude's Convent and Chapel*, W of Cottonwood (6-18-79).

Kootenai County

Coeur d'Alene, *First United Methodist Church*, 618 Wallace Ave. (6-18-79).

Latah County

Moscow, *Moscow Carnegie Library*, 110 S. Jefferson St. (6-18-79).

Oneida County

Samaria, *Samaria Historic District*, Main, Center, 1st and 2nd Sts., 1st and 2nd Aves. (6-11-79).

ILLINOIS*Adams County*

Quincy, *Gardner, Robert W., House*, 613 Broadway St. (6-20-79).

Calhoun County

Brussels vicinity, *Golden Eagle-Toppmayer Site*

Hamburg vicinity, *Schudel No. 2 Site* (6-15-79).

Cook County

Chicago, *Balaban and Katz Chicago Theatre*, 175 N. State St. (6-6-79).

Chicago, *Wicker Park Historic District*, roughly bounded by Wood, Crystal and N. Caton Sts., Claremont and North Aves. (6-20-79).

Kane County

Batavia, *Chicago, Burlington, and Quincy Railroad Depot (Batavia Depot Museum)*, 155 Houston St. (6-6-79).

Batavia vicinity, *Dutch Mill*, N of Batavia off IL 25 (6-4-79).

Kankakee County

Kankakee, *Milk, Lemuel, Carriage House*, 165 N. Indiana Ave. (6-4-79).

McHenry County

Marengo vicinity, *Rogers, Orson, House*, E of Marengo at 19621 E. Grant St. (6-22-79).

Piatt County

Bement vicinity, *Voorhies Castle (Nels Larson House)* S of Bement (6-20-79).

Winnebago County

Rockford, *Graham-Cinestra House*, 1115 S. Main st. (6-11-79).

INDIANA*Clinton County*

Frankfort, *Old Frankfort Stone High School*, 301 E. Clinton (6-4-79)

Monroe County

Bloomington, *Cochran-Helton-Lindley House*, 405 N. Rogers St. (6-20-79).

Noble County

Ligonier, *Straus, Jacob, House (Louis Levy House)* 210 S. Main St. (6-4-79).

Shelby County

Shelbyville, *Hamilton, John, House*, 132 W. Washington St. (6-4-79).

IOWA*Clayton County*

Garnavillo, *I.O.O.F. Hall*, Centre St. (6-18-79).

Floyd County

Charles City vicinity, *Cook Farm*, S of Charles City on U.S. 218 (6-18-79).

Jackson County

St. Donatus, *Gehlen House and Barn*, U.S. 52 (6-18-79).

Johnson County

Iowa City, *Berryhill, Charles, House*, 414 Brown St. (5-31-79).

Iowa City, *Rittenmeyer, F. X., House*, 630 E. Fairchild St. (5-31-79).

Montgomery County

Red Oak vicinity, *Runnels, B. F., House*, SW of Red Oak (6-4-79).

Pottawattamie County

Council Bluffs, *Wickham, O. P., House*, 616 S. 7th St. (6-18-79).

Ringgold County

Mount Ayr, *Ringgold County Jail*, 201 E. Monroe St. (6-19-79).

Winneshiek County

Ossian, *Ossian Opera House*, Main St. (6-18-79).

KENTUCKY**Boone County**

Burlington, *Burlington Historic District*, KY 18 (6-19-79).

Leslie County

Wooton, *Wooton Presbyterian Center*, KY 80 (5-24-79).

Nicholas County

Carlisle, *Louisville and Nashville Passenger Depot*, Market and Locust Sts. (5-18-79).

Woodford County

Versailles vicinity, *Arnold-Wooldrige House (Prospect Hill)* S of Versailles (5-29-79).

LOUISIANA**Caddo Parish**

Shreveport, *Texas Avenue Buildings*, 824-864 Texas Ave. (5-25-79).

East Baton Rouge Parish

Baton Rouge, *Reilly-Reeves House*, 810 Park Blvd. (5-24-79).

Pointe Coupee Parish

Lacour vicinity, *Old Hickory*, SE of Lacour (6-15-79).

New Roads vicinity, *St. Francis Chapel*, NW of New Roads on LA 10 (5-25-79).

Rapides Parish

Pineville, *Rapides Cemetery*, Hardtner and Main Sts. (6-15-79).

MAINE**Androscoggin County**

Lewiston, *Grand Trunk Railroad Station*, Lincoln St. (6-4-79).

Cumberland County

Brunswick, *Dunlap, John, House*, 4 Oak St. (6-14-79).

Harpowell, *Merriconegan Farm*, ME 123 (6-15-79).

Kennebec County

Gardiner, *Richards, Laura, House*, 3 Dennis St. (6-14-79).

Washington County

Calais, *Gilmore House*, 316 Main St. (6-14-79).

MARYLAND**Baltimore (independent city)**

House at 9 North Front Street (6-14-79).
Walters Bath No. 2, 900 Washington Blvd. (6-19-79).

Baltimore County

Owings Mills, *St. Thomas Church*, St. Thomas Lane and Garrison Forest Rd. (5-24-79).

Dorchester County

Taylor's Island, *Bethlehem Methodist Episcopal Church*, Hoopers Neck Rd. (6-7-79).

Frederick County

Urban vicinity, *Fat Oxen*, N of Urbana on MD 355 (5-21-79).

Harford County

Bel Air vicinity, *Norris-Stirling House*, 4 mi. SW of Bel Air (5-30-79).

Howard County

Dorsey vicinity, *Troy*, N of Dorsey (6-22-79).

MASSACHUSETTS**Bristol County**

Fairhaven, *Sawin, Ezekiel, House (Howland House)* 44 William St. (6-15-79).

Hampden County

Springfield, *Kennedy-Worthington Blocks*, 1585-1623 Main St. and 168-190 Worthington St. (6-14-79).
Springfield, *Wason-Springfield Steam Power Blocks*, 27-43 Lyman St. and 26-50 Taylor St. (6-19-79).

Middlesex County

Belmont, *Pleasant Street Historic District*, irregular pattern along Pleasant St. (6-12-79).
Cambridge, *Hooper-Lee-Nichols House*, 150 Brattle St. (6-15-79).
Concord, *Damon Mill*, 9 Pond Lane (5-25-79).
Concord vicinity, *Parkman Tavern*, S of Concord at 20 Powder Mill Rd. (6-19-79).
Winchester, *Winchester Savings Bank*, 26 Mt. Vernon St. (6-19-79).

Norfolk County

Brookline, *Brookline Village Commercial District*, irregular pattern along Washington St. (5-22-79).
Norfolk, *Ware, Josiah, Tavern*, Main St. and Rockwood Rd. (6-19-79).

Worcester County

Firchburg, *Calvanistic Congregational Church*, 820 Main St. (6-15-79).

MICHIGAN**Lake County**

Idlewild, *Idlewild Historic District*, U.S. 10 (6-7-79).

Wayne County

Detroit, *Dunbar Hospital*, 580 Frederick St. (6-19-79).
Detroit, *First Congregational Church*, 33 E. Forest St. (6-4-79).

MINNESOTA**Price County**

Northfield, *Northfield Historic District*, roughly bounded by water, Division, 3rd and 5th Sts. (6-11-69).

MISSISSIPPI**SWINGING SUSPENSION BRIDGES**

THEMATIC RESOURCES. Reference—see individual listings under Hinds, Jefferson and Rankin Counties.

Adams County

Natchez, *Dixon Building*, 514 Main St. (5-30-79).

Natchez, *Institute Hall*, 111 S. Pearl St. (6-20-79).

Natchez, *Smart-Griffin House*, 180 St. Catherine St. (5-18-79).

Natchez vicinity, *Mount Repose*, N of Natchez on MS 555 (6-19-79).

Forrest County

Hattiesburg, *Saenger Theatre*, Forrest and Front Sts. (5-29-79).

Hinds County

Byram, *Byram Bridge (Swinging Suspension Bridges Thematic Resources)* Old Byram and Florence Rds. (5-23-79) [also in Rankin County].

Jefferson County

Coon Box, *Coon Box Fork Bridge (Swinging Suspension Bridges Thematic Resources)* Coon Box Rd. (5-23-79).

Fayette, *Old Hill Place Bridge (Swinging Suspension Bridges Thematic Resources)* Hill Rd. (5-23-79).

Union Church, *Youngblood Bridge (Swinging Suspension Bridges Thematic Resources)* Youngblood Rd. (5-23-79).

Rankin County

Byram Bridge (*Swinging Suspension Bridges Thematic Resources*). Reference—see Hinds County.

Tippah County

Blue Mountain, *Blue Mountain College Historic District*, MS 15 (5-23-79).

Warren County

Vicksburg, *Hotel Vicksburg*, 601 Clay St. (6-4-79).

MISSOURI**Boone County**

Columbia, *Missouri Theater*, 201-215 S. 9th St. (6-6-79).

Jackson County

Kansas City, *Hotel Phillips*, 106 W. 12th St. (6-4-79).

Ralls County

Center vicinity, *St. Paul Catholic Church*, W of center off SR EE (5-31-79).

MONTANA*Powell County*

Deer Lodge, *Coleman, William E., House*, 500 Missouri Ave. (5-21-79).

NEBRASKA*Arthur County*

Arthur, *Pilgrim Holiness Church*, off NE 61 (6-18-79).

Lancaster County

Lincoln, *Burr Block*, 1208 O St. (5-18-79).
Walton vicinity, *Retzlaff Farmstead* (5-31-79).

NEVADA*Douglas County*

Gardnerville, *Carson Valley Hospital*, 1466 U.S. 395 (5-29-79).

NEW HAMPSHIRE*Coos County*

Berlin, *St. Anne Church*, 58 Church St. (5-29-79).

Sullivan County

Claremont, *Rositer, William, House*, 11 Mulberry St. (5-25-79).

NEW JERSEY*Bergen County*

Franklin Lakes, *Reaction Motors Rocket Test Facility*, 936 Dogwood Trail (6-6-79).

Cape May County

Cape May Court House, *Holmes, John, House*, U.S. 9 (6-12-79) HABS.

Mercer County

Trenton, *Clay, Henry and Bock and Company Cigar Factory*, 507 Grand St. (6-12-79).
Trenton, *Pennsylvania Railroad Bridge*, spans Delaware River (6-6-79) (also in Bucks County, PA).

Morris County

Dover vicinity, *Tuttle, David, Cooperage*, 83 Gristmill Rd. (6-19-79).

NEW MEXICO*Bernalillo County*

Albuquerque, *de García, Tomasa Griego, House*, 6939 Edith Blvd., NE. (6-19-79).

Otero County

La Luz vicinity, *La Luz Pottery Factory*, 2 mi. (3.2 km) E of La Luz (5-29-79).

Torrance County

Moriarty vicinity, *Moriarty Eclipse Windmill*, 2 (3.2 km) W of Moriarty off NM 222 (6-4-79).

Waseca County

Janesville vicinity, *Seha Sorghum Syrup Mill*, SE of Janesville off MN 60 (6-4-79).

NEW YORK**HUDSON RIVER LIGHTHOUSES**

THEMATIC RESOURCES. Reference—see individual listings under Columbia, Greene, Rockland, Ulster and Westchester Counties.

Columbia County

Hudson, *Hudson-Athens Lighthouse (Hudson River Lighthouses Thematic Resources)* spans Hudson River (5-29-79) (also in Greene County).

Greene County

Hudson-Athens Lighthouse (Hudson River Lighthouses Thematic Resources). Reference—see Columbia County.
Leeds vicinity, *Salisbury Manor*, NW of Leeds on NY 145/23 (6-19-79).

Manhattan County

New York, *Jeffrey's Hook Lighthouse (Hudson River Lighthouses Thematic Resources)* Fort Washington Park (5-29-79).

New York County

New York, *Greenwich Village Historic District*, roughly bounded by W. 13th St., St. Luke's Pl., University Pl., and Washington St. (6-19-79).

Rockland County

Stony Point, *Stony Point Lighthouse (Hudson River Lighthouses Thematic Resources)* Stony Point Battlefield (5-29-79).

Ulster County

Esopus, *Esopus Meadows Lighthouse (Hudson River Lighthouses Thematic Resources)* spans Hudson River (5-29-79).
Kingston, *Kingston/Roundout 2 Lighthouse (Hudson River Lighthouses Thematic Resources)* Hudson River and Roundout Creek (5-29-79).
Saugerties, *Saugerties Lighthouse (Hudson River Lighthouses Thematic Resources)* Hudson River at Esopus Creek (5-29-79).

Westchester County

North Tarrytown, *Tarrytown Lighthouse (Hudson River Lighthouses Thematic Resources)* spans Hudson River (5-29-79).

Yates County

Penn Yan, *Yates County Courthouse Park District*, Main, Court and Liberty Sts. (6-19-79).

NORTH CAROLINA*Alamance County*

Burlington, *St. Athanasius Episcopal Church and Parish House and the Church of the Holy Comforter*, 300 E. Webb Ave. and 320 E. Davis St. (5-29-79).

Cleveland County

Shelby, *McBrayer, Dr. Victor, House*, 507 N. Morgan St. (5-31-79).

Gaston County

Mountain Island, *St. Joseph's Catholic Church*, off MD 273 (6-7-79).

Guilford County

Greensboro, *Green Hill Cemetery Gatekeeper's House*, 700 Battleground Ave. (5-29-79).

Greensboro, *Ireland, Charles H., House*, 602 W. Friendly Ave. (5-29-79).

Greensboro, *Wafco Mills*, 801 McGee St. (5-30-79).

Richmond County

Rockingham, *Manufacturers Building*, 220 E. Washington St. (5-29-79).

Wake County

Cary, *Page-Walker Hotel*, 119 Ambassador St. (5-29-79).

Wayne County

Goldsboro, *First Presbyterian Church (Church of Christ, Scientist)* 111 W. Ash St. (5-29-79).

OHIO*Athens County*

Athens, *Ohio University Campus Green Historic District*, Ohio University campus (6-11-79).

Clinton County

Wilmington, *Doan House*, 822 Fife Ave. (6-20-79).
Wilmington, *Rombach Place*, 149 E. Locust St. (6-20-79).

Columbiana County

Lisbon vicinity, *Columbiana County Infirmary* W of Lisbon on County Home Rd. (6-20-79).

Cuyahoga County

Brecksville vicinity, *Jaito Mill Historic District*, SE of Brecksville at Riverview and Vaughan Rds. (5-21-79) (also in Summit County).
Cleveland, *Woodland Avenue and West Side Railroad Powerhouse*, 1180 Cathan Ave., NW. (6-4-79).
Olmstead Falls, *Lay, Samuel, House*, 7622 Columbia Rd. (6-20-79).

Franklin County

Grove City, *Gantz Homestead*, 2233 Gantz Rd. (6-20-79).

Hamilton County

Cincinnati, *Baker, John S., House* 1807 Madison Rd. (6-6-79).

Licking County

Johnstown vicinity, *Lynnwood Farm*, S of Johnstown at 4986 Caswell Rd. (6-22-79).
Newark, *Upham-Wright House*, 342 Granville St. (6-22-79).

Lorain County

Wellington, *Wellington Historic District*, irregular pattern along Main St. from Kulloy St. to W and L E RR (5-30-79).

Lorain County

Wellington-Huntington Road Multiple Resource Area (Partial Inventory). This area includes: Wellington vicinity, *Allan, Darlon, House*, OH 58; *Baker, O. T., House*, OH 58; *Chapman, John A., House*, OH 58; *Clark, Ansel, House*, OH 58; *Clark, Whitney, House*, OH 58; *Gregg House*, OH 58; *Gunn House*, OH 58; *Huntington Public School*, OH 58 and OH 162; *Mosher House*, OH 58; *Nimocks House*, OH 58; *Nooney, William, House*, OH 58; *Old Baptist Church*, OH 58 and OH 162; *Old Baptist Parsonage*, OH 58; *Old Congregational Church*, OH 58; *Old Inn*, OH 58 and OH 162; *Old Methodist Parsonage*, OH 58; *Sage*

- House, OH 58; Sprague House, OH 58; United Church of Huntington, OH 58; Wadsworth, Benjamin, House, OH 58; West House, OH 58; Wilber, J. B., House, OH 58 and Griggs Rd. (6-15-79).*
- Lucas County**
Toledo, *Secor, Joseph K., House, 311 Bush St. (6-11-79).*
- Mahoning County**
Boardman, *St. James Episcopal Church, 375 Boardman-Poland Rd. (6-20-79).*
- Medina County**
Medina vicinity, *Gayer, Jacob, House, N of Medina at 4508 Marks Rd. (6-22-79).*
Weymouth, *Seymour, William H., House, 3306 S. Weymouth Rd. (6-4-79).*
- Montgomery County**
Kettering, *Trailsend (James M. Cox Mansion), 3500 Governors Trail (5-22-79).*
- Morgan County**
McConnelsville, *McConnelsville Historic District, OH 376 and OH 77 (6-14-79).*
- Muskingum County**
Duncan Falls, *Mound House, 400 Mound Rd. (6-6-79).*
New Concord, *Muskingum College Campus Historic District, U.S. 22/40 (6-11-79).*
- Noble County**
Lashley vicinity, *Williams, Abner, Log House, NE of Lashley (6-20-79).*
- Putnam County**
Leipsic, *Leipsic City Hall, Belmore St. (6-20-79).*
- Ross County**
Chillicothe, *Chillicothe Business District, roughly bounded by Water, 4th, Walnut and Hickory Sts. (6-11-79).*
Chillicothe, *Tanglewood, 177 Bellevue Ave. (6-20-79).*
- Scioto County**
Portsmouth, *Boneyfiddle Commercial District, roughly bounded by Front, Washington, 3rd and Scioto Sts. (6-6-79).*
- Seneca County**
Fostoria, *Cory, Ambrose, House, 957 N. Union St. (6-20-79).*
Tiffin, *Fort Ball-Railroad Historic District, roughly bounded by Sandusky River, Perry, Sandusky and Washington Sts. (6-20-79).*
- Summit County**
Bath Township Multiple Resource Area (Partial Inventory). This area includes:
Bath, *Hale, Jonathan, House, 2686 Oak Hill Rd.; Johnson, Dustin, House, 1946 Cleveland-Massillon Rd.; Kittinger, David, House, 1904 Cleveland-Massillon Rd.; Randall, Dr. Rufus, House, 3675 Ira Rd.; Richard, John, House, 1924 Cleveland-Massillon Rd.; Bath Center, Bath Township Hall, 1241 N. Cleveland-Massillon Rd.; Bath Center vicinity, Harshey, John, House, 4270 Bath Rd.; Bath vicinity, Hale, Elijah, House, 3243 Ira Rd.; Kent, J., House, 1727 Medina Line Rd.; Shaw, Samuel, House, 1588 Hametown Rd.; Shaw, Sylvester, House, 1786 Hametown Rd.; Thorp, Manville, House, 1907 Medina Line Rd.; Ghent, Barker, William, House, 805 Wye Rd.; Ghent vicinity, Bath Township School, 4055 Akron-Medina Rd.; Heller, Edward, House, 3891 Granger Rd.; Hershey, J., House, 286 Cleveland-Massillon Rd.; Hopkins, Roswell, House, 299 Hametown Rd.; Liggett, J., House, 481 Cleveland-Massillon Rd.; and Miller, Harvey, House, 188 Hametown Rd. (6-11-79).*
Jaite Mill Historic District. Reference—see Cuyahoga County.
- OKLAHOMA**
- Lincoln County**
Stroud, *Graham Hotel, Main St. and 2nd Ave. (5-22-79).*
- McCurtain County**
Idabel, *Frisco Station, Texas Ave. (5-21-79).*
- Oklahoma County**
Oklahoma City, *Heritage Hills Historic and Architectural District, roughly bounded by Robinson and Walker Aves., 14th, 15th, and 21st Sts. and Classen Blvd. (6-4-79).*
- Osage County**
Fairfax, *Chief Ne-kah-wah-she-tun-kah Grave and Statue, off OK 18 (5-22-79).*
Pawhuska, *Immaculate Conception Church, 1314 Lynn Ave. (5-21-79).*
- OREGON**
- Douglas County**
Roseburg, *U.S. Post Office, 704 SE. Cass Ave. (6-18-79).*
- Multnomah County**
Portland, *Central Building, Public Library, 801 SW. 10th Ave. (6-11-79).*
Portland, *Multnomah County Courthouse, 1021 SW. 4th Ave. (6-11-79).*
- PENNSYLVANIA**
- Bedford County**
Bedford, *Russell House, 203 S. Juliana St. (6-19-79).*
- Bucks County**
Pennsylvania Railroad Bridge. Reference—see Mercer County, NJ).
- Centre County**
Lemont, *Lemont Historic District, off PA 26 (6-6-79).*
Spring Mills vicinity, *Egg Hill Church, SW of Spring Mills on Egg Hill Rd. (6-4-79).*
Unionville, *Unionville Historic District, U.S. 220 and PA 504 (5-30-79).*
- Chester County**
Downingtown, *Downingtown Log House, 15 E. Lancaster Ave. (5-24-79).*
Unionville, *Unionville Village Historic District, PA 162 and PA 82 (6-6-79).*
- Clarion County**
Clarion, *Clarion County Courthouse and Jail, Main St. (5-22-79).*
- Clearfield County**
Burnside, *Irvin-Patchin House, Main St. (6-19-79).*
- Cumberland County**
Carlisle, *Carlisle Historic District, roughly bounded by Penn. East, Walnut and College Sts. (6-15-79).*
- Forest County**
Cooksburg, *Cook, Anthony Wayne, Mansion, River Dr. (6-19-79).*
- Luzerne County**
Wilkes-Barre, *Stegmaier Brewery, roughly bounded by Coal, Welles, Market, Lincoln and Baltimore Sts. (5-30-79).*
- Northampton County**
Bethlehem, *Fountain Hill Opera House (Globe Theatre) 405 Wyandotte St. (6-7-79).*
- Philadelphia County**
Philadelphia, *St. Stephen's Episcopal Church, 19 S. 10th St. (6-4-79) HABS.*
- Washington County**
California, *Pennsylvania Railroad Passenger Station, Water and Wood Sts. (6-19-79).*
- RHODE ISLAND**
- Providence County**
Johnston, *Hughes, Thomas H., House, 423 Central Ave. (6-15-79).*
Providence, *Dyerville Mill, 610 Manton Ave. (6-18-79).*
Providence, *Shakespeare Hall (Sprague-Knight Building) 128 Dorrance St. (6-18-79).*
Woonsocket, *U.S. Post Office, 295 Main St. (5-30-79).*
- TENNESSEE**
- Carter County**
Siam vicinity, *Carriger-Cowan House, E of Siam (6-6-79).*
- TEXAS**
- Bexar County**
San Antonio, *Alamo Methodist Church, 1150 S. Alamo St. (6-11-79).*
San Antonio, *Main and Military Plazas Historic District, roughly bounded by San Antonio River, E. Nueva, Laredo and Houston Sts. (6-11-79).*
- Cass County**
Linden, *Cass County Courthouse, Public Sq. (5-25-79).*
- Cooke County**
Lindsay, *St. Peter's Roman Catholic Church, Ash St. (5-25-79).*
- Harris County**
Houston, *Autry, James L., House, 5 Courtlandt Pl. (6-14-79).*
Houston, *Carroll, J. J., House, 16 Courtlandt Pl. (6-14-79).*
Houston, *Carter, W. T., Jr., House, 18 Courtlandt Pl. (6-14-79).*
Houston, *Christ Church, 1117 Texas Ave. (6-15-79).*
Houston, *Cleveland, A. S., House, 8 Courtlandt Pl. (6-14-79).*
Houston, *Donoghue, Thomas J., House, 17 Courtlandt Pl. (6-14-79).*

Houston, *Dorrance, John M., House*, 9 Courtlandt Pl. (6-14-79).
 Houston, *Jones-Hunt House*, 24 Courtlandt Pl. (6-14-79).
 Houston, *Myer, Sterling, House*, 4 Courtlandt Pl. (6-14-79).
 Houston, *Neuhaus, C. L., House*, 6 Courtlandt Pl. (6-14-79).
 Houston, *Parker, John W., House*, 2 Courtlandt Pl. (6-14-79).
 Houston, *Taylor, Judson L., House*, 20 Courtlandt Pl. (6-14-79).

Harrison County

Jonesville, *Locust Grove*, off TX 134 (6-20-79).

Jasper County

Jasper vicinity, *Smyth, Andrew, House*, W of Jasper (5-25-79).
 Roganville, *Turner-White-McGee House*, off U.S. 96 (6-19-79).

Karnes County

Karnes City vicinity, *Ruckman, John, House*, 6 mi. N of Karnes City off TX 80 (6-19-79).

Kendall County

Comfort, *Comfort Historic District*, TX 27 (5-29-79).

Palo Pinto County

Mineral Wells, *First Presbyterian Church*, 410 NW. 2nd St. (6-14-79).

UTAH**Salt Lake County**

Salt Lake City, *Anselmo, Fortunato, House*, 164 S. 900 East St. (5-21-79).
 Salt Lake City, *Grant Steam Locomotive No. 223*, Liberty Park (5-23-79).

Utah County

American Fork, *Smith, Warren B., House*, 589 E. Main St. (6-19-79).
 Provo, *Allen, Dr. Samuel H., House and Carriage House*, 135 E. 200 North (5-18-79).

Weber County

Ogden, *New Brigham Hotel*, 2402-2410 Wall Ave. (6-14-79).

VERMONT**Caledonia County**

Hardwick vicinity, *Hardwick Street Historic District*, NE of Hardwick (6-22-79).

Washington County

Waterbury, *Mill Village Historic District*, roughly bounded by VT 100, I-89, and Stowe St. (6-12-79).

VIRGINIA**Alexandria (independent city)**

Lee-Fendall House, 614 Oronoco St. (6-22-79).

Arlington County

Arlington, *Hume School*, 1805 S. Arlington Ridge Rd. (6-18-79).

Augusta County

Mossy Creek vicinity, *Miller, Hannah, House*, N of Mossy Creek off VA 747 (5-24-79).
 Mossy Creek vicinity, *Miller, Henry, House*, E of Mossy Creek on VA 42 (5-23-79).

Buena Vista (independent city)

Old Courthouse, 2110 Magnolia Ave. (5-25-79).

Campbell County

Spring Mills vicinity, *Blenheim*, 2.4 mi. SW of Spring Mills (5-31-79).

Clarke County

Boyce vicinity, *Meadow, The (Huntingdon)*, N of Boyce (5-25-79).

Fairfax County

Colchester, *Fairfax Arms*, 10712 Old Colchester Rd. (5-21-79).
 Herndon, *Herndon Depot*, Elden St. (6-18-79).

Hampton (independent city)

Trusty, *William H., House*, 76 W. County St. (6-22-79).

Hanover County

Ashland, *Randolph-Macon College Buildings*, Randolph-Macon College campus (6-19-79).

Harrisonburg (independent city)

Wilton, *Joshua, House*, 412 S. Main St. (5-24-79).

Isle of Wight County

Raynor vicinity, *Jordan, Joseph, House*, NE of Raynor on VA 683 (6-22-79).

Lexington (independent city)

Lexington Presbyterian Church, Main and Nelson Sts. (5-24-79).

Lunenburg County

Kenbridge vicinity, Flat Rock, SW of Kenbridge on VA 655 (5-21-79).

Lynchburg (independent city)

Hayes Hall, Dewitt St. and Garfield Ave. (6-19-79).
 Main Hall, *Randolph-Macon Women's College*, 2500 Rivermont Ave. (6-19-79).

Madison County

Woodberry Forest, *Residence, The*, Woodberry Forest School (6-19-79).

Mecklenburg County

Clarksville, *Moss Tobacco Factory*, Main and 7th Sts. (5-21-79).

Norfolk (independent city)

Christ and St. Luke's Church, 560 W. Olney Rd. (6-18-79).
 St. Mary's Church, 232 Chapel St. (5-25-79).

Page County

Hamburg vicinity, *Fort Egypt*, NW of Hamburg (6-18-79).
 Stanley vicinity, *Beaver, John, House*, N of Stanley on VA 615 (6-22-79).

Petersburg (independent city)

Tabb Street Presbyterian Church, 21 W. Tabb St. (5-31-79) HABS.

Pittsylvania County

Danville vicinity, *Dan's Hill*, 4 mi. (6.4 km) W of Danville (5-30-79) HABS.

Prince Edward County

Meherrin vicinity, Falkland, NW of Meherrin on VA 632 (6-22-79).

Pulaski County

Newbern, *Newbern Historic District*, VA 611 (6-4-79).

Rappahannock County

Washington vicinity, *Mount Salem Baptist Meetinghouse*, SE of Washington on VA 626 (5-24-79).

Richmond (independent city)

St. Andrew's Church, 223, 224 and 227 S. Cherry St. (6-22-79).
 Winston, *Joseph P., House*, 101-103 E. Grace St. (6-11-79).

Rockbridge County

Buena Vista vicinity, *Glen Maury*, W of Buena Vista (5-24-79).
 Lexington vicinity, *Stone House (Zachariah Johnston House)* W of Lexington on Ross Rd. (5-24-79).

Staunton (independent city)

Hilltop, Mary Baldwin College campus (6-10-79).

Kable House, 310 Prospect St. (6-19-79).
 Miller, C. W., House, 210 N. New St. (6-19-79).

National Valley Bank, 12-14 W. Beverly St. (6-19-79).

Oaks, The, 437 E. Beverley St. (6-19-79).
 Rose Terrace, 150 N. Market St. (6-10-79).

Shenandoah County

Strasburg, *Strasburg Stone and Earthenware Manufacturing Company*, E. King St. (6-10-79).

Southampton County

Drakes Corner vicinity, *Brown's Ferry*, E of Drakes Corner off VA 684 (6-18-79).

Wythe County

Fort Chiswell vicinity, *McGavock Family Cemetery*, E of Fort Chiswell off I-81 (6-22-79).

WASHINGTON**Adams County**

Lind vicinity, *Seivers Brothers Ranchhouse and Barn*, SE of Lind on Providence Rd. (6-19-79).

Franklin County

Pasco, *Moore, James, House*, off U.S. 12 (5-31-79).

Grays Harbor County

Hoquiam, *Polson, F. Arnold, House and Polson, Alex, Grounds*, 1611 Riverside Ave. (6-19-79).

King County

Seattle, *Ballard Carnegie Library*, 2026 N. West Market St. (6-15-79).
 Seattle, *Olympic Hotel*, 1200-1220 4th Ave. (6-15-79).
 Seattle, *Raymond-Ogden Mansion*, 702 35th Ave. (6-15-79).

Spokane County

Spokane, *Frequency Changing Station, E.*
1420 Celesta Ave. (6-19-79).

Thurston County

Olympia, *Washington State Capitol Historic District*, State Capital and environs (6-22-79).

WEST VIRGINIA

Olympia, *Women's Club*, 1002 S. Washington St. (6-15-79).

Brooke County

Bethany, *Delta Tau Delta Founders House*,
211 Main St. (5-29-79).

Gilmer County

Glenville vicinity, *Job's Temple*, W of
Glenville on WV 5 (5-29-79).

Hampshire County

Romney, *Literary Hall*, Main and High Sts.
(5-29-79).

Jackson County

Staats Mill, *Staats Mill Covered Bridge*, SR
40 (5-29-79).

Marion County

Fairmont, *Marion County Courthouse and Sheriff's House*, Adams and Jefferson Sts.
(5-29-79).

Mercer County

Bluefield, *Municipal Building*, 514 Bland St.
(5-29-79).

Mineral County

Ridgeville, *Vandiver-Trout-Clause House*,
U.S. 50/220 (5-29-79). 173 Ohio County
Triadelphia vicinity, *Stewart, David, Farm (Mrs. Robert White House)* SE of
Triadelphia off SR 43 (5-29-79).

Taylor County

Webster, *Jarvis, Anna, House*, U.S. 119/250
(5-29-79).

Wood County

Parkersburg, *Oakland (James M. Stephenson House)* 1131 7th (5-29-79) HABS.

WISCONSIN**Grant County**

Potosi, *St. John Mine*, WI 133 (6-4-79).

Kenosha County

Kenosha, *Kenosha High School*, 913 57th St.
(6-6-79).

Kenosha, *St. Matthews' Episcopal Church*,
5900 7th Ave. (6-6-79)

Racine County

Racine, *Hansen House*, 1221 N. Main St. (6-6-79).

Racine, *Murray, George, House*, 2219
Washington Ave. (6-6-79).

Rock County

Centric, *Barns Thematic Group in Rock County*. Reference—see individual listings in Beloit vicinity, Edgerton vicinity, Milton vicinity and Orfordville vicinity.

Edgerton vicinity, *Gilley-Tofslund Octagonal Barn (Centric Barns Thematic Group in Rock County)* NW of Edgerton (6-4-79).

Beloit vicinity, *Dougan Round Barn (Centric Barns Thematic Group in Rock County)* S of Beloit (6-4-79).

Janesville, *Myers-Newhoff House*, 121 N. Parker Dr. (5-18-79).

Milton vicinity, *Dean-Armstrong-Englund Octagonal Barn (Centric Barns Thematic Group in Rock County)* NE of Milton (6-4-79).

Orfordville vicinity, *Gempeler Round Barn (Centric Barns Thematic Group in Rock County)* SW of Orfordville (6-4-79).

Orfordville vicinity, *Risum Round Barn (Centric Barns Thematic Group in Rock County)* SW of Orfordville (6-4-79).

WYOMING**Larmie County**

Cheyenne, *Baxter Ranch Headquarters Buildings*, 912-122 E. 18th St. and 1810-1920 Morrie Ave. (6-14-79).

* * * * *

The following properties were omitted from the listing in the Federal Register, Part II, February 6, 1978.

VIRGINIA

Luray vicinity, *Fort Rodes*, 3 mi. NW of Luray (5-22-78).

Page County

Luray vicinity, *Fort Stover*, N of Luray off VA 660 (5-22-78).

* * * * *

The following is a list of corrections to properties listed in the Federal Register, Part II, February 6, 1978. Additional corrections may appear in subsequent updates.

HAWAII**Hawaii County**

Kealahou, *Greenwell Store*, III 11 (5-22-78) (previously listed in Kealahou).

Honolulu County

Haleiwa vicinity, *Kawailoa Ryusenji Temple*, N of Haleiwa at 179-A Kawailoa Dr. (11-21-78) (previously listed in Oahu County).

MASSACHUSETTS**Worcester County**

West Brookfield vicinity, *Salem Cross Inn*, NW of West Brookfield on Ware Rd. (4-14-75) (previously listed as White Homestead).

* * * * *

Determinations of eligibility are made in accordance with the provisions of 36 CFR 63, procedures for requestion determinations of eligibility, under the authorities in section 2(b) and 1(3) of Executive Order 11593 and section 106 of the National Historic Preservation Act of 1966, as amended, as implemented by the Advisory Council on Historic Preservation's procedures, 36 CFR Part 800. Properties determined to be eligible under § 63.3 of the procedures for requestion determinations of eligibility are designated by (63.3).

Properties which are determined to be eligible for inclusion in the National Register of Historic Places are entitled to protection pursuant to section 106 of the National Historic Preservation Act of 1966, as amended, and the procedures of the Advisory Council on Historic Preservation, 36 CFR Part 800. Agencies are advised that in accord with the procedures of the Advisory Council on Historic Preservation, before any agency of the Federal Government may undertake any project which may have an effect on an eligible property, the Advisory Council on Historic Preservation, shall be given an opportunity to comment on the proposal.

The following list of additions, deletions, and corrections to the list of properties determined eligible for inclusion in the National Register is intended to supplement the cumulative version of that list published in February of each year.

ALABAMA**Pike County**

Troy, *Troy Main Post Office*, 300 E. Walnut St.

ARIZONA**Gila County**

Globe vicinity, *Archeological Sites AR-03-13-02-72 and 75* (63.3).

Navajo County

Lakeside vic, *Archeological Historic Site NA14, 803* (63.3).

Yuma County

Archeological Sites AZS:7:13 (ASU), 8:5, 8:12 and 8:13.

COLORADO**Denver County**

Denver, *Denver Lower Downtown Commercial District*, roughly bounded by 20th, Market and Wyncoop Sts.
Denver, *Plymouth Place (Cory Hotel)* Broadway and 16th Sts.

Jefferson County

Golden, *Magic Mountain Site (5)F223*.

CONNECTICUT**Fairfield County**

Automatic Signal System, Conrail New Haven Mainline and New Canaan Branch (63.3) (also in New Haven County).

Catenary Bridge System. Reference—see New Haven County.

Greenwich, *Our House*, 61 East Putnam Ave.

New Haven County

Automatic Signal System. Reference—see Fairfield County.

Catenary Bridge System, Conrail New Haven Mainline and New Canaan Branch (63.3) (also in Fairfield).

Waterbury, *Arthemis, The*, 149 Cooke St.

Waterbury, *Bishop Street School*, Bishop St.

Waterbury, *Mathew and Willard Company*, 16 Cherry St.

Waterbury, *St. Thomas School*, Beacon St.

Waterbury, *Stapleton*, Easton Ave. and N. Main St.

Waterbury, *Twin Blocks*, N. Main and Aetna Sts.
 Waterbury, *Waterbury Clock Company, Offices and Laboratories*, N. Elm St. and Cherry Ave.
 Waterbury, *Waterbury Green Historic District*, Waterbury (63.3)
 Waterbury, *Webster School*, 127 Easton Ave.
 Waterbury, *Wheeler and the Wilson*, N. Main and Cooke Sts.
 Waterbury, *Wilby High School*, Grove St.
 West Haven, *Union School*, Union and Center Sts.

DISTRICT OF COLUMBIA

Washington
 District of Columbia, *Stoddard Baptist Church* 1818 Newton Street, NW (63.3).

ILLINOIS

Knox County
 London Mills, *London Mills Bridge*, over the Spoon River (63.3).

INDIANA

Vanderburgh County
 Evansville, *West Franklin Street, Wabash Avenue Historic District* (63.3).

IOWA

Dallas County
 Landis Site (13DA12) Raccoon River Valley (63.3).
 Hamilton County
 Webster, *U.S. Post Office*, 801 Willson Ave. (63.3).
 Polk County
 Des Moines, *Houses at 1037—1039, 1053 and 1059 9th Street*.

MICHIGAN

Indiana, on Lake Superior bottomlands.

MISSISSIPPI

Tippah County
 Blue Mountain, *Palmer House*, Highway 15S.

MONTANA

Lewis and Clark County
 Helena, *Drennen Log House*, 520 W. Main St.

NEW JERSEY

Burlington County
 Bordentown, *Bordentown Historic District* (63.3).
 Essex County
 Newark, *Branch Brook Park* (63.3).
 Newark, *Lincoln Park Historic District* (63.3).
 Monmouth County
 Jackson Forge Site, *Dowd Site, Floodplain Site, Kandy Bar Ranch Site and Squantum Mill Historic Site* (63.3).

NEW MEXICO

San Juan County
 Little Water vic, *Archeological Site LA7371* near US 668.

NEW YORK

Suffolk County
 Upton, *World War I Training Trenches*.

NORTH CAROLINA

Guilford County
 Greensboro, *Old Greensborough District* (63.3).
 Hyde County
 New Holland, *Mattamuskeet Lodge, Mattamuskeet National Wildlife Refuge*.
 Rowan County
 Salisbury, *Expanded boundaries for the Salisbury Historic District*.

OHIO

Hamilton County
 Cincinnati, *Buildings at 1716, 1718, 1726 and 1728 Race Street*.
 Cincinnati, *House at 27 West McMillan Street*.
 Cincinnati, *Houses at 801, 813, 817, 819, 821 and 823 Vine Street*.

Meigs County

Rutland Village, *Campbell-Larkin House* E of Rutland Village.

Morgan County

McConnelsville, *McConnelsville Historic District* (63.3).

OREGON

Jackson County
 Big Elk Guard Station, *Rouge River National Forest* (63.3).
 Copper vicinity, *Archeological Sites 35JA42, 35JA47, 35JA52 and 35JA53* (63.3).
 Palmer Creek Sites B, D, and F, *Rouge River National Forest*.

PENNSYLVANIA

Allegheny County
 Heidelberg vicinity, *Midden near Neville House*, off SR 50 (63.3).
 Sewickley, *U.S. Post Office*, Walnut and Bank Streets (63.3).

SOUTH DAKOTA

Brookings County
 Brookings, *Oakwood Lakes Site* (39BK 7) Oakwood-Lakes State Park.

TENNESSEE

Jackson County
 Gainesboro vic., *Hurricane Branch Archeological District*, N of Gainesboro.

VIRGINIA

Norfolk County
 Norfolk, *Attucks Theater*, 1008—1012 Church St. (63.3).
 Norfolk, *First Calvary Baptist Church*, 1036—1040 Wide St. (63.3).

WASHINGTON

Benton County
 Pasco-Kennewick Bridge. Reference—see Franklin County.

Clark County

Vancouver, *Buildings No. 110, 113, and 134* Fort Vancouver Military Reservation (63.3).
 Vancouver, *Vancouver Barracks*, Vancouver Barracks.

Franklin County

Pasco vicinity, *Pasco-Kennewick Bridge* (63.3) (also in Benton County).

Whatcom County

Newhalem Historic District, WA 20.

WISCONSIN**Crawford County**

Prairie du Chien, *Island of St. Friele Archeological and Historic District* (63.3).

Dane County

Madison, *Thorstrand Estate*.

Winnebago County

James Island, *James Island* (63.3).

[FR Doc. 79-20438 Filed 7-2-79; 8:45 am]

BILLING CODE 4310-03-M

National Register of Historic Places; Notification of Pending Nominations**Correction**

In FR Doc. 79-19429, appearing at page 37337 in the issue for June 26, 1979, make the following corrections:

(1) On page 37339, in the first column, under the main heading "Utah," minor heading "Salt Lake County," and the entry for Salt Lake City, and above the minor heading "Addison County," insert the main heading, "Vermont".

(2) On page 37339, in the second column, under the minor heading "Southampton County," and the entry for Courtland vicinity, and above the entry for Aboriginal Rock Art Sites in Washington Thematic Resources, insert the main heading, "Washington".

BILLING CODE 1505-01-M

INTERNATIONAL COMMUNICATION AGENCY**Importation of Culturally Significant Objects From Abroad; Determination**

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459) and Executive Order 12047 of March 27, 1978 (43 F.R. 13359, March 29, 1978), I hereby determine that the objects (described in the list ¹ filed as part of this

¹ An itemized list of objects included in the exhibit is filed as part of the original document.

determination) imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to agreements between The National Gallery of Art and various foreign owners or custodians. I also determine that the temporary exhibition or display of the listed exhibit objects, entitled "The Art of the Pacific Islands," at the National Gallery of Art, Washington, D.C., beginning on or about July 1, 1979, to on or about October 14, 1979, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

John E. Reinhardt,

Director, International Communication Agency.

June 29, 1979.

[FR Doc. 79-20711 Filed 7-2-79; 10:39 am]

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

Response to Public comment and Notice of Issuance of LEAA Program Announcement; Replication of Project New Pride: A Serious Offender Youth Treatment Program

AGENCY: Law Enforcement Assistance Administration.

ACTION: Response to Public Comment and Notice of Issuance.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration (LEAA) published in the Federal Register on April 25, 1979 (44 FR 24348-53) the draft Guideline for the program announcement of competitive action grants for the Replication of Project New Pride: A Serious Offender Youth Treatment Program. This notice summarizes the comments received, responds to issues, details the changes made, and sets forth the final program Guideline.

FOR FURTHER INFORMATION CONTACT: Ms. Marjorie L. Miller at 202-724-7759, Office of Juvenile Justice and Delinquency Prevention, LEAA, 633 Indiana Avenue, NW., Washington, DC 20531.

I. Nature of Comments and LEAA's Response

LEAA received 16 comments directed toward specific programmatic issues. These comments, and LEAA's response, are indicated below:

A. Applicant Eligibility. Numerous comments were received on the issue of applicant eligibility. A number of

comments centered around the question, "Can public and quasi-public agencies be eligible as grantees for this initiative?"

The decision was made to limit applicant eligibility to private non-profit organizations and agencies. This decision was made for the reasons set forth below:

1. The model upon which this replication is based requires a private non-profit agency as the lead implementing and coordinating agency. The impact of the New Pride Program on serious juvenile offenders and the non-profit perspective and capability were both significant factors in the decision to replicate the project nationally. In large part, this perspective and capability relate to two sets of factors:

a. The flexibility of non-profit agencies with respect to recruitment and selection of skilled professionals; the time frame within which they can institute and creatively modify service delivery techniques as program needs require; and the resources and flexibility to refine treatment, organizational and management skills over a period of time.

b. The ability of non-profit agencies to draw upon a range of community resources essential to support this project, and to incorporate the views of a range of community interests without the constraints of established regulations, procedures and pre-defined relationships.

2. This is a replication initiative and part of the process in replicating is to determine if it can effectively be implemented in other cities throughout the country. Project New Pride, Inc., a private nonprofit agency, is distinctly different from public and quasi-public agencies. An important goal of this replication program is to identify characteristics of private non-profit agencies which influence their capability to implement community-based treatment programs and influence the juvenile justice system practices.

3. One of the Office's goals under this program is to determine to what extent projects such as New Pride can be institutionalized after the initial period of Federal funds through reallocation of public and private funds.

4. In addition to the above, this program presents an excellent opportunity for OJJDP to determine the direction of future funding activities. Given our previous efforts, we are now in a position to evaluate programs implemented by public agencies. This initiative will provide us with an opportunity to evaluate the ability of private agencies to implement a major initiative that requires substantial

coordination between the public and private sectors.

B. Institutionalization. One commenter questioned the ability of private non-profit agencies to institutionalize programs at the termination of the Federal funding. This comment stressed that the public sector has greater access and ability to secure public funds. While we recognize that institutionalization of projects as discussed in the draft Guideline may be more easily accomplished by public agencies, one of the results sought by the replication initiative is to determine whether private non-profit youth-serving agencies can develop innovative treatment alternatives, which can then be supported by public agencies who have public responsibility but often lack the flexibility to creatively experiment with new approaches.

C. Program Elements. It has been suggested that this Guideline allow for more flexibility and experimentation as to program elements and alternative approaches. For purposes of replication, the suggestion to allow for more flexibility and experimentation has been rejected because the purpose of this program is to replicate a model documented to be successful in reducing recidivism of serious offenders and improving their overall social functioning. The expectation is that further demonstration and refinement of this model will result in a more effective treatment approach for serious juvenile offenders.

D. Several agencies located in Boston and New York commented on the jurisdictional approach as set forth in the draft Guideline. Specifically, that approach read, "The target for this program is adjudicated youth from 14 to 17 years of age residing in jurisdictions with high levels of serious juvenile crime, under court supervision with records of at least two (2) prior convictions for serious misdemeanors and felonies (Preferably robbery, burglary, or assault) who would otherwise be confined in correctional institutions or placed on probation. There will be no deviations from these target population characteristics except for applicants from jurisdictions that have established a juvenile court jurisdictional age other than 18."

1. The concern was expressed that in several jurisdictions the age characteristics of youth under the jurisdiction of the juvenile justice system do not coincide with those set forth in the Guideline. In recognition of that fact, the Guideline was modified to exclude youth under the age of 18 who are not subject to juvenile court

jurisdiction (e.g., 16- and 17-years-olds in New York). It should also be understood that juveniles may be referred to the program from either the juvenile court or criminal court provided that they meet the juvenile jurisdictional age requirements. The decision was made to maintain 14 years of age as the minimum age requirement. An essential component of New Pride is job preparation and job placement. It is clear that a target population under the age of 14 would not be in a position to benefit from either of these goals. Thus no changes were made to the minimum age category.

2. Several comments were received regarding the offense characteristics of the target population. One commentator expressed the view that restrictions such as mandatory minimum sentences for juveniles under court jurisdiction, and eligibility based on specific offenses, would unduly restrict the target population. Therefore, it was suggested that the program be expanded to include within the target population youth who have committed less serious offenses. It should be emphasized that juveniles convicted of serious offenses (the precipitating offenses) with a record of at least two other serious offense adjudications/convictions within the past 24 months are the specific target population of this initiative. To alter the proposed eligibility criteria would detract from the major program purpose—comprehensive services for multiple serious offenders.

E. Evaluation. One comment suggested that projects be allowed to conduct their own evaluation of that the national evaluator be responsive to local program design and local needs. As stated in the draft Guideline, "projects funded under the program will be evaluated by an independent evaluator selected by the Office of Juvenile Justice and Delinquency Prevention under a separate solicitation." OJJDP is supporting a National Evaluation to study the New Pride replication and the impact on youth involved. In view of the fact that this is a replication effort, there will be only minimal deviation from the established program model which includes a management information system/self evaluation component. Therefore, additional local evaluation efforts are not necessary. Because uniform criteria must be used to study such a national replication effort, OJJDP cannot fund individual evaluation efforts. However, as stated in the Guideline, "each project will implement a program management information system based on the system developed by the New Pride program. This system

will include case management data and service delivery data," which projects would be expected to use in program management.

Project evaluation requirements have been clarified and now read as follows:

1. Each project will implement a program management/self evaluation system, based on the system developed by Project New Pride, Inc., under the direction of the national evaluator. This system will address the following objectives:

(a) to develop information on the numbers and types of youth served by the project;

(b) to develop information on the level and types of services provided;

(c) to determine the impact of the project on school achievement, remediation of learning disabilities, and employment of youths served by the program;

(d) to determine the impact of the project on rearrest rates of youths served by the project;

(e) to determine the impact of the project on the number of youth incarcerated; and

(f) to determine what types of services appear to be most effective for what types of youth, and under what conditions.

F. Match. One reviewer suggested that the 10% cash match requirement be deleted or required as an in-kind match of not more than 5%. However, LEAA has no authority to waive the 10% cash match requirement for Omnibus Crime Control and Safe Streets Act funds. Parts C and E discretionary grant funds are the source of funding for this initiative. OJJDP reserves the option to require an increase in grantee's cash match contribution in the third year of funding in order to encourage institutionalization of projects.

G. Advisory Group. Several comments addressed required representation on the local Advisory Group, suggesting that units of local government be represented on the Advisory Board. OJJDP concurs in the suggestion because of the importance of government support and participation in New Pride projects. The Guideline has been amended to read, "the Board must include youth, community residents and representatives from juvenile justice system agencies, institutions of higher education, private industry, labor unions, and local and state public officials."

H. Service Providers. Concern was expressed by several youth serving agencies that the Guideline fails to spell out specific expectations for grantee purchase of service. Maximum credit

will be given to those applicants who demonstrate a substantial capability to provide services directly. Project New Pride's role is based on a model that is significantly more than a brokerage role. Therefore the section of the Guideline entitled "Applicant Capability" has been amended, in part, to read as follows: "While applications may reflect the participation of several public and private youth serving agencies and organizations, the implementing agency must meet the following conditions of capability and show evidence by past performance of the applicant's ability to provide project services directly or contract for them as discussed in subsections (2) through (5) below."

I. Submission Requirements. One commentator noted that OJJDP did not specifically include the requirements outlined in Appendix 2, Section 2, Paragraph 4, of the Guide for Discretionary Grant Programs, M 4500.1G, issued September 30, 1978, for both "Consultation and Participation with State Planning Agencies" and "Submission and Processing Procedures." In order to make clear that these discretionary grant guideline requirements are fully applicable to this program, OJJDP has, in response, modified the Guideline submission requirements to specifically note that this requirement "includes appropriate consultation and participation with State Planning agencies."

J. Reference Service. To assure rapid response for requests of the brochure *Project New Pride: An Exemplary Project*, July 1977, NILEC/LEAA, we are modifying the Guideline to permit direct written inquiries to OJJDP. The Section now reads: "(Copies of *Project New Pride: An Exemplary Project*, July 1977, NILEC/LEAA, may be obtained from the Office of Juvenile Justice and Delinquency Prevention, LEAA, 633 Indiana Avenue, NW, Room 442, Washington, DC 20531)."

It should be stressed that the publication *Project New Pride: An Exemplary Project* should be used as background information only. The manual was published two years ago and during that period some refinements have been made to critical program elements. The critical program elements are explained in detail in Appendix 1. All applicants are urged to carefully review the critical program elements as well as read the New Pride manual.

II. Program Guideline: Replication of Project New Pride

A. Program Objective. The objective of this program is to establish non-residential community-based treatment

projects for adjudicated youth with a history of serious offenses. The program model is based on reducing recidivism, improving social functioning, and increasing academic achievement, job skills and employment of youth who have repeatedly failed in traditional programs.

B. Program Description. 1.

Background. The Denver (Colorado) New Pride Project has been selected for replication by the Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration because of its demonstrated effectiveness in working with a target population of serious juvenile offenders through a core of integrated and comprehensive services which have been described as a "Wholistic Approach." Since its inception in 1973, Project New Pride has demonstrated success in keeping serious offenders in the community, reducing recidivism rates, improving academic abilities, employing youth and reducing their incarceration. The projects through extensive and well developed relationships with juvenile justice agencies, have had a most significant impact on the Denver juvenile justice system's dispositional response to youth adjudicated for serious offenses. Juvenile justice agencies refer multiple offenders to Project New Pride with confidence that both youth and community interests are protected.

2. Problem Addressed. The problem addressed by this Initiative is the lack of effective non-residential community-based treatment approaches for serious juvenile offenders with a myriad of social adjustment problems, and a history of failure in traditional alternatives. Based upon a skilled diagnostic assessment of each youth referred, the project will provide comprehensive and integrated treatment services supported by intensive supervision. Projects will be implemented by private non-profit youth-serving agencies in conjunction with public institutions such as courts, schools, probation services, police, and other human resources agencies.

3. Program Target. The target for this program is adjudicated youth from 14 to 17 years of age residing in jurisdictions with high levels of serious juvenile crime, under court supervision for a serious offense, with records of at least two (2) prior adjudications/convictions for serious misdemeanors and/or felonies (preferably robbery, burglary, or assault) within the past 24 months who would otherwise be confined in correctional institutions or placed on probation. There will be no deviations

from these target population characteristics except for applicants from jurisdictions that have established a maximum juvenile court jurisdictional age other than 18.

4. Result Sought. Based on experiences of the Denver New Pride Project, results sought from this Initiative are:

a. Increased school achievement, remediation of learning disabilities, employment of youth participating in the program and improved social functioning.

b. Reduction in the incarceration of youth adjudicated for criminal offenses.

c. Reduction in rearrests for any offense of those youth involved in the community-based treatment project.

d. Institutionalization of comprehensive and integrated community-based treatment services for serious juvenile offenders through redirection of state and local resources into more cost-effective community-based treatment services.

5. Working Assumptions. a. The project developed in replication of Project New Pride will be capable of both decreasing unnecessary incarceration of certain types of serious juvenile offenders and reducing recidivism among these offenders, through effective community-based program intervention.

b. When the number of prior arrests is correlated with recidivism, the greater the number of arrests, the greater the likelihood for continued delinquent activity (Wolfgang and Collins, 1978 and Carr & Moloff, 1972). Therefore, the serious offender with several prior arrests is more likely to recidivate unless intervention occurs.

c. Meaningful employment is an effective deterrent to delinquent activity.

d. A disproportionate number of youth with identifiable learning disabilities are presented in the adjudicated offender population as compared to the general population.

e. Treatment must be individualized and must take into account academic, psychological, vocational, and physical factors. A thorough diagnostic and needs assessment will enhance the accurate determination of client needs and the services necessary to meet those needs.

f. Cultural, physical, and health education is necessary for normal socialization. The serious offender is isolated from the social mainstream and does not have the necessary information or self-confidence to utilize existing resources.

g. Low academic achievement is highly correlated with delinquency, as is self-concept. (Frease, 1972.) Further research indicates that in many instances, the traditional school system is a stimulus for delinquent behavior. (Elliott, 1966.) Therefore youth with a history of serious offenses are likely to be academic underachievers and require individualized remedial education, and remediation of learning disabilities.

C. Program Strategy. 1. Program Design. Applications are invited for action projects which replicate the Denver New Pride Project. It is a community-based treatment model administered by an agency outside the justice system which includes the following integrated program elements (see Appendix 1 for a detailed description of each):

a. Diagnostic assessment.

b. Remedial education.

c. Special education for youth with learning disabilities.

d. Job preparation and job placement.

e. Intensive supervision.

f. Volunteer support.

g. Follow-up services.

2. Performance Standards. While the funded projects will vary in relation to the resources and characteristics of the jurisdiction, all programs must include all components listed above as well as meet the following performance standards:

a. Provide for the intensive and consistent participation of all cognizant juvenile justice agencies in all phases of the projects, throughout their existence.

b. Provide for legal safeguards to protect the rights of participating juvenile offenders. Such safeguards must assure that a youth is represented by counsel at any hearing which may result in termination of participation in the project or result in incarceration.

c. Utilize existing resources within the jurisdiction and involve both public and private non-profit agencies in the development and implementation of the project.

d. Provide for an advisory board which will participate in all phases of planning and program implementation throughout the duration of the project. The board must include youth, community residents and representative from juvenile justice system agencies, institutions of higher education, private industry, labor unions, and local and state public officials.

e. Develop and pursue a strategy for institutionalization of the project after Federal funding ceases at the end of the three (3) year project period.

f. Include appropriate public education and information

dissemination activities which gain and maintain public understanding and support for the program.

g. Develop a program management component which includes a management information system and procedures for using feedback in program planning and operation.

3. *Range and Duration of Grants.* The grant period for the program is three years, but awards will be made in increments of 24 months and 12 months. Third year continuation awards are contingent upon satisfactory grantee performance in achieving stated objectives in the previous year(s), availability of funds, and compliance with the terms and conditions of the grants. Grants will range up to \$450,000 for each year per site, with the amount of funding for each grant based upon the number of juveniles served, the cost-effectiveness of the project design, and the jurisdiction's capacity to absorb the program after this funding terminates. Funds for this program are allocated under Part C and E of the Omnibus Crime Control and Safe Streets Act of 1968, as amended. Pursuant to Sections 306(a)(2) and 455(a) of the Act, funds awarded in response to this Guideline require a 10% cash match for the initial two-year period. There can be *no waiver of this cash match requirement.* Grants may be terminated at any point for failure to meet program requirements or performance standards. OJJDP reserves the option to require an increase in grantee's cash contribution in the third year of funding in order to encourage institutionalization of projects.

4. *Applicant Eligibility.* Applications are invited from private non-profit organizations and agencies in jurisdictions with high levels of serious juvenile crime. In this jurisdictions, youth served by the project must reside in neighborhoods having the highest levels of serious juvenile crime.

5. *Applicant Capability.* While applications may reflect the participation of several public and private youth-serving agencies and organizations, the implementing agency must meet the following conditions of capability, and the show evidence by past performance of the applicant's ability to provide project services directly or to contract for them as discussed in subsections (2) through (5), below. Applicants must describe the expertise of professional staff and their ability to directly provide critical services to referred youth. See Appendix 4 for core staffing pattern. Failure to meet any one of these conditions or the requirements define above for "Applicant Eligibility" will disqualify

the applicant and the application will be considered ineligible and reviewed no further.

a. Be located outside the formal structure of the juvenile justice system.

b. Have substantial capacity for providing leadership in planning, standard setting, and coordination of youth services as evidenced by the inclusion of the following *written agreements* which must, where applicable, specify levels of services to be provided, projected outcomes, number of slots to be allocated, specific types of training and employment placements, number of volunteer interns, and detailed purchase of service contracts.

(1) Signed court agreements with the presiding judge or judges of the juvenile court, the district attorney and the chief of probation services regarding referral of the designated target population. Agreements must be provided with any other component of the juvenile justice system involved in dispositional decisions regarding adjudicated serious offenders.

(2) Signed written agreements with agencies capable of providing alternative education and special education in relation to learning disabilities.

(3) Signed written agreements with public and private sector agencies and organizations regarding job training and job placement.

(4) Signed written agreements with schools of higher education regarding the placement of volunteer interns

(5) Any other signed written agreements where there may be a purchase of service contract.

c. Have demonstrated experience and skill in the delivery and management of effective community-based treatment programs for youth.

D. *Application Requirements.* These requirements are to be used in lieu of Part IV, Program Narrative Instructions of the Federal Application Form 424. In order to be considered for funding, applications must include the following information, and *in the order outlined in this Guideline:*

1. *Applicant Eligibility.* a. Provide statistical documentation of the juveniles who were adjudicated for criminal offenses over the past year (1978). In doing so, prepare a chart using Appendix 2 of this Guideline which shows each type of offense, the number of juveniles adjudicated, by age range, sex, race, and dispositions by the processing agency.

b. Indicate geographic boundaries in which the project will operate. Provide

police juvenile arrest data for targeted neighborhoods.

2. *Applicant Capability.* a. Provide a list of the statutory rules, codes and ordinances governing juvenile behavior in the target jurisdiction. Provide a list of administrative procedures including formal and informal policies which regulate or prescribe methods for responding to juvenile behavior at the adjudicatory stage of the juvenile justice process.

b. Provide a list of existing community-based treatment projects presently serving serious youthful offenders within the target jurisdiction. Include a brief description of each, and proposed relationships with the Project New Pride replication.

c. Provide written agreements as outlined in paragraph C5 which are specific with respect to the referral of the target population, dispositional alternatives to be applied, the types and amount of services, and resources to be provided by participating organizations and agencies.

d. Provide a description of the implementing agency as required in paragraph C4 and include a copy of the governing bylaws, board and organizational structure, and staffing pattern. Provide resumes of core administrative and treatment staff.

3. *Project Goals and Objectives.* Outline project goals and objectives in measurable terms with respect to the number and specific characteristics of youth who will be served by the project. This should include the projected reduction in numbers of rearrests and commitments, increases in academic performance levels, increases in number of youth employed, improvements in the social functioning of youth served, and the institutionalization of the project. The impact levels established by the Denver Project are outlined in the brochure *Project New Pride: An Exemplary Project.* (Copies of *Project New Pride: An Exemplary Project*, July 1977, NILECJ/LEAA, may be obtained from the Office of Juvenile Justice and Delinquency Prevention, LEAA, Room 442, 633 Indiana Avenue, NW, Washington, DC, 20531. It should be stressed that publication of *Project New Pride: An Exemplary Project* should be used as background information only. The manual was written two years ago and during that period some refinements have been made to critical program elements. The critical program elements are explained in detail in Appendix 1. All applicants are urged to carefully review the critical program elements contained in Appendix 1 as well as read the New Pride Manual.

4. *Program Methodology.* Based on the information provided in Program Strategy, paragraph C1-5 of this Guideline, develop a project design which provides a clear description of the following:

- a. Procedures for selecting those youth who will participate in the program.
- b. The manner in which the project elements outlined in paragraph C1 in this Guideline will be structured and implemented. For additional information refer to Appendix 1 of this Guideline.
- c. The manner in which the performance standards as outlined in paragraph C2 in this Guideline will be implemented.

d. The manner in which the performance standards as outlined are addressed. Specify in detail the functions, qualifications and relationships of key units and staff. The applicant should make clear the extent to which the personnel needs are met by new recruits, transfers from other parts of the agency, or personnel already employed by other programs.

5. *Workplan.* In addition to following the format described in the *Guide for Discretionary Programs*, M 4500.1G Appendix 5, Parts III and IV, prepare a detailed work schedule which describes specific project objectives in relation to activities, milestones, and time frames for accomplishing the objectives. The workplan and budget should be prepared to allow for a three to six month startup period.

6. *Budget.* Prepare a budget of the total costs to be incurred in carrying out the proposed project over three years with a detailed breakdown and narrative for the first two budget years. Include in the budget travel for three (3) staff persons to attend four (4) technical assistance and training sessions for the first grant period for an average of three (3) days.

E. *Criteria for Selection of Projects.* Applications will be rated and selected using the following criteria. Where criteria are met equally, in making final selections, LEAA will consider geographic distribution of projects.

1. The extent to which applicants meet the capability and eligibility requirements as outlined in paragraph C5.
2. The extent to which serious juvenile crime is a significant problem in relation to its occurrence nationally.
3. The extent to which the project design conforms to the New Pride Model.
4. The extent to which the application is responsive to the performance requirements as outlined in paragraph C2.

5. The extent to which the project is cost effective in relation to the number of youth served, the project design, and work schedule.

F. *Submission Requirements.* 1. The replication of Project New Pride has been determined to have national impact and applications must be submitted in accordance with the instructions outlined in Appendix 2, of *Guide for Discretionary Grant Programs*, M 4500.1G, issued September 30, 1978, including appropriate consultation with State planning agencies. Refer to Appendix 5, Part II and Part IV, for instructions on how to prepare the budget, budget narrative, and program narrative.

2. All applicants must submit the original application and two copies to the Office of Juvenile Justice and Delinquency Prevention, LEAA, Room 442, 633 Indiana Avenue, NW, Washington, DC, 20531, no later than September 21, 1979. Applications sent by mail will be considered to be received on time if sent by registered or certified mail not later than September 21, 1979, as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service.

3. One copy must also be sent to the appropriate State A-95 Clearinghouses and state planning agencies (SPAs) for review and comments. The addresses of Clearinghouses and SPAs are listed in Appendices 7 and 8 of this Guideline. Documentation of these submissions must be included in the application.

G. *Evaluation Requirements.* 1. The projects funded under the program will be evaluated by an independent evaluator selected by the Office of Juvenile Justice and Delinquency Prevention under a separate solicitation. The national evaluation design will be based on the management information system developed and used by the Denver Project New Pride. The national evaluator will provide training and technical assistance to each project in implementing the New Pride Management Information System and develop a systems/community impact design to be implemented at selected projects. All applicants must provide assurance of full participation in and cooperation with the evaluation requirements. This will include providing project data to the national evaluator.

2. The major goals of the evaluation are:

- a. to develop information on client and services issues which can be used to refine the New Pride model; and

b. to determine under what conditions the program can be implemented in different types of jurisdictions.

3. *Project Evaluation Components.* Each project will implement a program management/self-evaluation system, based on the system developed by Project New Pride, Inc., under the direction of the national evaluator. This system will address the following objectives.

- a. to develop the information on the numbers and types of youth served by the project;
- b. to develop information on the level and types of services provided;
- c. to determine the impact of the project on school achievement, remediation of learning disabilities, and employment of youths served by the project;
- d. to determine the impact of the project on rearrest rates of youths served by the project;
- e. to determine the impact of the project on the number of youth incarcerated; and
- f. to determine what types of services appear to be most effective for what types of youth, and under what conditions.

4. *National Evaluation Component.* The objectives of the national evaluation are:

- a. to develop profiles of the types of youths served by the projects; and
- b. to document and assess the development, implementation and results of the projects' management/self-evaluation components.

The national evaluation will also include juvenile justice system and community impact evaluation at selected sites.

H. *Technical Assistance.* Project New Pride has field tested the program elements being replicated by this initiative over the past four years. However, New Pride continues to test state-of-the art techniques in the original project, as well as in other programs it operates in Denver. (Central Denver Youth Diversion, Morgan Center for Learning Disabilities), and will be in a position to up-date selected sites as to the feasibility of the implementation of program elements. New Pride (Denver), the host project, will participate in the delivery of on-going technical assistance, orientation and training. Management information staff employed by each of the replication sites will be responsible for the submission of the data collection forms on a monthly basis to the national evaluator. This data will be fed into the technical assistance process.

1. *Definitions.* 1. *Adjudication* is the process of determining guilt or innocence in juvenile court proceedings by either a counseled plea of guilty or a formal fact-finding hearing.

2. *Disposition* is that procedure in the juvenile court process which results in the imposition of a sentence, e.g., probation or commitment.

3. *Delinquency* is the behavior of a juvenile, in violation of a statute or ordinance in a jurisdiction, which would constitute a crime if committed by an adult.

4. *Jurisdiction* is any unit of general local government such as a city, county, township, borough, parish, village, or combination of such units.

5. *Juvenile* is a child or youth, defined as such by state or local law, who by such definition is subject to the jurisdiction of the juvenile court.

6. *Juvenile Justice System* refers to official structures, agencies, and institutions with which juveniles may become involved including, but not limited to, juvenile courts, law enforcement agencies, probation, aftercare, detention facilities, and correctional institutions.

7. *Private Youth-Serving Agency* is any agency, organization, or institution with two years experience in dealing with youth, designated tax exempt by the Internal Revenue Service under Section 501(c) of the Internal Revenue Code.

8. *Program* refers to the national initiative to establish programs supported by OJJDP and the overall activities related to implementing the program.

9. *Project* refers to the specific set of activities at given site(s) designed to achieve the overall goal of reducing delinquent behavior through the use of the purchased methods.

10. *Public Youth Serving Agency* is any agency, organization, or institution with two years experience, which functions as part of a unit of government, and is thereby supported by public revenue for purposes of providing services to youth.

11. *Serious Juvenile Offender.* For the purposes of this initiative, serious juvenile offenders are defined as adjudicated youth under court supervision 14-17 years of age with records of at least two (2) prior adjudication/convictions for serious misdemeanors and/or felonies (preferably robbery, burglary, or assault) who would otherwise be

confined in correctional institutions or placed on probation.

David D. West,

Acting Associate Administrator, Office of Juvenile Justice and Delinquency Prevention.

Appendices

Appendix 1—Program Elements

Appendix 2—Juvenile Offense Profile—Included in Program Announcement

Appendix 3—New Pride, Inc., Advisory Board—Included in Program Announcement

Appendix 4—Staffing Pattern and Organizational Chart—Included in Program Announcement

Appendix 5—New Pride, Inc., Client Flow Chart—Included in Program Announcement

Appendix 7—Directory of State Clearinghouses and Central Information Reception Agencies—Included in Program Announcement

Appendix 8—Addresses of State Planning Agencies—Included in Program Announcement

Appendix 9—Federal Assistance Application Form 424—Included in Program Announcement

Appendix 10—Appendix 2 of *Guide for Discriminatory Grant Programs*, M 4500.1G, Issued September 30, 1978, "Preparation and Submission of Applications"—Included in Program Announcement

Appendix 11—Appendix 5 of *Guide for Discretionary Grant Programs* M 4500.1G, Issued September 30, 1978, "Special Instructions for Non-Construction Grant Applications Standard Form 424"—Included in Program Announcement

Appendix 1

I. *Critical Program Elements*

A. *Diagnostic Assessment.* Project New Pride, Inc., uses an inter-disciplinary diagnostic team to individually evaluate all clients. Test results combined with a needs assessment to determine appropriate placement. The diagnostic process is based on the philosophy of administering only as much testing as is necessary to adequately define individual needs of each client. The concept of levels of testing evolved from this philosophy. These levels of testing cover four general areas of assessment—screening, in-depth psychological testing, learning disability testing, and projective psychological testing.

All New Pride clients receive the screening battery which is designed to be a general assessment covering the areas of sensory and learning processes, academic, and psychological functioning. This battery includes hearing and vision acuity screening tests; and instrument to measure the client's self-esteem; an instrument to assess academic functioning in the areas of reading, spelling and arithmetic; a learning disabilities screening battery containing ten items to assess visual, auditory and motor processing deficits; and a diagnostic questionnaire which includes questions tapping social,

educational and psychological perceptions of the client. This measure was included because information generated by the adolescent himself provides self-respect data which is an essential basis for comparison with objective test data and provides a foundation for understanding the individual's acquisition of adaptive behavior skills. The purpose of the screening battery is not to specifically define deficiencies, but to indicate the need for further assessment.

After the screening battery, the diagnostic team makes an interdisciplinary decision as to whether to recommend further testing. The following criteria serve as a guide in making that recommendation:

1. A level of functioning at the 25th percentile or less on the academic instrument.

2. Significant deficits revealed by the learning disabilities screening battery.

3. Information provided by supportive agencies (e.g., public school records) indicating the possibility of a learning problem.

At this time, if a recommendation is made for further testing, an in-depth assessment of intellectual and reading functioning is the next step toward assessing a learning disability. Another recommendation may be for further testing by hearing or vision specialists in these fields if the clients fail the hearing or vision acuity screening tests. The second level of testing consists of an age appropriate instrument to measure intellectual functioning and an indicator of patterns of learning dysfunctions. Additional instruments are used for refinements of dysfunctions in the visual-motor channel as indicated on the learning disabilities screening battery, and an instrument to corroborate the reading scores obtained. At this level of testing, a client may or may not be identified as learning disabled based upon the operational definition of significant discrepancy between intellectual functioning given an average I.Q. and academic achievement, with indications of process dysfunctions. If the client is ascertained to be learning disabled, a recommendation is made for the client to receive services at New Pride's Morgan Center for Learning Disabilities, or in a special program in public or private schools. A staffing is then held which involves members of the Diagnostic Team and the Intake Component to decide upon a recommendation for services.

The third level of testing is then administered to further clarify and define the specific learning disabilities. It is comprised basically of tests to assess process dysfunctions and to further verify academic functioning in the area of math achievement; the other tests are process tests measuring visual, auditory, motor, language and motor dysfunctions. From this level of testing a specific pattern of learning disabilities is defined and an individual educational prescription is recommended.

A fourth level of testing involves the administration of projective tests which are administered only when significant emotional factors are indicated by group consultation or after the client is referred to a treatment component. This level of testing is designed

to assess specific patterns of emotional and behavioral functioning. In defining learning disabilities, projective testing is important to rule out emotional disturbances as the primary cause of the learning problem rather than a specific learning disability.

B. Remedial Education. Academic remediation is designed to decrease educational lag and to facilitate reintegration into the public schools following completion of the intensive phase of the program. Typically, the client entering New Pride is several grade levels behind in academic ability, and has had a number of school-related failures ranging from truancy to suspension. Many have not adjusted well in the traditional school setting. Having experienced little success, academically or socially, school has become an experience to avoid. This lack of success demonstrated by low academic ability is measured by a battery of academic tests and personality inventories administered by the Diagnostic Team.

Based on the results of the administered tests, clients are assigned to classes in the New Pride Alternative School. Clients attend on a semester basis, Monday through Friday (either in the morning session 9:00 a.m.-12:00 noon, or in the afternoon session, 1:00 p.m.-4:00 p.m.). The Denver Public School system awards 23 to 25 academic credits for successful completion of each semester.

Credits are given in the following subjects: English, Mathematics, Social Studies, Science, Physical Education, and Practical Arts. An additional two credits may be earned by the student through participation in the employment component. Two certified teachers operate the alternative school and are assisted by two teacher's aides and numerous volunteers, who respond to the students' need for assistance with their academic work. The general format is one-to-one tutoring and a daily group activity. Staff are extremely supportive of the students' efforts, encourage their strengths, and attempt to make the academic work in the various areas rewarding to the students who have previously experienced repeated failure.

C. Special Education to Youth with Learning Disabilities. The primary focus of therapy at Morgan Center is to remediate or compensate for the most common learning disabilities observed in the client population. A primary hypothesis of the approach is that one of the contributing factors to the academic failures experienced by many Morgan youth is their failure to develop an organized, efficient perceptual system. In many instances, splinter skills have been developed which hamper the integration of stimuli perceived through the various sensory modalities (visual, auditory, tactile, kinesthetic). In order to achieve maximum benefit from their sensory system, a highly individualized multi-disciplinary approach must be taken which considers both client learning strengths and weaknesses, and how they affect not only the youth's academic performance, but his social performance in general. The Morgan Center tries to help its clients build a "personal learning system," which will help him to achieve successes in

academics, employment and in the community.

Of these clients diagnosed as learning disabled by New Pride, almost 100% possessed auditory problems. The auditory channel is one of the most important avenues through which children and adults receive information about their environment. Morgan Center clients often possess hearing acuity within the normal range of hearing, but have difficulty processing and obtaining meaning from auditory stimuli. Analysis of Morgan Center data suggests that a child who has difficulty processing auditory stimuli will perform poorly in some of the following tasks: (1) identify the source of sounds, (2) discriminate among sounds or words, (3) reproduce pitch, rhythm, and melody, (4) distinguish significant from insignificant stimuli, (5) combine speech sounds into words, or (6) understand the meaning of environmental sounds in general.

The second most commonly observed learning disability involves visual processing. In addition to observations made at the Morgan Center are a number of research studies which indicate that the processing of research studies which indicate that the processing of visual stimuli is a complex act that is highly active and investigatory. Eight stages are involved in visual processing operations. A brief description of the eight-stage visual processing operation follows: The person actively scans the object, identifies the significant visual cues, and attempts to integrate them into a simultaneous spatial construct. The visual image is tentatively put into a category and compared with the actual object as it is perceived. If the visual image is consistent with the object, the person terminates the perceptual activity. If the visual image and the actual facts are in disagreement, corrections are introduced into the previous visual hypothesis. For objects which are unfamiliar, the viewer may require all eight stages. In contrast, the process for perceiving familiar objects is more brief. Complex visual objects which are familiar to the viewer can be identified from one dominant sign, and verification that the image is correct takes place almost instantaneously (Gibbon, 1968).

Although many Morgan clients may be called "visual learners," in many instances their lack of basic-auditory processing skills has resulted in a tendency to overcompensate through the visual channel. Thus, while the visual channel may be observed as a learning strength for most Morgan youth, inefficient use of visual skills in relation to other sensory modalities tends to hamper maximum utilization of the visual system, therefore prohibiting development of an efficient, integrated perceptual learning system. Morgan Center clients suffer from dysfunction in which the students can see but experience difficulty in: (1) visually examining the individual details of an object; (2) identifying the dominant visual cues; (3) integrating or combining individual visual stimuli into simultaneous groups and obtaining meaning from the object; (4) classifying the object in a particular visual category; and (5) comparing the resulting

visual hypothesis with the actual object as it is perceived.

Other disabilities are diagnosed with varying degrees of frequency; kinesthetic and motor disabilities are also common among Morgan Center's client population.

Morgan Center's approach to the treatment of learning disabilities is multi-disciplinary. Experience indicates that no single treatment mode is more effective than another, but that a multi-disciplinary approach to diagnosis and treatment is most favorable. Although the emphasis at the Center is on remediation of compensation of learning disabilities and academic remediation, these are only parts of a complex set of needs possessed by the juvenile serious offender that must be met if intervention is to be effective in reducing both recidivism and incarceration.

D. Cultural, Physical and Health

Education. Cultural education is designed to expose youth to the total community, not just one segment of it. Youth are accompanied by staff and volunteers on a variety of field trips. Staff and volunteers act as guides and interpreters on field trips. In many instances community services can be obtained at no cost to the program. Clients are often unaware of their availability and consequently are not exposed to activities that help in the socialization process. Guest speakers are used also to reduce the isolation of the client in the community.

Physical education is a structured part of the program and is designed to teach self-awareness, group interaction, cooperation, and inter-dependence in a supervised environment. Physical education is conducted in gyms, recreational centers or parks. All physical education activities are supervised and the staff observes and records individual behavior during the supervised group activities, since these observations are used to develop counseling activities focused on self-control, etc. Games such as basketball are viewed as ideal because they demand cooperation, group interaction, and dependency on others. Additionally, for the learning disabled client, physical education is a part of the therapy program and staff will concentrate on aspects of games that help strengthen specific sensory modalities.

Health education is offered to help youth become aware of and understand the need for personal health care (diet, grooming, hygiene, etc.) and to help them implement personal health care plans. Health professionals from city agencies are guest speakers and instructors for this part of the program. New Pride youth are lower socio-economic status and frequently suffer from poor nutrition. Discussions on diet and improving nutrition are tailored to food items that are commonly found in their homes. Frequently the clients will become parents and have little knowledge about how the body functions, or normal growth and development of their children. Consequently, a variety of health-related topics are offered to clients.

E. Job Preparation and Job Placement. The employment component of Project New Pride, Inc. is designed to introduce youth to the world of work and its expectations. Emphasis is placed on providing clients with a

meaningful employment experience, through which they can earn income for work actually performed. Private sector employment is preferred and employers become part of the treatment team.

The emphasis in the employment component is the development of work habits, punctuality, reliability, and the experience of obtaining a job. New Pride clients are relatively young (average age is 16), and still attending school; therefore, job retention is secondary to the actual work experience. Part-time jobs for this population are more appropriate because these clients typically are deficient academically or learning disabled. The learning disabled youth, in particular, has specific needs which must be addressed if the employment experience is to be successful. Consequently, it is necessary for the employer to have access to both the teacher and the counselor when appropriate. Both the client and the employer are contacted on a regular basis to determine the progress of the youth during his period of employment. The client's treatment plan can be adjusted if the employment experience requires it.

Although employment as a treatment variable has been demonstrated to be effective (80% reduction in recidivism while employed), the other critical elements must be provided. School related problems must be addressed if the youth is to be successfully employed. Additionally, career counseling is viewed as essential to developing job habits and marketable skills. The client's interests and abilities are carefully determined prior to placement on a job. Employers who have a commitment to working with youth and an interest in teaching job skills are actively sought by the program.

New Pride pays the salary of all youth (minimum wage) for the first three months of employment. Attempts are made by New Pride to get commitments from employers to pay salaries after the initial three-month period. A variety of employment opportunities are provided with preference being given to private sector employers. This preference is based on the assumption that most youth will eventually seek employment on their own following program completion and most will try to enter the private sector rather than the public. In addition, small to mid-size employers are preferred because of their ability to closely supervise and provide training.

Job preparation is an integral part of the program and has been designed into the curriculms of both the alternative school and the learning disability center. Workshops are held with all youth with emphasis placed on interviewing techniques, filling out application forms, grooming, presentation, etc. Video equipment is used to practice and improve the ability of a client to interview. In addition, clients are taken on field trips to a variety of companies in an effort to expose them to different employment opportunities. Local manpower services are also utilized whenever they are appropriate. Employment counselors are primarily responsible for pre-vocational training. However, all staff and volunteers may be involved because of New Pride's "wholistic" approach. Audio-visual

materials are also used in the employment workshops and guest speakers are frequently used. Clients are given the opportunity to experiment with different occupations, although attempts are made to correctly identify aptitudes and abilities prior to job placement. If a placement is to be made into a specialized area such as construction trades, each client will enter a formal program of classroom training for six weeks. This training focuses on specific skill areas and job safety. All clients are expected to complete this classroom training prior to placement on a job in the construction industry.

Employment counselors also develop jobs and establish relationships with employers. Potential employers are briefed on how the juvenile justice system functions and behavioral characteristics of the New Pride population. Employers also know that counselors are always available upon request. Further, should a client not report for work, his counselor is notified immediately and steps are taken to determine why the person did not come to work. Clients are paid only for work performed and the employment counselors devote a considerable amount of time explaining pay scales and paydays prior to placing a client on a job. All youth must obtain a Social Security card prior to employment. Money management, banking and savings accounts are also included in the pre-vocational program.

F. Intensive Supervision. New Pride clients receiving intensive supervision are contacted daily by counselors. The intensive phase begins on the day that the client is staffed into a treatment component, and intensive supervision is both client and family oriented. Counselor caseloads do not exceed 10 to 15 active cases, and the entire family unit is considered to be a part of the counselor's caseload. Treatment goals are established for each client and detailed casenotes are maintained which chart progress in accomplishing the goals. These goals are usually short-term and are concentrated in the areas of behavioral and additional problems which can be readily addressed. Treatment goals are determined by the diagnostic examination and needs assessment. Modification can be made to the original goals with the concurrence of the Counseling Supervisor.

Individual, family and group counseling is provided by staff a minimum of two sessions a week. When appropriate counselors will coordinate the efforts of other community agencies (i.e., mental health) working with the client. Counselors focus on the socialization of the youth, giving particular attention to the client's learning problems and how they affect his behavior. Individual counseling is oriented toward teaching the client coping skills. Emphasis is placed on helping the client understand how the community functions, as it currently exists, and the necessity for education and employment is also stressed. Counselors are advocates for the youth, and it is mandatory that they accompany the client to any court appearance, with a detailed written report.

Counselors frequently become resources to the family, and family counseling involves

educating the parents about their child's learning problem or disability and to problems that the client might have. The majority of New Pride clients are lower-socio-economic status and might require some form of public assistance. During the intensive supervision phase, counselors are expected to help the client and his family receive any appropriate assistance. If a referral is made to another agency, the counselor insures that services requested are delivered.

Individual counseling also includes living within a fixed income, cultural opportunities available in the community, coping with the cultural mainstream, continuing education after termination from the program, and post-delinquency life-styles. The client is counseled on becoming responsible for his actions and, during the follow-up period, dependency on the counselor is reduced.

G. Volunteer Support. Since its inception, New Pride has relied on the extensive involvement of volunteers. Volunteer agencies such as the American Red Cross have provided pools of volunteers continually to the program. The extensive use of volunteers in all aspects of the program has enabled New Pride to individualize its treatment services. Local colleges and universities have also provided another source of volunteer support. Student interns from both graduate and undergraduate schools have specific expertise which can be matched to the needs of the program.

All volunteers, either Red Cross or student interns, are required to give specific time commitments. Volunteers receive the same training that staff members are provided and participate in in-service training. Additionally, volunteers are encouraged to express their opinions, and information provided by them has led to significant improvement in the delivery of services.

All volunteers are screened and interviewed prior to being accepted by New Pride. The interviewing process is similar to that used in identifying new staff. Volunteers also undergo a probationary period and are closely supervised by professional staff. Volunteers have proven to be especially effective in working with the two school programs. Additionally, volunteers are routinely used as guest speakers and on field trips.

H. Follow-Up (Second Six Months). The purpose of the follow-up phase is to continue to meet the needs of clients who have completed the intensive segment of the program. Counselors continue to provide support and direction during this period. Treatment objectives of each client are developed for the follow-up phase, similar to ones that were established during the intensive phase. However, the client assumes more responsibility for meeting the objectives during this period.

Counselor-client meetings during this period vary from once a week to bi-monthly sessions, depending upon need. Contacts are client-initiated. During this period, the client will be reintegrated into appropriate placements in the community, i.e., public school, community vocational educational programs, etc.

Although a client can continue to receive a range of New Pride services during the follow-up phase, attempts are made to decrease the amount of staff dependency that was created during the intensive phase. Counselors maintain detailed case records during this period and meet periodically with counseling supervisor to discuss client progress toward self-sufficiency. Additionally, the same strategy is followed with the client's family in decreasing their dependency on the staff. Other community resources are identified for the family unit and again attempts are made to involve others in the treatment of the client and his family rather than relying solely on the New Pride staff. The wholistic concept of providing well-integrated services during this period is maintained by all staff and volunteers working with the client and his family.

II. Twelve-Month Program Phases

Intensive Phase

First Month: Initial contact is made with the client immediately following referral and a needs assessment is conducted at his home. The client is then diagnostically screened and individualized treatment plans (education and intensive supervision) are developed and the client is enrolled in the appropriate alternative education program. Job training begins during this period and, following two weeks of employment workshops, the client is placed on an appropriate subsidized job. Refinements are made to the individualized education and supervision plans. Clients are contacted daily during this period.

Clients attend the appropriate educational program daily and are seen by their assigned counselors on a daily basis for intensive supervision. The majority of the youth will also be working during this period (exceptions may be made for the severely learning disabled) and will also be seen by the employment counselor. The family will also be intensively involved with the counselor during this period. Additionally, the counselor will serve as a resource person to the entire family unit, arranging appointments with other agencies, i.e., Health and Hospitals, Social Services, Housing, etc. Detailed casenotes must be maintained and it is essential that all staff closely coordinate their efforts. Failure to do so will destroy the concept of "providing services in a well-integrated fashion." Interim and post-testing will also be performed during this period to chart individual progress.

New Pride, Inc.

Denver, Colorado

[FR Doc. 79-20447 Filed 7-2-79; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Employment and Training Administration

United States Employment Service; 1979 Adverse Effect Wage Rate for Texas

AGENCY: U.S. Employment Service, Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Administrator, U.S. Employment Service, announces the 1979 adverse effect wage rate for agricultural employment in the State of Texas: \$3.25 per hour. This is the minimum rate employers of temporary alien agricultural labor must offer and pay their workers to avoid adversely affecting the wages and working conditions of U.S. workers.

EFFECTIVE DATE: July 5, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Aaron Bodin, Chief, Division of Labor Certifications, U.S. Employment Service, Suite 8410, 601 "D" Street, NW., Washington, D.C. 20213, Telephone: 202-376-6295.

SUPPLEMENTAL INFORMATION:

Adverse Effect Wage Rates

So that the temporary employment of nonimmigrant aliens in agriculture will not adversely effect the wages and working conditions of similarly employed U.S. workers, the Department of Labor (DOL) requires employers seeking certification from DOL for such workers to agree to pay their U.S. and alien workers at least the adverse effect wage rate. 20 CFR § 655.202(b)(9).

For the most states, the adverse effect wage rate is the same as the prevailing wage for the employment in that State. 20 CFR 655.207(a). However, for those States listed at 20 CFR 655.207(b)(2), and for sugar cane workers in Florida, the Administrator, U.S. Employment Service, annually must compute and must publish in the Federal Register adverse effect wage rates. 20 CFR 655.207(b). The methodology by which these rates are computed is set forth in 20 CFR 655.207, and was published also at 41 FR 25018 (June 22, 1976), and at 43 FR 10310 (March 10, 1978). The last previous publication of these rates was at 44 FR 32306-32307 (June 5, 1979).

1979 Adverse Effect Wage Rate: State of Texas

On June 5, 1979, there was published in the Federal Register an amendment to 20 CFR 655.207(b)(2), effective on July 5, 1979, adding the State of Texas to the

list of States for which an adverse effect wage rate must be computed and published. Accordingly, the adverse effect wage rate for the State of Texas is set as \$3.25 per hour, effective on July 5, 1979. The State of Texas and the 1979 rate of \$3.25 per hour for that State are added to the table at 44 FR 32306-32307 (June 5, 1979) effective July 5, 1979.

Signed at Washington, D.C. this 28th day of June 1979.

William B. Lewis,

Administrator, U.S. Employment Service.

[FR Doc. 79-20618 Filed 7-2-79; 8:45 am]

BILLING CODE 4510-30-M

Office of Pension and Welfare Benefit Programs

[Application No. D-1291]

Employee Retirement Income Security Act; Proposed Exemption for Certain Transactions Involving Atlantic Richfield Company Retirement Plans

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would permit the contribution of property and ground lease by the Atlantic Richfield Company (the Employer) to a commingled trust fund in which separate qualified pension plans of the Employer and its subsidiaries maintain participating accounts. The proposed exemption, if granted, would affect participants and beneficiaries of the Plans and the Employer.

DATES: Written comments and requests for a public hearing must be received by the Department on or before August 6, 1979.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20216, Attention: Application No. D-1291. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200

Constitution Avenue, NW, Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Frederic G. Burke, Office of Fiduciary Standards, Pension and Welfare Benefit Programs, U.S. Department of Labor, (202) 523-8195. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption from the restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471 April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicant.

1. The Employer and certain of its subsidiaries maintain thirteen separate qualified pension plans (the Plans) which participate in a commingled trust (the Trust). As of June 30, 1978 the Plans' assets were in excess of \$900,000,000 for the benefit of approximately 70,000 participants and their beneficiaries. Of that amount \$7,000,000 is in real estate related investments. The Investment Officer of the Employer will be designated as the fiduciary empowered to make all investment decisions and to direct the bank trustee with regard to real estate investments.

2. Following an acquisition and development, as hereinafter described, the Employer proposes to contribute to the Trust certain property located at the northeast corner of Fifth and Flower Streets in the business section of downtown Los Angeles, California. The applicant is uncertain as to whether such a contribution should be treated as a sale or exchange for purposes of section 406(a)(1)(A) of the Act and section 4975(c)(1)(A) of the Code and,

accordingly, seeks an exemption with respect to the proposed contribution.

3. The subject property consists of two contiguous parcels of undeveloped land, one currently owned by the Community Redevelopment Agency of Los Angeles which will be transferred to the Employer, and the other owned by the Employer.

4. The Employer will sign a development agreement and an unsubordinated ground lease of both parcels to Rock-Flower, Inc., a wholly owned real estate development subsidiary of Rockefeller Center, Inc., for the purpose of constructing a major office building consisting of a 46-story tower with approximately 876,000 square feet of rentable space. Rock-Flower, Inc. is a party unrelated to the Employer and not a party in interest with respect to the Plans.

5. Rock-Flower, Inc. will own and operate the leasehold improvements and will be responsible for ground lease rental payments.

6. Upon completion of the building in 1981, the Employer proposes to transfer the land in fee simple by a general warranty deed and will assign the ground lease to the Trust.

7. The Employer proposes to record the contribution in the amount of \$7,500,000 or, if less, the fair market value of the subject property at the time of contribution.

8. The maximum term of the ground lease is 99 years with an initial term of 47 years and two 21 year and one 10 year renewal options, thus permitting Rock-Flower, Inc. to obtain maximum initial permanent financing. The base rent of \$800,000 per year is net as to the lessor and is subject to escalation at the beginning of the 16th and 31st years and every 10th year thereafter; upon transfer of all or part of the leasehold interest; or upon refinancing. Additional rent is also payable upon each transfer or refinancing after the deduction of certain "preferred payments" to Rock-Flower, Inc.

9. Based on a transfer value of \$7,500,000 the base rent, exclusive of any escalation rent and any additional rent, will provide an annual return to the Trust of 10.67 percent.

10. The interest of any subsidiary's plan participating in the Trust is marketable within the Trust and the total interest of the Plans in the property would be marketable with independent third parties in a period of time reasonable for real estate.

11. The Employer expects that the holding of the ground lease will permit possible substantial appreciation and favorable income stream. In addition,

the property will enable the Trust to diversify away from more volatile equity investments.

12. An independent market and financial analysis of the property and ground lease made by Coldwell Banker Management Corporation concludes that the proposed contribution represents an exceptional investment opportunity for the Plans which would not be available to the Trust on the open market. It combines an assured return of 10.67 percent with excellent potential for increased yield, with minimum risk, which is comparable to or greater than the yield of alternate real estate investments.

13. If the proposed contribution were added to present holdings, the real estate related investments of the Plans in the aggregate would be less than 2 percent of the approximate market value of the Plans' assets.

14. In summary, the applicant represents that the statutory criteria of section 408(a) of the Act are met in that:

(a) The proposed transactions will provide the Plans with a high quality and secure asset. The contribution of the property with the associated favorable ground lease provisions combines assured return with excellent potential for appreciation and increased yield without risk.

(b) The transaction is a one time transaction and is structured in a manner that makes it self-executing by its own terms—i.e., upon completion of the office building by Rock-Flower, Inc. the Employer will transfer fee title in the land and assign the ground lease to the Trust.

(c) The Employer will record a contribution in the amount of \$7,500,000 or, if less, the fair market value of the subject property as established by independent appraisers at the time of contribution.

(d) The Employer and the trust investment manager have considered the proposed transaction and have concluded that it meets the various financial requirements and goals of the Plans.

(e) Finally, Coldwell Banker, an independent real estate management corporation, after an evaluation of its appraisal concluded that the proposed contribution represents an exceptional investment opportunity which would not be available to the Plans on the open market.

Notice to Interested Parties

All employees who are or may become eligible for a benefit under any one of the Plans and all retired participants and former participants in

receipt of benefit payments, or who have a vested deferred right to receive such payments at a later date, under any of the plans which are a subject of the application, and all collective bargaining agents under any of the affected plans will receive notice. The employees will be notified by posting the required notice on Employer bulletin boards; and copies of the notice will be mailed to the affected collective bargaining agents and to retired or terminated vested participants.

The notices will be posted or mailed, as applicable, within 15 days after publication in the Federal Register of notice of pendency of the exemption and will contain a copy of the notice of pendency of the exemption and will inform the interested persons of their right to comment and to request a hearing within the period set forth in the notice of the pendency of the exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code.

including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the contribution of property located at the northeast corner of Fifth and Flower Streets, Los Angeles, California, and ground lease thereon, by the Employer to the Trust in which separate qualified pension plans of the Employer and its subsidiaries maintain participating account. The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 27th day of June, 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 79-29473 Filed 7-2-79; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-1374]

Proposed Exemption for Certain Transactions Involving the Great Lakes Mortgage Corporation Employees' Profit Sharing Plan and Trust

AGENCY: Department of Labor.

AGENCY: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the negotiation and execution by the Trustees of the Great Lakes Mortgage Corporation Employees' Profit Sharing Plan and Trust (the Trust) of an agreement with the Lomas & Nettleton Company (L & N), to sell all of the Great Lakes Mortgage Corporation and its subsidiaries (GLMC) stock held by the Trust to L & N. The agreement will contain provisions which will allow the Trust, under certain conditions, to release and indemnify GLMC. The proposed exemption, if granted, would affect the Trustees, the participants and beneficiaries of the Trust, GLMC, L & N and other persons involved in the proposed transaction.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before August 3, 1979.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, Attention: Application No. D-1374. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Robert N. Sandler, of the Department of

Labor, telephone (202) 523-8882. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code, by reason Of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Trust, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Trust, which is a defined contribution plan, owns all of the outstanding common stock of GLMC and 1,485 of the 2,475 outstanding shares of the 6% cumulative participating voting preferred stock, Series B, of GLMC. All such stock was acquired by the Trust by contributions from GLMC at various times during the period 1957 to 1967. The Trust Agreement as amended and restated effective January 1, 1976, provides that the Trustees shall have the power to hold stock of GLMC without limitation as to amount and regardless of any lack of diversification.

2. The Trustees are William N. Melzer, President and Director of GLMC, Leonard J. Gibbin, Vice-President and Director of GLMC, Lloyd N. Wheeler, Vice-President and Director of GLMC and Continental Illinois National Bank and Trust Company of Chicago (the Bank).

3. The Trustees entered into an agreement (the Agreement) effective February 28, 1979, with L & N to sell all of the GLMC stock, both common and preferred, owned by the Trust to L & N for cash, conditioned upon securing a favorable ruling from the Department. It is contemplated that immediately before the sale, all of the outstanding shares of preferred stock not owned by the Trust

will be purchased by GLMC. L & N is a corporation totally unrelated to GLMC and is not a party in interest with respect to the Plan.

4. Pursuant to the terms of the Trust Agreement, the Trust will terminate within 10 days of the transfer of the GLMC stock to L & N pursuant to the Agreement. An application will be submitted to the Internal Revenue Service for a determination that the termination of the Plan will not adversely affect the qualification of the Plan, and it is contemplated that after a favorable determination is received the Trustees will proceed to liquidate the Trust assets and distribute them to the Trust participants, pursuant to the terms of the Trust Agreement.

5. Under the Agreement, the maximum purchase price to the Trust is \$7,210,000, subject to downward adjustment depending upon final adjustments in the consolidated net worth of GLMC and its subsidiaries. The Agreement provides that at the closing date, such downward adjustment shall not cause the purchase price to be less than \$6,800,000. The stock, both common and preferred, that is held by the Trust, has been appraised by Duff and Phelps, Inc., an independent investment and financial analyst company. Duff and Phelps, Inc. stated that as of December 31, 1978, the fair market value of the GLMC stock held by the Trust was \$1,578,900 without including the value for control of GLMC and \$4,109,400 including the control value.

6. The Agreement provides that L & N will pay to the Trust on the closing date an amount equal to the purchase price minus \$2,000,000, and that this remaining \$2,000,000, plus or minus certain adjustments relating to a final valuation of certain GLMC assets, made within 45 days after the closing date, together with interest accrued from the closing date at 8% per annum, will be paid to the Trust on the final payment date, subject to certain reductions including any amount attributable to the indemnification provision discussed in paragraph 8 below. The closing date will be June 30, 1979, or such other date as may be agreed upon between the Trust and L & N. The final payment date will be the 170th day after the closing date or the 10th day after the receipt of a favorable Internal Revenue Service determination letter, whichever is later.

7. Under the Agreement, the Trust is required to release L & N and its officers, directors, shareholders and affiliates and GLMC and its subsidiaries from any and all claims which the Trust may have against any of them by reason of anything that may have occurred or

failed to occur at any time on or before the closing date, except with respect to any obligation to be performed by L & N after the closing date under the Agreement.

L & N represents that in transactions involving the purchase of all of the stock of a corporation, it is customary to obtain from the selling shareholder a release of all claims which the shareholder might have against the corporation. L & N further represents that a prudent purchaser would not assume the risk of paying cash to a selling shareholder for the stock of a corporation subject to claims by the shareholder which might equal or exceed the price paid by the purchaser for the stock. Furthermore, a release of L & N would not by operation of law, release GLMC when it becomes a subsidiary of L & N. Therefore, both GLMC and L & N must each specifically be released for the release to be effective.

8. The Agreement provides that the Trust will indemnify and hold GLMC, L & N and its officers, directors, shareholders and affiliates harmless against loss which they may incur by reason of a breach of any warranty or other obligation of the Trust under the Agreement or any inaccuracy in any representation set forth in the Agreement. It provides, however, that the liability of the Trust under the indemnification provision is limited to the portion of the purchase price, with interest, remaining to be paid to the Trust after the closing date, and, further, that L & N and GLMC are not entitled to bring any proceeding against the Trust pursuant to the indemnification provision at any time after the final payment date. It provides further that L & N may off-set any amount owing to it on account of the indemnification provision against any amount remaining to be paid by L & N on the purchase price.

9. The Bank states that it is customary for a purchaser of a controlling interest of stock in a company to request and receive representations and warranties from the seller respecting the condition of the business of the company whose stock is being sold and for the seller to indemnify the purchaser for any damages incurred by it resulting from a breach of any of such representations and warranties on the theory that the purchaser has the right to be made whole for what he has bargained and paid for. Usually the amount of such indemnification remains in force for a substantial (often indefinite) period of time. L & N states that normally it has retained the right to sue selling

shareholders for an indefinite period of time after the final payment date.

10. The Agreement evolved out of six complete drafts, copies of each of which were submitted to representatives of the Bank, which, along with the three individual trustees, is a signatory to the Agreement. The Bank representatives reviewed and commented on each draft and the Bank believes that these comments had a significant impact on the manner in which the Agreement was finally structured.

11. In summary, the applicants represent that the proposed transaction satisfies the statutory criteria of Act section 408(a) because:

(a) The cash purchase price offered by L & N is significantly higher than the market value as determined by an independent appraiser;

(b) The Bank, in its capacity as independent corporate Trustee of the Plan, was intimately involved on behalf of the Plan in the negotiation of the release and indemnification provisions of the Agreement and is a signatory to the Agreement;

(c) L & N and the Bank represent that release and indemnification provisions are customary in this type of transition and that the subject release and indemnification provisions are more favorable to the Plan than is customary for such provisions in similar transactions.

Notice to Interested Persons

Notice of the pending exemption will be given to all interested persons including participants and beneficiaries of the Trust, the Trustees, to GLMC and to L & N, within 10 days of the publication of the pending exemption in the Federal Register. Such notice shall include a copy of the notice of pendency of the exemption as proposed in the Federal Register and shall inform interested persons of their right to comment on or request a hearing regarding the proposed exemption. The notice will be provided to participants currently employed by GLMC by posting it at locations customarily used for employer notices to employees regarding labor-management matters. The notice will be provided to all other persons in person or by certified mail.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of

the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA

Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the negotiation of and execution of the Agreement by the Trustees of those provisions which provide for the release and indemnification of GLMC by the Plan.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 27th day of June, 1979.

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 79-20473 Filed 7-2-79; 8:43 am]

BILLING CODE 4510-29-M

[Application No. D-1122]

Proposed Exemption for Certain Transactions Involving St. Louis Union Trust Company

AGENCY: Department of Labor.

ACTION: Notice of Proposed Exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the purchase by the St. Louis Union Trust Company (the Trustee) of certain securities for its own account from the Collective Employees Trust Benefit Fund G (G Fund) of which it serves as trustee.

The proposed exemption, if granted, would affect participants and beneficiaries of participating employee benefit plans and the Applicant.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before August 6, 1979.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective July 27, 1977.

ADDRESS: All written comments and requests for a hearing (at least three

copies) should be sent to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216.

ATTENTION: Application No. D-1122. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare-Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Frederic G. Burke of the Department of Labor, (202) 523-8515. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the Trustee, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

The application was filed with both the Department and the Internal Revenue Service. However, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Collective Employee Benefit Trust Fund G of St. Louis Union Trust Company was created as a vehicle for the collective investment of the assets of pension trusts qualified under Section 501(a) of the Internal Revenue Code.

2. The G Fund was established by the Trustee in 1968 to invest primarily in common stocks or securities which were exchangeable into common stocks. The investments were to be in securities

which had potential for above average appreciation.

3. In 1970, the G Letter Stock Account (the Account) of the G Fund was established to hold securities which were segregated because they were not readily marketable due to restrictions on transferability. The securities were held in the Account for liquidation and thereafter for pro rata distribution of the proceeds to the qualified pension trusts which held units of the G Fund at the time of segregation.

4. The Trustee terminated the G Fund in 1973 because the Fund was not meeting its stated objectives.

5. On July 27, 1977, the Trustee determined that a \$125,000 Mesker Brothers, Incorporated, 8% Convertible Subordinated Debenture, due June 30, 1994 (Security), held by the Account was unmarketable at a reasonable price and the Trustee purchased it for its own corporate account, at the \$125,000 face value. The purchase price was set at face value to enable participating trusts to recoup the full investment although the Trustee considered the fair market value of this Security to be less than its face amount at such time. The Trustee received no fee or commission on the transaction.

6. The Trustee did not attempt to sell the Security to Mesker Brothers because the company was prohibited from redeeming the Security under its line of credit restrictions. The Trustee requested an appraisal of the value of the Security and was informed by Goldman, Sachs and Company, an independent authority, that there was no known market for the Security and that a determination of the value of the Security would involve a fee of \$50,000.

7. The purchase of the Security permitted the participating trusts to receive an immediate distribution of their full interest in the G Fund. Each of the 29 pension trusts with rights in the Account received their pro rata share of the sale proceeds on or about August 18, 1977. The sale represented the liquidation of the last asset held for the benefit of trusts participating in the G Fund.

8. On November 14, 1978, the Trustee sold the Security to an individual connected with Mesker Brothers at a price of \$90,000. The sale represented a net loss to the Trustee of \$35,000.

9. In summary, the Applicant represents that the transaction meets the statutory criteria of Act section 408(a) because,

1. it was a one-time transaction for cash;

2. the Account was able to dispose of an otherwise long, unmarketable obligation;

3. it enabled the Trustee to provide to the affected plans the ability to terminate their respective interests in the G Fund and realize the value of their respective interest immediately and in full.

Notice to Interested Persons

All 29 plan administrators of plans representing the Trusts which participated in the Account will be notified with a letter which will include a copy of the notice of proposed exemption as published in the Federal Register which will advise them of their rights to comment and/or to request a hearing within the period of time specified in the notice. Notification will be given within ten days after filing in the Federal Register of the notice of proposed exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act, and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other

provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471). If the exemption is granted, the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code; by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the purchase of the Security from the Account by the Trustee for its corporate account at the \$125,000 face value.

The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C. this 27th day of June, 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 79-20474 Filed 7-2-79; 8:45 am]

BILLING CODE 4510-29-M

MERIT SYSTEMS PROTECTION BOARD

Office of the Special Counsel

Public Availability of Certain Agency Head Reports and Certifications Under the Civil Service Reform Act

Section 1206(d) of title 5, United States Code, as added by the Civil Service Reform Act of 1978 (Pub. L. 95-454; 92 Stat. 1128), requires the Special Counsel to maintain and make available to the public a list of certain noncriminal whistleblower allegations and Special Counsel findings of violations of law, rule or regulation, together with the reports and certifications by heads of agencies (5 U.S.C. 1206(b)(3), (c)).

The public list and reports and certifications of agency heads are available to the public between 8:30 a.m. and 5:00 p.m., weekdays (except legal holidays) in the Office of the Special Counsel, Room 215, 1717 H Street, NW., Washington, D.C. 20419.

Dated: June 28, 1979.

H. Patrick Swygert,
Special Counsel.

[FR Doc. 79-20442 Filed 7-2-79; 8:45 am]

BILLING CODE 6325-01-M

PRESIDENT'S COMMISSION ON THE ACCIDENT AT THREE MILE ISLAND

Meetings

In accordance with the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following meetings:

Name: President's Commission on the Accident at Three Mile Island.

Place: Washington, D.C., Georgetown University, Hall of Nations, The Edmund Walsh Building (38th Street, N.W. between N and Prospect Streets, N.W.)

TIME: Wednesday, July 18, 10:00 a.m.—4:00 p.m.; Thursday, July 19, 10:00 a.m.—4:00 p.m.; Friday, July 20, 10:00 a.m.—6:00 p.m.

Proposed Agenda:

- I. Testimony of Witnesses
- II. Discussion of issuance of *subpoenas ad testificandum* and *duces tecum*.

The Commission was established by Executive Order 12130 on April 11, 1979, to conduct a comprehensive study and investigation of the accident involving the nuclear power facility on Three Mile Island in Pennsylvania.

Upon completion of the receiving of testimony and any other business on July 20, 1979, the Commission will go into closed session to discuss issuance of *subpoena* for subsequent meetings.

Except for final closed session, the meetings are open to the public. Inquiries should be addressed to Barbara Jorgenson (202/653-7677).

Barbara Jorgenson,
Public Information Director.

June 28, 1979.

[FR Doc. 79-20337 Filed 7-2-79; 8:45 am]

BILLING CODE 6820-AJ-M

DEPARTMENT OF THE TREASURY

Customs Service

Certain Valves and Parts Thereof From Italy; Receipt of Countervailing Duty Petition and Initiation of Investigation

AGENCY: United States Customs Service, Treasury Department.

action: Initiation of Countervailing Duty Investigation.

SUMMARY: This notice is to advise the public that a satisfactory petition has been received and a countervailing duty investigation is being initiated to determine if benefits are paid by the Government of Italy to manufacturers and exporters of certain valves and parts thereof which constitute the payment of a bounty or grant within the meaning of the U.S. countervailing duty law. A preliminary determination will be made no later than October 18, 1979, and the final determination no later than April 18, 1980.

EFFECTIVE DATE: July 3, 1979.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, Operations Officer, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, telephone (202) 566-5492.

SUPPLEMENTARY INFORMATION: A petition in satisfactory form was received on April 18, 1979, from the Valve Manufacturers' Association alleging that benefits received from the Government of Italy by manufacturers and exporters of certain valves and parts thereof constitute the payment or bestowal of a bounty or grant within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303).

The products covered by this investigation are taps, cocks, valves, and similar devices, however operated and parts thereof, used to control the flow of liquids, gases or solids, provided for in item numbers 680.2010 through 680.2080, 680.2205 through 680.2270, 680.2500, and 680.2720 through 680.2740 of the Tariff Schedules of the United States Annotated (TSUSA).

Petitioner alleges that tax rebates received by exporters of iron and steel

products, which include valves, under Italian Law No. 639 constitute bounties or grants. The Treasury has, in a number of prior determinations, found that certain rebates paid under Law 639 to exporters of products made of steel constitute a bounty or grant within the meaning of the countervailing duty statute. It has also consistently maintained that the non-excessive rebate upon export of such indirect taxes, if incurred on inputs physically incorporated in a final product, does not constitute a countervailable benefit. In the instant case, it will be necessary to determine the extent to which this criterion may reduce the total subsidy, if any, paid to valve producers.

Other programs under which bounties or grants which petitioner has alleged may benefit valve producers and exporters are:

(1) Special benefits provided to firms located in Southern Italy, an area known as the Mezzogiorno. These benefits allegedly include forgiveness of corporate income tax, cash grants for the building of plants and acquisition of machinery, and loans for investment at interest rates below prevailing commercial rates;

(2) Fiscal incentives for enterprises established in other designated regions, under Italian Law No. 675. Firms determined to be eligible by the Minister of Industry allegedly receive benefits similar to those described above under the Mezzogiorno program;

(3) Substantial exemptions from local and national corporate taxes, allegedly available to enterprises established in other regions;

(4) Government cash grants or low-cost loans for research and development costs, available to industrial firms eligible to receive benefits under Law No. 675 and the Mezzogiorno program;

(5) Loans for exporters at rates which are one-half the commercial interest rate through a government-supported organization known as Mediocredito.

(6) Insurance for exporters at subsidized premium rates provided by a government agency called the Istituto Nazionale delle Assicurazioni (INA).

Petitioner has not alleged that benefits under any of the foregoing six programs are paid to or received by Italian valve producers exporting to the United States, nor that it has made efforts to determine from public and industry sources reasonably available whether such benefits are likely to have been paid to or received by such producers. However, because the allegations with respect to benefits under Law 639, based on prior determinations, warrant the initiation of this investigation, it is

appropriate to inquire as well about the other programs that may provide bounties or grants under the law.

Pursuant to section 303(a)(4) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)(4)), the Secretary of the Treasury is required to issue a preliminary determination as to whether or not any bounty or grant is being paid or bestowed as defined by the statute within 6 months of receipt, in satisfactory form, of a petition alleging the payment or bestowal of a bounty or grant. A final determination must be issued within 12 months of the receipt of such a petition.

Therefore, a preliminary determination regarding this petition will be made no later than October 18, 1979, as to whether or not the alleged payments or bestowals conferred by the Government of Italy upon the manufacture, production, or exportation of the merchandise described above constitute a bounty or grant within the meaning of section 303, Tariff Act of 1930, as amended. A final determination will be issued no later than April 18, 1980.

This notice is published pursuant to section 303(a)(3) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)(3)), and § 159.47(c) of the Customs Regulations (19 CFR 159.47(c)).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order No. 101-5, May 16, 1979, the provisions of Treasury Department Order No. 165, Revised, November 2, 1954, and § 159.47 of the Customs Regulations (19 CFR 159.47), insofar as they pertain to the initiation of a countervailing duty investigation by the Commissioner of Customs, are hereby waived.

Robert H. Mundheim,
General Counsel of the Treasury.

June 26, 1979.

[FR Doc. 79-20482 Filed 7-2-79; 8:45 am]

BILLING CODE 4810-22-M

[Supplement to Department Circular—
Public Debt Series—No. 14-79]

Treasury Bonds of 1994; Interest Rate

The Secretary of the Treasury announced on June 27, 1979, that the interest rate on the bonds described in Department Circular—Public Debt Series—No. 14-79, dated June 21, 1979, will be 8¾ percent. Interest on the

bonds will be payable at the rate of 8¾ percent per annum.

Paul H. Taylor,
Fiscal Assistant Secretary.

Supplementary Statement

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

[FR Doc. 79-20516 Filed 7-2-79; 8:45 am]

BILLING CODE 4010-40-M

**INTERSTATE COMMERCE
COMMISSION**

[Notice No. 101]

Assignment of Hearings

June 28, 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.

Correction:¹

No. MC-14215 (Sub-No. 18F), Smith Truck Service, Inc., now assigned for hearing on July 30, 1979 (1 week) at Cleveland, OH, in a hearing room to be later designated.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-20537 Filed 7-2-79; 8:45 am]

BILLING CODE 7035-01-M

[Notice No. 102]

Assignment of Hearings

June 28, 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

¹This notice corrects the place of hearing to Cleveland, OH., instead of Cincinnati.

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-48F), Central Transport, Inc., now assigned for hearing on July 23, 1979 (1 week), at Lansing, MI, and will be held in the Capitol Park Motor Hotel, 500 South Capitol Avenue.
- AB 1 (Sub-73F), Chicago and North Western Transportation Company Abandonment Near Marathon And Alton In Buena Vista, Clay, O'Brien and Sioux Counties, IA., now assigned for hearing on July 23, 1979 at Alton, Iowa., and will be held at the Community Bldg., 1101 3rd Avenue.
- MC 95876 (Sub-254F), Anderson Trucking Service, Inc., now assigned for hearing on July 19, 1979 (2 days), at St. Paul, MN., and will be held in Court Room No. 2, Federal Building, 316 N. Robert.
- MC 111545 (Sub-268F), Homes Transportation Company, Inc., now assigned for hearing on July 23, 1979 (3 days), at St. Paul, MN., and will be held in the Court Room No. 2, Federal Building, 316 N. Robert.
- MC 115826 (Sub-362F), W. J. Digby, Inc., now assigned for hearing on July 26, 1979 (1 day), at St. Paul, MN., and will be held in the Court Room No. 2, Federal Building, 316 N. Robert.
- MC 30844 (Sub-632F), Kroblin Refrigerated Express, Inc., now assigned for hearing on July 27, 1979 (1 day), at St. Paul, MN., and will be held in the Court Room No. 2, Federal Building, 316 N. Robert.
- MC 138882 (Sub-78F), Wiley Sanders, Inc., now assigned for hearing on July 24, 1979 (1 day), at Nashville, TN., and will be held in Room No. 961, U.S. Court House Bldg., 801 Broadway.
- MC 143625 (Sub-2F), Reunion Transport Company, Inc., now assigned for hearing on July 25, 1979 (3 days), at Nashville, TN., and will be held in Room No. 961, U.S. Court House Bldg., 801 Broadway.
- MC 144247 (Sub-3F), Downey Enterprises Inc., now assigned for hearing on July 9, 1979 (1 day) at Denver, CO., and will be held in Room No. 158 U.S. Customs House, 721 19th Street.
- MC 145498 (Sub-2F), Skyline Construction Company, Inc., now assigned for hearing on July 11, 1979 (3 days), at Denver CO., and will be held in Room No. 158, U.S. Customs House, 721 19th Street.
- MC 108380 (Sub-95F), Johnston's Fuel Liners, Inc., now assigned for hearing on July 19, 1979 (3 days), at Denver, Co., Class Room 202, Law School Bldg., University of Denver Law School, 200 W. 14th Avenue.
- MC 120427 (Sub-23F), Williams Transfer, Inc., now assigned for hearing on August 6, 1979 at Dallas, TX., and will be held in Room No. 5A15-17, Federal Bldg., 1100 Commerce Street.
- MC 119988 (Sub-173F), Great Western Trucking Co., Inc., now assigned for hearing on August 7, 1979 at Dallas, TX., and will be held in Room 5A15-17, Federal Bldg., 1100 Commerce Street.
- MC 44735 (Sub-40F), Kissick Truck Lines, Inc., now assigned for hearing on August 9, 1979

at Dallas, TX., and will be held in Room No. 5A15-17, Federal Bldg., 1100 Commerce Street.

- MC-C-10159, International Brotherhood Of Teamsters Chauffeurs, Warehousemen & Helpers Of America V. Ringsby Truck Lines, Inc., now assigned for hearing on July 10, 1979 at Denver, CO., and will be held in Winchester Room, Ramada Inn-Smith Road, 6090 Smith Road.
- AB 7 (Sub-68F), Stanley E.G. Hillman, Trustee Of The Property Of Chicago, Milwaukee, St. Paul And Pacific Railroad Company, Debtor, Abandonment Near Ortonville And Fargo, In Big Stone And Traverse Counties, MN; Roberts County, SD, And Richland And Cass Counties, ND., now assigned for hearing on July 23, 1979 at Walpeton, ND., and will be held in the Law Enforcement Center, (Basement Room), 4th St. 3rd Avenue.
- No. 37087, Clevepak Corporation V. Checker Express Co. And O. K. Motor Service, Inc. now assigned for hearing on July 17, 1979 at Chicago, IL., and will be held in Room No. 208, Loyola Law School Bldg., 41 East Pearson St.
- MC 109633 (Sub-38F), Arbet Truck Lines, Inc., now assigned for hearing on July 26, 1979 at Chicago, IL., is canceled and transferred to Modified Procedure.
- MC 529 (Sub-7F), Brooks Transportation, Inc., transferred to Modified Procedure.
- MC 129631 (Sub-63F), Pack Transport, Inc., now assigned for hearing on July 11, 1979, at Billings, MT. is postponed indefinitely.
- MC 143328 (Sub-15F), Eugene Tripp Trucking, now assigned for hearing on July 10, 1979 at San Francisco, CA. is postponed to September 11, 1979 (4 days), at San Francisco, CA. in a hearing room to be designated later.
- MC 2900 (Sub-342), Ryder Truck Line, Inc., now assigned for hearing on July 11, 1979 at Birmingham, AL. is postponed to July 18, 1979 (3 days), at Birmingham, AL. in a hearing room to be designated later.
- MC 115162 (Sub-459F), Poole Truck Lines, Inc., transferred to Modified Procedure.
- I & S No. 8863, Switching and Minimum Carload Charges, Houston, Texas, now being assigned for continued hearing on July 9, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.
- I & S No. 9212, Coal, Caballo Jct. and Rawhide Jct., Wyo., to Sergeant Bluff, Iowa, now being assigned for hearing on July 24, 1979, at the Offices of the Interstate Commerce Commission, Washington, D.C.
- MC 119741 (Sub-131F), Green Field Transport Company, Inc., now assigned for hearing on July 23, 1979 at Chicago, IL., and will be held in Room No. 208, Loyola Law School Bldg., 41 East Pearson St.
- MC 124078 (Sub-934F), Schwerman Trucking Co., now assigned for hearing on July 26, 1979 at Chicago, IL., and will be held in Room No. 208, Loyola Law School Bldg., 41 East Pearson St.
- MC 116077 (Sub-396F), DSI Transports, Inc., now assigned for hearing on July 31, 1979 (4 days), at Dallas, TX., and will be held in Room No. 5A15-17, Federal Bldg., 1100 Commerce Street.

MC 51146 (Sub-664F), Schneider Transport, Inc., now assigned for hearing on July 26, 1979 (1 day), at Chicago, IL., in a hearing room to be later designated.

MC 51146 (Sub-664F), Schneider Transport, Inc., now assigned for hearing on July 26, 1979 (1 day), at Chicago, IL., in a hearing room to be later designated.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-25333 Filed 7-2-79; 2:45 pm]

BILLING CODE 7035-01-M

[Exemption Under Provision of Rule 19 of the Mandatory Car Service Rules Ordered in Ex Parte No. 241; Twenty-Seventh Revised Exemption No. 129]

Car Service Rules

It appearing. That the railroads named herein own numerous forty-foot plain boxcars; that under present conditions, there is virtually no demand for these cars on the lines of the car owners; that return of these cars to the car owners would result in their being stored idle on these lines; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of plain boxcars owned by the railroads listed herein, resulting in unnecessary loss of utilization of such cars.

It is ordered. That, pursuant to the authority vested in me by Car Service Rule 19, plain boxcars described in the Official Railway Equipment Register, ICC RER 6410-A, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM," with inside length 44-ft. 6-in. or less, regardless of door width and bearing reporting marks assigned to the railroads named below, shall be exempt from provisions of Car Service Rules 1(a), 2(a), and 2(b).

Atlanta & Saint Andrews Bay Railway Company, Reporting Marks: ASAB
Chicago, West Pullman & Southern Railroad Company, Reporting Marks: CWP
Illinois Terminal Railroad Company, Reporting Marks: ITC
Louisville, New Albany & Corydon Railroad Company, Reporting Marks: LNAC
Missouri-Kansas-Texas Railroad Company, Reporting Marks: MKT-BKTY
Southern Railway Company,* Reporting Marks: CG-NS-SA-SOU

Effective 12:01 a.m., June 15, 1979, and continuing in effect until further order of this Commission.

* Addition.

Issued at Washington, D.C., June 12, 1979.
Interstate Commerce Commission,

Joel E. Burns,
Agent.

[FR Doc. 79-20542 Filed 7-2-79; 8:35 am]
BILLING CODE 7035-01-M

[Exception No. 4 to Corrected Second Revised Service Order No. 1301]

Car Service Rules; Burlington Northern Inc.

Pursuant to the authority vested in me by Section (a)(4) of Corrected Second Revised Service Order No. 1301, Burlington Northern Inc. is authorized to use 40-ft., narrow-door plain boxcars owned by Chicago and North Western Transportation Company or by Chicago, Rock Island and Pacific Railroad Company from stations in the State of North Dakota destined to Minneapolis, Minnesota, subject to the following conditions:

1. Cars must be used in compliance with United States Customs regulations.
2. Cars must be used in compliance with Car Service Rules 1 and 2 adopted by the Commission in Docket Ex Parte No. 241.

3. Car Relocation Directives and Car Assistance Directives issued by the Car Service Division, Association of American Railroads, applicable to such cars remain fully in effect.

Effective June 19, 1979.

Expires September 30, 1979.

Issued at Washington, D.C., June 19, 1979.

Joel E. Burns,

Director, Bureau of Operations.

[FR Doc. 79-20543 Filed 7-2-79; 8:43 am]

BILLING CODE 7035-01-M

Fourth Section Application for Relief

June 28, 1979

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. by July 18, 1979. FSA No. 43712, Seatrain International, S.A. No. WEE-31, intermodal rates on general commodities in containers, between rail terminals on the United States Pacific Coast, on the one hand, and on the other, ports in Europe and Africa via Galveston and Houston, Texas to be published in its Tariff ICC STLU 314, FMC No. 137 and two agency tariffs. Grounds for relief—water competition.

By the Commission.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-20541 Filed 7-2-79; 8:45 am]

BILLING CODE 7035-01-M

[Permanent Authority Decisions Volume No. 93]

Permanent Authority Applications; Decision-Notice

Decided: June 12, 1979.

The following applications, filed on or after March 1, 1979, are governed by Special-Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the Federal Register. Protests (such as were allowed to filings prior to March 1, 1979) will be rejected. A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace the extent to which petitioner's interest will be represented by other parties, the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rules may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to timely prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administrative acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and

the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. § 10930(a) [formerly section 210 of the Interstate Commerce Act].

In the absence of legally sufficient petitions for intervention, filed on or before August 2, 1979 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

H. G. Houshe, Jr.,

Secretary.

MC 108119 (Sub-133F), filed March 29, 1979. Applicant: E. L. MURPHY TRUCKING COMPANY, a corporation, P.O. Box 43010, St. Paul, MN 55164. Representative: Andrew R. Clark, 1000 First National Bank Building, Minneapolis, MN 55402. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, from the facilities of Nucor Steel Division of Nucor Corp., at Jewett, TX, to points in NM, CO, NE, KS, OK, IA, MO, IL, IN, and OH. (Hearing site: Dallas or Houston, TX.)

MC 112989 (Sub-91F), filed March 23, 1979. Applicant: WEST COAST TRUCK LINES, INC., 85647 Highway 99 South, Eugene, OR 97405. Representative: John W. White, Jr. (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *lumber and lumber mill products* from St. Joseph, MO, to points in AZ, CA, ID, MT, NV, OR, UT, WA, and WY. (Hearing site: Kansas City, MO, or Chicago, IL.)

MC 114569 (Sub-296F), filed March 30, 1979. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins

(same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *confectionery*, from Montrose, CO, to Dallas, TX. (Hearing site: Denver, CO, or Washington, DC.)

Note.—Dual operations may be involved.

MC 117119 (Sub-730F), filed March 28, 1979. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Representative: Martin M. Geffon, P.O. Box 156, Mt. Laurel, NJ 08054. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *Chemicals* (except in bulk), from Rahway, NJ, to Marsing, ID; (2) *agricultural insecticides and agricultural fungicides* (except commodities in bulk), from Marsing, ID, to St. Louis, MO; and (3) *plastic containers*, from Kansas City, MO, to Marsing, ID. (Hearing site: Washington, DC, or New York, NY.)

MC 118089 (Sub-33F), filed March 28, 1979. Applicant: ROBERT HEATH TRUCKING, INC., 2909 Avenue C, P.O. Box 2501, Lubbock, TX 79408. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *animal feed, feed ingredients, and feed additives*, (except commodities in bulk), and (2) *materials and supplies* used in the manufacture, and distribution of the commodities in (1) above, (except commodities in bulk), from the facilities of Kal Kan Foods, Inc., at or near Los Angeles and Irvine, Ca, to points in the United States (except AK and HI). (Hearing site: Los Angeles, CA, or Lubbock, TX.)

Note.—Dual operations may be involved.

MC 123048 (Sub-434F), filed March 29, 1979. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 5021 21st Street, Racine, WI 53406. Representative: John L. Bruemmer, 121 West Doty Street, Madison, WI 53703. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *forklift trucks and attachments, accessories, and parts* for forklift trucks, from Waco, TX, to points in the United States) except AK and HI). (Hearing site: Dallas, TX, or Washington, DC.)

MC 125358 (Sub-27F), filed March 8, 1979. Applicant: MID-WEST TRUCK LINES, LTD., 1216 Fife Street, Winnipeg, Manitoba, Canada. Representative:

James E. Ballenthin, 630 Osborn Building, St. Paul, MN 55102. To operate as a *contract carrier*, by motor vehicle, in foreign commerce only over irregular routes, transporting *materials and equipment* used in the manufacture of buses, from the port of entry on the international boundary line between the United States and Canada at or near Pembina, ND, to the facilities of Universal Coach Parts, Inc., at or near Northlake, IL, under continuing contract with Universal Coach Parts, Inc., of Northlake, IL. (Hearing site: Chicago, IL.)

Note.—Dual operations may be involved.

MC 127539 (Sub-72F), filed March 29, 1979. Applicant: PARKER REFRIGERATED SERVICE, INC., 1108 54th Avenue East, Tacoma, WA 98424. Representative: Michael D. Duppenhaller, 211 South Washington Street, Seattle, WA 98104. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by grocery and food business houses, in vehicles equipped with mechanical refrigeration (except in bulk) from Los Angeles and Ontario, CA, to points in AZ, CO, ID, MT, NV, NM, UT, OR, WA, and WY, restricted to the transportation of traffic originating at or destined to the facilities of Kraft, Inc. (Hearing site: Los Angeles, CA, or Phoenix, AZ.)

MC 128909 (Sub-16F), filed March 12, 1979. Applicant: COMMODORE CONTRACT CARRIERS, INC., 400 West Brooklyn Avenue, Syracuse, IN 46567. Representative: Leonard A. Jaskiewicz, 1730 M Street NW., Suite 501, Washington, DC 20036. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (a) *trucks*, in secondary movements, (b) *automobiles*, and (c) *motor homes*, from the facilities of Commodore Recreational Vehicles, Inc., at (a) Marlette, MI, (b) Middleburg, PA, and (c) Syracuse, IN, to points in the United States (except AK and HI), under continuing contract(s) with Commodore Recreational Vehicles, Inc., of Syracuse, IN. (Hearing site: Washington, DC.)

MC 128909 (Sub-17F), filed March 12, 1979. Applicant: COMMODORE CONTRACT CARRIERS, INC., 400 West Brooklyn Avenue, Syracuse, IN 46567. Representative: Leonard A. Jaskiewicz, 1730 M Street NW., Suite 501, Washington, DC 20036. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *materials, equipment, supplies, furniture, appliances, and accessories* used in the

manufacture and distribution of (1) trailers designed to be drawn by passenger automobiles, (2) buildings in sections, mounted on wheeled undercarriages with hitch-ball connectors, (3) buildings in sections, (4) motor homes, (5) automobiles, and (6) trucks, from points in the United States (except AK and HI), to (a) the facilities of Commodore Home Systems, Inc., at (i) Danville, VA, (ii) Haleyville, AL, (iii) Lebanon and McMinnville, OR, (iv) Syracuse and Bourbon, IN, (v) Clarion, PA, (vi) Leesburg and Largo, FL, (vii) Ottawa, KS, (viii) Worthington, MN, (ix) Colton, Woodland, and Santa Fe Springs, CA, and (x) Texarkana, TX, and (b) the facilities of Commodore Recreational Vehicles, Inc., at (i) Syracuse, IN, (ii) Marlette, MI, and (iii) Middleburg, PA, under continuing contracts with Commodore Home Systems, Inc., and Commodore Recreational Vehicles, Inc., both of Syracuse, IN. (Hearing site: Washington, DC.)

MC 133189 (Sub-23F), filed March 29, 1979. Applicant: VANT TRANSFER, INC., 1229 Osborne Road, Minneapolis, MN 55432. Representative: John Van de North, Jr., 2200 First National Bank Building, St. Paul, MN 55101. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1)(a) *metal and metal articles*, and (b) *materials, equipment, and supplies* used in the manufacture of metal and metal articles, between the facilities of Gate City Steel Corporation, at (i) Gary, IN, (ii) Sterling, IL, (iii) Davenport, IA, (iv) St. Paul, MN, and (v) Omaha, NE; (2) *metal and metal articles*, from the facilities named in (1) above to points in IL, IN, WI, IA, NE, MN, MO, ND, and SD; and (3) *materials, equipment, and supplies* used in the manufacture of metal and metal articles, from points in IL, IN, WI, IA, NE, MN, MO, ND, and SD, to the facilities named in (1) above. (Hearing site: Omaha, NE, or St. Paul, MN.)

MC 136818 (Sub-66F), filed March 30, 1979. Applicant: SWIFT TRANSPORTATION COMPANY, INC., 335 West Elwood Road, P.O. Box 3902, Phoenix, AZ 85030. Representative: Donald E. Fernaays, 4040 East McDowell Road, Suite 320, Phoenix, AZ 85008. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *non-frozen canned goods*, (1) from Belledeau and St. Francisville, LA, to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, WY, MO, KS, and OK, and (2) from Hoopeston and

Princeville, IL, to points in AZ, CA, CO, ID, MT, NV, NM, OR, TN, TX, UT, WA, and WY. (Hearing site: Chicago, IL, or Phoenix, AZ.)

Note.—Dual operations may be involved.

MC 138109 (Sub-10F), filed March 28, 1979. Applicant: RAY J. FORNEY, INC., P.O. Box 207, Ashton, IL 61006. Representative: E. Stephen Heasley, 805 McLachlen Bank Building, Washington, DC 20001. To operate as a *contract carrier*, by motor vehicle, in interstate of foreign commerce, over irregular routes, transporting (1) *salt, salt products, pepper, and food seasoning compounds*, (except commodities in bulk), and (2) *materials, equipment, and supplies* used in the manufacture, sale, and distribution of the commodities in (1) above, (except commodities in bulk), between the facilities of Morton Salt Company, Division of Morton-Norwich Incorporated, at or near Saltair, UT, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with Morton Salt Company, Division of Morton-Norwich Incorporated, of Chicago, IL. (Hearing site: Chicago, IL.)

MC 140829 (Sub-203F), filed March 28, 1979. Applicant: CARGO, INC., P.O. Box 206, Sioux City, IA 51102. Representative: William J. Hanlon, 55 Madison Avenue, Morristown, NJ 07960. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *aluminum*, (2) *metal products*, and (3) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, (except commodities in bulk, in tank vehicles), from the facilities of Kero Metal Products Co., Inc., at or near Carlstadt, NJ, to points in AR, IL, IN, IA, KS, LA, MI, MN, MO, NE, OH, OK, TX, and WI, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC 140829 (Sub-205F), filed March 29, 1979. Applicant: CARGO, INC., P.O. Box 206, Sioux City, IA 51102. Representative: William J. Hanlon, 55 Madison Avenue, Morristown, NJ 07960. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *paper and paper products*, from the facilities of The C. W. Zumbiel Company, at Cincinnati, OH, to points in AR, IA, KS, LA, MN, MO, NE, OK, TX, and WI, restricted to the transportation of traffic originating at the named origin and destined to the indicated

destinations. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC 140829 (Sub-206F), filed March 29, 1979. Applicant: CARGO, INC., P.O. Box 206, Sioux City IA 51102. Representative: William J. Hanlon, 55 Madison Avenue, Morristown, NJ 07960. To operate as a *common carrier*, by motor vehicle, in interstate of foreign commerce, over irregular routes, transporting *foodstuffs*, in vehicles equipped with mechanical refrigeration (except in bulk, in tank vehicles), from the facilities of Anderson Clayton Foods, (1) at or near Jacksonville, IL, to points in AR, CT, IN, IA, KS, LA, MN, MO, NE, NH, OK, RI, TX, and VT, (2) at or near Sherman, TX, to points in CO, CT, IL, IN, IA, KS, MD, MA, MI, MN, MO, NE, NH, NJ, NY, OH, PA, RI, SD, VT, and WI, and (3) at or near Humboldt, TN, to Jacksonville, IL, and Sherman, TX, restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC 143059 (Sub-71F), filed March 28, 1979. Applicant: MERCER TRANSPORTATION CO., a corporation, 12th & Main Streets, P.O. Box 35610, Louisville, KY 40232. Representative: James L. Stone (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, from the facilities of Jones & Laughlin Steel Corp., at or near Chicago, IL, to points in the United States (except AK and HI), restricted to the transportation of traffic originating at the named facilities. (Hearing site: Louisville, KY, or Washington, DC.)

MC 143698 (Sub-2F), filed March 1, 1979. Applicant: CAST NORTH AMERICAN LTD., 4150 Ste-Catharine Street, West, Montreal, Quebec, Canada H3Z 2Y5. Representative: Richard H. Streeter, 1729 H Street NW., Washington, DC 20006. To operate as a *common carrier*, by motor vehicle, in foreign commerce only, over irregular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, commodities in bulk, and those requiring special equipment), in intermodal containers, between Detroit, MI, on the one hand, and, on the other, points in OH, MI, KY, and IN, restricted to the transportation of traffic having a prior or subsequent movement by water. (Hearing site: Washington, DC, or Detroit, MI.)

Note.—Tacking is authorized, pending a final grant of authority in carrier's application No. MC-143698 Sub 1F, to provide a through service between Detroit, MI, on the one hand, and, on the other, Chicago, IL.

MC 144978 (Sub-5F), filed March 23, 1979. Applicant: MIDWESTERN PLASTICS AND CHEMICALS, INC., 1025 Avenue M, Grand Prairie, TX 75050. Representative: William P. Jackson, Jr., 3426 N. Washington Boulevard, P.O. Box 1240, Arlington, VA 22210. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *plastic resin* (except in bulk), (a) from points in TX and LA to points in NC, SC, WI, AL, AR, GA, OH, MI, TN, KY, IL, IN, KS, OK, MO, MS, and CO, (b) from points in LA to points in TX, (c) from Parkersburg, WV, to points in TX, NC, and IL, (d) from points in MA to points in TX, and (e) from Bardstown, KY, to points in TX and GA, under continuing contract(s) with Albis Corporation, of Houston, TX. (Hearing site: Houston, TX, or Washington, DC.)

MC 145298 (Sub-3F), filed March 6, 1979. Applicant: J. R. BUTLER, INC., 1031 Reeves Street, Dunmore, PA, 18512. Representative: Andrew Jay Burkholder, 275 East State Street, Columbus, OH 43215. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, between points in OH, MI, PA, and NY, under continuing contracts with (a) Gibraltar Steel Corporation, of Buffalo, NY, (b) Seneca Steel Corporation, of Buffalo, NY, (c) Beals, McCarthy and Rogers, Inc., of Buffalo, NY, (d) Lake Eastern Steel Products Co., of Niles, OH, (e) Steel Bar Service, Inc., of Niles, OH, and (f) Gibraltar of Rochester, Inc., of Rochester, NY. (Hearing site: Columbus, OH.)

MC 145468 (Sub-9F), filed March 23, 1979. Applicant: KSS TRANSPORTATION CORP., P.O. Box 3052, North Brunswick, NJ 08402. Representative: Elaine M. Conway, 10 South LaSalle Street, Suite 1600, Chicago, IL, 60603. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *canned foodstuffs*, from the facilities of Aunt Nellie's Foods Inc., at Clyman, WI, to points in AL, AR, CO, FL, KS, KY, GA, IA, MA, MD, MI, MN, MO, NE, NY, NC, SC, PA, TN, TX, VA, WV, and OH. (Hearing site: Chicago, IL.)

Note.—Dual operations may be involved.

MC 145528 (Sub-1F), filed March 29, 1979. Applicant: TOMKO TRUCKING, INC., 1850 Enterprise Drive, De Pere, WI

54115. Representative: Wayne W. Wilson, 150 East Gilman Street, Madison, WI 53703. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *malt beverages and malt beverage dispensing equipment*, from St. Paul, MN, to De Pere, WI, under continuing contract(s) with Kay Beer Distributing, Inc., of De Pere, WI. (Hearing site: Madison or Milwaukee, WI.)

MC 146598 (Sub-2F), filed March 29, 1979. Applicant: NORMAN J. LENZ, Route 2, County Gate Lane, Black Creek, WI 54106. Representative: Wayne W. Wilson, 150 East Gilman Street, Madison, WI 53703. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *paper and paper products*, from the facilities of Fox River Paper Company, Division of Fox Valley Corporation, at Appleton, WI, to points in AZ, CA, OR, and WA. (Hearing site: Appleton or Madison, WI.)

[FR Doc. 79-20539 Filed 7-2-79; 8:45 am]
BILLING CODE 7035-01-M

[Permanent Authority Decisions Volume No. 91]

Permanent Authority Applications; Decision-Notice

Decided: June 7, 1979.

The following applications, filed or after March 1, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the Federal Register. Protests (such as were allowed to filings prior to March 1, 1979) *will be rejected*. A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave

to intervene under Rule 247(1) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace the extent to which petitioner's interest will be represented by other parties, the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rules may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to timely prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administrative acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract

carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. § 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. § 10101 subject to the right of the Commission, which to expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. § 10930(a) [formerly section 210 of the Interstate Commerce Act].

In the absence of legally sufficient petitions for intervention, filed on or before August 2, 1979 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill.

H.G. Homme, Jr.,

Secretary.

MC 2368 (Sub-92F), filed March 23, 1979. Applicant: BRALLEY-WILLET TANK LINES, INC., 2212 Deepwater Terminal Rd., P.O. Box 495, Richmond, VA 23204. Representative: Steven L. Weiman, Suite 145, 4 Professional Drive, Gaithersburg, MD 20760. To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over

irregular routes, transporting *lubricating oils*, in bulk, from Marcus Hook; PA, to Richmond, VA. (Hearing site: Richmond, VA, or Washington, DC.)

MC 31389 (Sub-277F), filed March 23, 1979. Applicant: McLEAN TRUCKING COMPANY, a corporation; 1920 West First Street, Winston-Salem, NC 27104. Representative: David F. Eshelman, P.O. Box 213, Winston-Salem, NC 27102. To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *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), (1) between Winston-Salem, NC, on the one hand, and, on the other, Des Moines, IA, and (2) between Durham and Reidsville, NC, and Richmond, VA, on the one hand, and, on the other, Des Moines, IA, restricted in (1) above to the transportation of traffic originating at or destined to the facilities of R. J. Reynolds Tobacco Company, and in (2) above to the transportation of traffic originating at or destined to the facilities of American Tobacco Company, Division of American Brands, Inc. (Hearing site: Washington, DC, or Winston-Salem, NC.)

MC 31389 (Sub-278F), filed March 23, 1979. Applicant: McLEAN TRUCKING COMPANY, a corporation; 1920 West First Street, Winston-Salem, NC 27104. Representative: David F. Eshelman, P.O. Box 213, Winston-Salem, NC 27102. To operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *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), (1)(a) between Savannah, GA, and Jacksonville, FL over U.S. Hwy. 17, and (b) between junction of U.S. Hwy 17 and Interstate Hwy 95 and Jacksonville, FL, over Interstate Hwy 95, (2) between Augusta, GA, and Jacksonville, FL, over U.S. Hwy 1, (3) between Augusta, GA, and Savannah, GA, from Augusta over U.S. Hwy 25 to junction U.S. Hwy 80, then over U.S. Hwy 80 to Savannah, and return over the same route, (4) between the SC-GA State line and the GA-AL State line (a) from the SC-GA State line over U.S. Hwy 278 to junction U.S. Hwy 78 near Atlanta, GA, then over U.S. Hwy 78 to the GA-AL State line, and return over the same route, and (b) over Interstate Hwy 20, (5) between

Savannah and Atlanta, GA, from Savannah over Interstate Hwy 16 to junction Interstate Hwy 75, at Macon, GA, then over Interstate Hwy 75 to Atlanta, and return over the same route, (6) between Savannah and Macon, GA, over U.S. Hwy 80, (7) between Macon, GA, and the GA-FL State line (a) over U.S. Hwy 41, and (b) over Interstate Hwy 75, (8) between Madison and Dublin, GA, over U.S. Hwy 441, (9) between junction U.S. Hwys 80 and 280, at or near Blythe, and Columbus, GA, over U.S. Hwy 280, (10) between Brunswick, GA, and Dothan, AL, over U.S. Hwy 84, (11) between Atlanta, GA, and the GA-FL State line, over U.S. Hwy 19, (12) between Waycross, GA, and Eufaula, AL, over U.S. Hwy 82, (13) between Macon and Brunswick, GA, from Macon over U.S. Hwy 23 to Hazlehurst, GA, then over U.S. Hwy 341 to Brunswick, and return over the same route, (14) between Midway and Waycross, GA, over U.S. Hwy 82, (15) between the SC-GA State line and Statesboro, GA, over U.S. Hwy 301, (16) between Wrens and Macon, GA, from Wrens over GA Hwy 88 to Sandersville, then over GA Hwy 24 to to Milledgeville, then over GA Hwy 49 to Macon, and return over the same route, (17) between Helena, GA and the GA-FL State line, over U.S. Hwy 441, (18) between the TN-GA State line and Bainbridge, GA, over U.S. Hwy 27, (19) between Macon and Columbus, GA, over U.S. Hwy 80, (20) between Atlanta, GA, and Lanett, AL, (a) over U.S. Hwy 29, and (b) over Interstate Hwy 85, (21) between Albany and Donaldsonville, GA, over GA Hwy 91, (22) between Atlanta and Blairsville, GA, over U.S. Hwy 19, (23) between Madison and Clayton, GA, over U.S. Hwy 441, (24) between Atlanta, GA, and the GA-TN State line (a) over Interstate Hwy 75, and (b) over U.S. Hwy 41, (25) between Dalton and Clayton, GA, over U.S. Hwy 76, (26) between Atlanta, GA and the GA-SC State line, over Interstate Hwy 85, (27) between Atlanta, GA, and Memphis, TN, from Atlanta over U.S. Hwy 278 to junction U.S. Hwy 78, then over U.S. Hwy 78 to Memphis, and return over the same route, (28) between Thomson and Athens, GA, over U.S. Hwy 78, and (29) between Washington, GA and junction Interstate Hwy 85 and GA Hwy 366, from Washington over GA Hwy 27 to junction GA Hwy 77, then over GA Hwy 77 to junction GA Hwy 366, then over GA Hwy 366 to junction Interstate Hwy 85, and return over the same route, serving in (1) thru (29) above all points in GA as intermediate and off-route points. (Hearing site: Atlanta, GA, or Washington, DC.)

MC 31389 (Sub-279F), filed March 27, 1979. Applicant: McLEAN TRUCKING COMPANY, a corporation, 1920 West First Street, Wintson-Salem, NC 27104. REPRESENTATIVE: David F. Eshelman, P.O. Box 213, Winston-Salem, NC 27102. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *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], serving the facilities of Brown Printing Company, at or near Waseca, MN as an off-route points in connection with applicant's otherwise authorized regular routes operations. (Hearing site: Minneapolis, MN, or Washington, DC.)

MC 31498 (Sub-1F), filed March 19, 1979. Applicant: K & T AIR FREIGHT, INC., 16525 Eastland Street, Roseville, MI 48066. Representative: William B. Elmer, 21635 East Nine Mile Road, St. Clair Shores, MI 48080. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *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), between the facilities of Chrysler Corporation, at Marysville, MI, on the one hand, and, on the other, Detroit, MI. (Hearing site: Detroit, MI.)

MC 108589 (Sub-16F), filed March 26, 1979. Applicant: EAGLE EXPRESS COMPANY, a corporation, P.O. Box 12047, Lexington, KY 40580. Representative: Michael Spurlock, 275 East State Street, Columbus, OH 43215. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *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), (1) from Fonthill, KY, to Cincinnati, OH, from Fonthill over unnumbered Hwy to junction KY Hwy 80, then over KY Hwy 80 to junction U.S. Hwy 127, then over U.S. Hwy 127 to Danville, KY, then over KY Hwy 34 to junction U.S. Hwy 27, then over U.S. Hwy 27, then over U.S. Hwy 27 to Lexington, KY, and then over U.S. Hwy 25 to Cincinnati, OH, serving the intermediate and off-route points within 10 miles of Fonthill, KY and (2) between Russell Springs and Columbia, KY over

KY Hwy 80, serving all intermediate points. (Hearing site: Knoxville, TN.)

Note.—Applicant intends to tack this authority with its existing authority to provide service from Knoxville, TN, and other points.

MC 108859 (Sub-67F), filed March 22, 1979. Applicant: CLAIRMONT TRANSFER CO., A corporation, 1803 Seventh Avenue, North, Escanba, MI 49829. Representative: John L. Bruemmer, 121 West Doty Street, Madison, WI 53703. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *paper and paper products*, from the port of entry on the international boundary line between the United States and Canada, at or near Sault Ste. Marie, MI, to Minneapolis, MN, points in IL on and north of U.S. Hwy 24, those in IN on and north of U.S. Hwy, and those in WI on and east of U.S. Hwy 51. (Hearing site: Chicago, IL.)

MC 110098 (Sub-174F), filed March 23, 1979. Applicant: ZERO REFRIGERATED LINES, 1400 Ackerman Road, P.O. Box 20380, San Antonio, TX 78220. Representative: T.W. Cothren (Same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from Indianapolis, IN, and points in IL, IA, MN, NE, and SD, to points in AZ, CA, and NV. (Hearing site: Omaha, NE or Chicago, IL.)

MC 113959 (Sub-9F), filed March 22, 1979. Applicant: LEMMON TRANSPORT COMPANY, INC., P.O. Box 580, Marion, VA 24354. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street, N.W., Washington, D.C. 20001. To operate as a *contract carrier*, by motor vehicle, in interstate of foreign commerce, over irregular routes, transporting *chemicals*, in bulk, in tank vehicles, (1) from Charleston, TN, to points in AR and MD, and (2) from Augusta, GA, and McIntosh, AL, to points in AL, AR, FL, GA, KY, MS, NC, SC, VA and WV, under a continuing contract(s) with Olin Corporation, of Stamford, CT. (Hearing site: New York, NY.)

Note.—Dual operations may be involved.

MC 117068 (Sub-114F), filed March 26, 1979. Applicant: MIDWEST

SPECIALIZED TRANSPORTATION, INC., P.O. Box 6418, Rochester, MN 55901. Representative: Paul F. Sullivan, 711 Washington Bldg., Washington, D.C. 20005. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *metal fabricating machinery*, from Lake City, MN, to points in the United States (except AK and HI), and (2) *materials and supplies* used in the manufacture of the commodities in (1) above, (except commodities in bulk), in the reverse direction. (Hearing site: Minneapolis, MN, or Chicago IL.)

MC 119689 (Sub-22F), filed March 23, 1979. Applicant: PEERLESS TRANSPORT CORP. 2701 Railroad Street, Pittsburgh, PA 15222. Representative: John A. Vuono, 2310 Grant Building, Pittsburgh, PA 15219. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *castor oil and vegetable oil*, in bulk, in tank vehicles, from Baltimore, MD, Philadelphia, PA, New York, NY, and points in NJ, to Dover, OH. (Hearing site: Pittsburgh, PA, or Washington, D.C.)

MC 119789 (Sub-560F), filed March 22, 1979. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr. (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate of foreign commerce, over irregular routes, transporting *wine and brandy* (except in bulk), from Acampo, St. Helena, and San Francisco, CA, to points in CO. (Hearing site: San Francisco, CA.)

MC 119789 (Sub-563F), filed March 26, 1979. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 226188, Dallas, TX 75266. Representative: James K. Newbold, Jr. (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs*, from Winchester, VA, to points in CA. (Hearing site: Buffalo, NY.)

MC 124328 (Sub-129F), filed March 22, 1979. Applicant: BRINK'S INCORPORATED, Thorndal Circle, P.O. Box 1225, Darien, CT 06820. Representative: Richard H. Streeter, 1729 H Street, NW, Washington, DC 20006. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *embossed credit cards*, from Columbus, OH, to Charleston and Wheeling, WV, and Ashland, KY, under

continuing contract(s) with City National Bank & Trust Co., of Columbus, OH. (Hearing site: Washington, DC, or Charleston, WV.)

MC 126079 (Sub-7F), filed March 27, 1979. Applicant: STOUT CORPORATION, 1200 West 200 South, P.O. Box 186, Provo, UT 84601. Representative: Irene Warr, 430 Judge Bldg., Salt Lake City, UT 84111. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1)(a) *roofing products, insulation products, wallboard and panel electric wallboard*, and (b) *materials, equipment, and supplies* used in the manufacture, distribution, and installation of the commodities in (1)(a) above, from Cody, WY, Albuquerque, NM, and Phoenix and Nogales, AZ, and points in CA, OR, CO, and WA, to points in UT, and (2)(a) *insulation products*, and (b) *materials, equipment, and supplies* used in the manufacture, distribution, and installation of the commodities in (2)(a) above, from points in Salt Lake County, UT, to Phoenix, AZ, under continuing contract(s) with P-K Supply Company, Division of Bird & Son, Inc., of East Walpole, MA. (Hearing site: Washington, DC.)

MC 126118 (Sub-136F), filed March 19, 1979. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *paper and paper products*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of paper and paper products (except commodities in bulk, or those which because of size or weight require the use of special equipment), between the facilities of Fort Howard Paper Company, at or near Green Bay, WI, on the one hand, and, on the other, points in AL, AR, CA, CO, DE, GA, IL, IN, IA, KS, KY, LA, MD, MI, MN, MS, MO, NE, NV, NJ, NY, NC, OH, OK, OR, PA, SC, TN, TX, UT, VA, WA, WV, and DC. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC 128909 (Sub-18F), filed March 12, 1979. Applicant: COMMODORE CONTRACT CARRIERS, INC., 400 Brooklyn Avenue, Syracuse, IN 46567. Representative: Leonard A. Jaskiewicz, 1730 M Street, NW, Suite 501, Washington, DC 20036. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *trailers* designed to be drawn by passenger

automobiles, (2) *buildings in sections*, mounted on wheeled undercarriages with hitch-ball connectors, (3) *buildings in sections*, (4) *parts, appliances, furniture, and accessories* for the commodities in (1), (2), and (3) above, when moving in mixed loads with the commodities in (1), (2), and (3) above, and (5) *wheels, axles, and hitches*, between points in the United States (except AK and HI), restricted to the transportation of traffic originating at the facilities of (a) Commodore Home Systems, Inc., and (b) Commodore Recreational Vehicles, Inc., under continuing contracts with (i) Commodore Home Systems, Inc., and (ii) Commodore Recreational Vehicles, Inc., both of Syracuse, IN. (Hearing site: Washington, DC.)

MC 129768 (Sub-3F), filed March 20, 1979. Applicant: HENRY R. KESTERSON d.b.a. GALAXY LIMOUSINE SERVICE, 948 McDowell Drive, Dover, DE 19901. Representative: Chester A. Zyblut, 366 Executive Building, 1030 Fifteenth Street, NW, Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *passengers and their baggage*, in special operations, limited to the transportation of not more than 11 passengers, not including the driver, in any one vehicle, between points in Kent and Sussex Counties, DE, on the one hand, and, on the other, Baltimore, MD, Atlantic City, Newark, and McGuire Air Force Base near Wrightstown, NJ, Washington, DC, and Dulles Airport in Loudoun County, VA, Philadelphia, PA, and New York, NY. (Hearing site: Dover, DE.)

MC 135078 (Sub-48F), filed March 23, 1979. Applicant: AMERICAN TRANSPORT, INC., 7850 "F" Street, Omaha, NE 68127. Representative: Arthur J. Cerra, P.O. Box 19251, Kansas City, MO 64141. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *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), from points in DE, MD, NJ, and PA, to Denver, CO, Chicago, IL, Des Moines, IA, Kansas City, MO, and Lincoln and Omaha, NE. (Hearing site: Omaha, NE.)

Note.—Dual operations may be involved.

MC 136408 (Sub-44F), filed March 23, 1979. Applicant: CARGO, INC., P.O. Box 206, Sioux City, IA 51102. Representative: William J. Hanlon, 55 Madison Avenue, Morristown, NJ 07960.

To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *cleaning, polishing, and defoaming soaps, rust removing, paint removing, cleaning, polishing, defoaming, disinfectant, and water treating compounds, oils, and paint*, (except in bulk, in tank vehicles), from the facilities of Oakite Products, Inc., at Romulus, MI, to points in CA, IL, IA, KY, MS, OK, TN, TX, and WI, under continuing contract(s) with Oakite Products, Inc., of Berkley Heights, NJ. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC 138109 (Sub-8F), filed March 27, 1979. Applicant: RAY J. FORNEY, INC., P.O. Box 207, Ashton, IL 61006. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street, N.W., Washington, DC 20001. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *salt and salt products, pepper, and food seasoning compounds*, (except commodities in bulk), and (2) *materials, equipment, and supplies* used in the manufacture, sale, and distribution of the commodities in (1) above, (except commodities in bulk), between the facilities of Morton Salt Company, Division of Morton-Norwich Incorporated, at or near Weeks Island, LA, on the one hand, and, on the other, points in the United States (except AK and HI), under a continuing contract(s) with Morton Salt Company, Division of Morton-Norwich Incorporated of Chicago, IL. (Hearing site: Chicago, IL.)

MC 138109 (Sub-9F), filed March 27, 1979. Applicant: RAY J. FORNEY, INC., P.O. Box 207, Ashton, IL 61006. Representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 Eleventh Street, N.W., Washington, DC 20001. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *salt and salt products, pepper, and food seasoning compounds*, (except commodities in bulk), and (2) *materials, equipment and supplies* used in the manufacture, sale, and distribution of the commodities in (1) above, (except commodities in bulk), between the facilities of Morton Salt Company, Division of Morton-Norwich Incorporated, at or near Marysville, MI, on the one hand, and, on the other, points in the United States (except AK and HI), under a continuing contract(s) with Morton Salt Company, Division of Morton-Norwich Incorporated, of Chicago, IL. (Hearing site: Chicago, IL.)

MC 138479 (Sub-3F), filed March 27, 1979. Applicant: UNIVERSAL CARTAGE, INC., 640 W. Ireland Road, South Bend, IN 46680. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *vinyl skirting, vinyl siding, asphalt siding, and steel siding*, (a) from the facilities of Mastic Corporation, at South Bend, IN, to Joliet, Rockford, and Chicago, IL, and points in CT, IN, ME, MN, and VT, and (b) from the facilities of Mastic Corporation, at Stuarts Draft, VA, to points in IN, MI, SC, and VA, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, in the reverse direction, under continuing contract(s) with Mastic Corporation, of South Bend, IN. (Hearing site: Chicago, IL.)

Note.—The person or persons who appear to be engaged in common control must either file an application under 49 U.S.C. § 11343(a) (formerly Section 5(2) of the Interstate Commerce Act), or submit an affidavit indicating why such approval is unnecessary.

MC 138869 (Sub-18F), filed March 22, 1979. Applicant: W. T. MYLES TRANSPORTATION CO., a corporation, P.O. Box 321, Conley, GA 30027. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *plumbing fixtures, plumbing fittings, plumbing supplies, vanities, vanity cabinets, and plastic articles*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), between the facilities of Universal-Rundle Corporation at or near (a) New Castle, PA, (b) Leominster, MA, (c) Monroe and Union Point, GA, (d) Corsicana and Hondo, TX, (e) Tempe, AZ, (f) Redlands, CA, (g) Ottumwa, IA, (h) Milwaukee, WI, (i) Rensselaer and Crawfordsville, IN, and (j) Salem, OH, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract(s) with Universal-Rundle Corporation, of New Castle, PA. (Hearing site: Atlanta, GA.)

Note.—Dual operations may be involved.

MC 140829 (Sub-196F), filed March 27, 1979. Applicant: CARGO, INC., P.O. Box 206, Sioux City, IA 51102. Representative: William J. Hanlon, 55 Madison Avenue, Morristown, NJ 07960. To operate as a *common carrier*, by motor vehicle, in interstate or foreign

commerce, over irregular routes, transporting *plastic and rubber articles*, from the facilities of Tucker Manufacturing Company, at or near Arlington, TX, to points in IL, MO, and NE, restricted to the transportation of traffic originating at the named origin and destined to the named destinations. (Hearing site: Washington, DC). Note.—Dual operations may be involved in this proceeding.

MC 142059 (Sub-69F), filed March 28, 1979. Applicant: CARDINAL TRANSPORT, INC., 1830 Mound Road, Joliet, IL 60436. Representative: Jack Riley (Same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs* (except frozen and in bulk), (1) from DeKalb, Mendota, and Rochelle, IL, and Arlington, Markesan, and Plover, WI, to points in IN, KY, MI, MN, MO, ND, OH, PA, WV, and WI, and (2) between the facilities of Del Monte Corporation, in IL, IN, KS, MN, NJ, TN, and WI, restricted to the transportation of traffic originating at the named origins and destined to the named destinations. (Hearing site: Chicago, IL, or San Francisco, CA.)

MC 142399 (Sub-2F), filed March 23, 1979. Applicant: ELLERBROCK TRUCKING INC., Highway 20 East, Sac City, IA 50583. Representative: Richard D. Howe, 600 Hubbell Building, Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *farm machinery and materials, equipment, and supplies* used in the manufacture and distribution of farm machinery (except commodities in bulk), between the facilities of Lear Siegler-Noble Division, at or near Sac City, and points in AR, CO, IL, IN, KS, LA, MI, MN, MO, NE, ND, OK, SD, TN, TX, WI, WY, AL, KY, OH, and MS. (Hearing site: Omaha, NE, or Des Moines, IA.)

MC 142508 (Sub-69F), filed March 23, 1979. Applicant: NATIONAL TRANSPORTATION, INC., P.O. Box 37465, 10810 South 144th Street, Omaha, NE 68137. Representative: Lanny N. Fauss, P.O. Box 37096, Omaha, NE 68137. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *confectionery*, (1) from the facilities of E. J. Brach & Sons, at Chicago, IL, to Reno, NV, and points in CO, and (2) from the facilities of E. J. Brach & Sons, at Reno, NV, to points in AZ, CA, CO, ID, MT, NM, OR, UT, and WA, restricted in (1) and (2) above to the transportation of traffic originating

at the named origins and destined to the indicated destinations. (Hearing site: Chicago or Joliet, IL.)

MC 142848 (Sub-8F), filed March 23, 1979. Applicant: JAMES R. POSHARD AND SON, INC., P.O. Box 69, Mt. Vernon, IN 47620. Representative: Norman R. Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *dry commodities*, in bulk, between the facilities of Southwind Maritime Centre, at or near Mt. Vernon, IN, on the one hand, and, on the other, points in AR, IL, IN, KY, MO, OH, and TN, restricted to the transportation of traffic (1) having a prior or subsequent movement by water or rail, or (2) originating at or destined to the indicated points. (Hearing site: Indianapolis, IN, or Chicago, IL.)

MC 142999 (Sub-14F), filed March 22, 1979. Applicant: TRANSPORT MANAGEMENT SERVICE CORPORATION, P.O. Box 39, Burlington, NJ 08016. Representative: Ronald N. Cobert, Suite 501, 1730 M Street, NW., Washington, DC 20036. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *pesticides, fertilizer compounds, and chelating compounds* (except commodities in bulk), from Birmingham, McIntosh, and Mobile, AL, Memphis and Millington, TN, Baton Rouge and St. Gabriel, LA, and Jackson, MS, to points in AR, DE, FL, GA, IL, IN, IA, KS, MD, MN, MO, MI, NE, NJ, NY, NC, OH, OK, PA, TX, VA, and WI; and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), in the reverse direction, under continuing contract(s) with Ciba-Geigy Corporation of Ardsley, NY. (Hearing site: Washington, DC.)

MC 143059 (Sub-66F), filed March 23, 1979. Applicant: MERCER TRANSPORTATION CO., a corporation, 12th & Maine Streets, P.O. Box 35610, Louisville, KY 40232. Representative: James L. Stone (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, from Gadsden, AL, to points in AR, FL, GA, IL, IN, KY, LA, MS, MO, NC, OH, OK, PA, SC, TN, TX, VA, and WV, restricted to the transportation of traffic originating at the facilities of Republic Steel Corporation, at Gadsden, AL. (Hearing site: Louisville, KY, or Washington, DC.)

MC 143059 (Sub-70F), filed March 23, 1979. Applicant: MERCER TRANSPORTATION CO., a corporation, 12th & Maine Streets, P.O. Box 35610, Louisville, KY 40232. Representative: James L. Stone (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *plastic pipe* and *commodities* used in the installation of plastic pipe, from the facilities of DuPont Co., at Tulsa, OK, to points in the United States (except AK and HI), restricted to the transportation of traffic originating at the named origin and destined to the indicated destinations. (Hearing site: Louisville, KY, or Washington, DC.)

MC 143499 (Sub-3F), filed March 22, 1979. Applicant: DOUBLE NICKEL TRANSPORT LTD., 50 South Main Street, Pearl River, NY 10967. Representative: John L. Alfano, 550 Mamaroneck Avenue, Harrison, NY 10528. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in or used by hospitals (except commodities in bulk), between points in CA, CT, FL, GA, IL, NE, NJ, NY, SC, and TX, under continuing contract(s) with Becton-Dickinson, Division of Becton, Dickinson and Company, of Rutherford, NJ. (Hearing site: White Plains, NY.)

Note.—Dual operations may be involved.

MC 144678 (Sub-7F), filed March 26, 1979. Applicant: AMERICAN FREIGHT SYSTEM, INC., 9393 West 110th Street, Fifth Floor, Overland Park, KS 66210. Representative: Harold H. Clokey (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *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), serving the facilities of Brownsberry Oven, Inc., Division of Peavey Company, at or near Oconomowoc, WI, as an off-route points in connection with applicants otherwise authorized regular route operations. (Hearing site: Washington, DC.)

MC 144879 (Sub-4F), filed March 27, 1979. Applicant: D AND J TRANSFER CO., a corporation, Highway 4 North, Sherburn, MN 56171. Representative: Lavern R. Holdeman, 521 South 14th Street, P.O. Box 81849, Lincoln, NE 68501. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products, and*

meat byproducts, and articles distributed by meat-packing houses as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk), from the facilities of Sioux Pac of Iowa, Inc., at or near Sioux City, IA, to points in IL and WI, restricted to the transportation of traffic originating at the named origin facilities and destined to the named destinations. (Hearing site: Sioux City, IA, or Omaha, NE.)

Note.—Dual operations may be involved.

MC 144888 (Sub-6F), filed March 26, 1979. Applicant: BIL-RIC TRANSPORT SYSTEMS INC., 92 East Main Street, Somerville, NJ 08876. Representative: Joel J. Nagel, 19 Back Drive, Edison, NJ 08817. To operate as a *contract carrier*, by motor vehicle in interstate or foreign commerce, over irregular routes, transporting (1) *sodium carbonate, sodium bicarbonate, and cleaning, scouring, and washing compounds*, and (2) *materials* used in the manufacture of the commodities in (1) above, (except commodities in tank vehicles), between the facilities of Church & Dwight Co., Inc., at or near Syracuse, NY, Old Fort, OH, and Green River, WY, on the one hand, and, on the other points in the United States (except AK and HI), under continuing contract(s) with Church & Dwight Co., Inc., of Piscataway, NJ. (Hearing site: Newark, NJ, or New York, NY.)

MC 145738 (Sub-4F), filed March 19, 1979. Applicant: EAST-WEST MOTOR FREIGHT, INC., P.O. Box 525, Selmer, TN 38375. Representative: Richard M. Tettelbaum, Fifth Floor, Lenox Towers South, 3390 Peachtree Road, NE, Atlanta, GA 30326. To operate as a *common carrier* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *rubber tire treads, tread stock, tire patches, tire tubes, solvents, adhesives, and cured rubber* (except commodities in bulk), and (2) *materials, equipment, and supplies* used in the manufacture, distribution, and sale of the commodities in (1) above, (except commodities in bulk), between points in CA, GA, IA, NC, and TX, restricted to the transportation of traffic originating at the facilities of Bandag, Inc. (Hearing site: Atlanta, GA, or Washington, DC.)

Note: Dual operations may be involved.

MC 146208 (Sub-2F), filed March 23, 1979. Applicant: SHIVES, INC., P.O. Box 100, Armington, IL 61721. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, in interstate or foreign

commerce, over irregular routes, transporting *such commodities* as are dealt in by agricultural implement dealers, from the facilities of Deere & Company, in Rock Island County, IL, to points in IA. (Hearing site: Moline or Chicago, IL.)

MC 146298 (Sub-2F), filed March 26, 1979. Applicant: KESS TRANSPORTATION, INC., Box 5091, Cincinnati, OH 45205. Representative: Eric Meierhoefer, Suite 423, 1511 K St., NW., Washington, DC 20005. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *empty plastic bottles*, between Cincinnati, OH, on the one hand, and, on the other, Louisville, KY. (Hearing site: Cincinnati, OH.)

MC 146479 (Sub-2F), filed March 26, 1979. Applicant: HARRISON CARRIERS, INC., P.O. Box 367, Harrison, NY 10528. Representative: David M. Marshall, 101 State Street, Suite 304, Springfield, MA 01103. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *light bulbs, lamps, and lighting fixtures*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), between the facilities of North American Philips Lighting Corporation, at or near South Brunswick and Highstown, NJ, and points in Essex County, MA, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Newark, NJ, or New York, NY.)

Note.—Dual operations may be involved.

MC 146709F, filed March 26, 1979. Applicant: BILLY M. EDMONDSON, d.b.a. EDMONDSON SWIFT MEAT TRANSPORT, Route 1, Georgetown, GA 31754. Representative: Theodore Polydoroff, Suite 301, 1307 Dolly Madison Boulevard, McLean, VA 22101. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *insulators and insulator parts*, from Sandersville, GA, to points in the United States in and west of MN, IA, MO, AR, and LA (except AK and HI). (Hearing site: Atlanta, GA.)

[FR Doc. 79-20540 Filed 7-2-79; 8:45 am]

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[Permanent Authority Decisions Volume No. 97]

**Permanent Authority Application;
Decision-Notice**

Decided: June 1, 1979.

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice (49 CFR 1100.247)*. These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the Federal Register.

Protests (such as were allowed to filings prior to March 1, 1979) *will be rejected*. A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace the extent to which petitioner's interest will be represented by other parties, the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rules may be rejected. An original and

one copy of the petition to intervene shall be filed with the Commission, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to timely prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after the date of this publication.*

Any authority granted may reflect administrative acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

Finding

With the exception of those applications involving duly noted problems (e.g., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. § 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petitioner, that the proposed dual operations are consistent with the public interest and the transportation policy of 49 U.S.C. § 10101 subject to the right of the Commission, which is expressly

reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. § 10930(a) [formerly section 210 of the Interstate Commerce Act].

In the absence of legally sufficient petitions for intervention, filed on or before August 2, 1979 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the grant or grants of authority within 90 days after the service of the notification of the effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

By the Commission, Review Board Number 2 Members, Liberman, Eaton, and Boyle.

H. G. Homme, Jr.,
Secretary.

MC 3062 (Sub-43F), filed March 19, 1979. Applicant: INMAN FREIGHT SYSTEM, INC., 321 N. Spring Avenue, Cape Girardeau, MO 63701. Representative: Joel H. Steiner, 39 South LaSalle Street, Chicago, IL 60603. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *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), (1) between Dyersburg and Humboldt, TN: (a) from Dyersburg over TN Hwy 104 to Trenton, TN, then over U.S. Hwy 45W to Humboldt, and return over the same route, and (b) from Dyersburg over TN Hwy 20 to junction U.S. Hwy 79, then over U.S. Hwy 79 to Humboldt, and return over the same route, serving junctions TN Hwy 20 and U.S. Hwy 79 for purposes of joinder only, and (2) between junctions U.S. Hwy 79 and TN Hwy 20, and Memphis, TN, over U.S. Hwy 79; serving no intermediate points in connection with (1) and (2) above. (Hearing site: Memphis or Humboldt, TN.)

MC 16513 (Sub-11F), filed March 15, 1979. Applicant: REISCH TRUCKING & TRANSPORTATION CO., INC., 819 Union Avenue, Pennsauken, NJ 08110.

Representative: Jeffrey A. Vogelmann, Suite 400, Overlook Building, 6121 Lincolnia Road, Alexandria, VA 22312. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *plastic articles*, from the facilities of Plastic Packaging Corporation at West Springfield, MA, to New York, NY, and points in Westchester, and Suffolk Counties, NY. (Hearing site: Washington, DC.)

MC 58923 (Sub-54F), filed March 13, 1979. Applicant: GEORGIA HIGHWAY EXPRESS, INC., 2090 Jonesboro Road, SE., P.O. Box 6944, Atlanta, GA 30315. Representative: William W. West (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over regular routes, transporting *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), (1) between Mobile, AL, and Gretna, LA: from Mobile over U.S. Hwy 90 to junction LA Hwy 18, then over LA Hwy 18 to Gretna, and return over the same route; (2) between Jacksonville, FL, and Natchez, MS: from Jacksonville over U.S. Hwy 90 to junction U.S. Hwy 98, then over U.S. Hwy 98 to Natchez, and return over the same route; (3) between Mobile, AL, and Tupelo, MS: from Mobile over U.S. Hwy 45 (also U.S. Hwy 45 Alt.) to Tupelo, and return over the same route; (4) between Columbus, GA, and Vicksburg, MS, over U.S. Hwy 80; (5) between Brunswick, GA, and Natchez, MS, over U.S. Hwy 84; (6) between Savannah, GA, and Greenville, MS: from Savannah over U.S. Hwy 17 to junction U.S. Hwy 82, then over U.S. Hwy 82 to Greenville, and return over the same route; (7) between New Orleans, LA, and Memphis, TN, over U.S. Hwy 61; (8) between LaPlace, LA, and Fulton, KY: from LaPlace over U.S. Hwy 51 to junction U.S. Hwy 45, then over U.S. Hwy 45 to Fulton, and return over the same route; (9) between New Orleans, LA, and Chattanooga, TN, over U.S. Hwy 11; (10) between Gulfport, MS, and Helena, AR: from Gulfport over U.S. Hwy 49 (also U.S. Hwy 49E and U.S. Hwy 49W) to Helena, and return over the same route; (11) between Bay St. Louis, MS, and Baton Rouge, LA: from Bay St. Louis over U.S. Hwy 90 to junction U.S. Hwy 190, then over U.S. Hwy 190 to Baton Rouge, and return over the same route; (12) between Gadsden, AL, and Clarksdale, MS: from Gadsden over U.S. Hwy 278 to junction MS Hwy 6 (also over U.S. Hwy 278 to

junction U.S. Hwy 78, then over U.S. Hwy 78 to junction MS Hwy 6), then over MS Hwy 6 to Clarksdale, and return over the same route; (13) between Chattanooga, TN, and junction U.S. Hwy 70 and U.S. Hwy 27 at or near Rockwood, TN, over U.S. Hwy 27; (14) between Knoxville and Nashville, TN: from Knoxville over U.S. Hwy 70 (also U.S. Hwy 70N and U.S. Hwy 70S) to Nashville, and return over the same route; (15) between McMinnville and Chattanooga, TN, over TN Hwy 8; (16) between McMinnville and Dayton, TN: from McMinnville over U.S. Hwy 70S to junction TN Hwy 30, then over TN Hwy 30 to Dayton, and return over the same route; (17) between Livingston, TN, and junction TN Hwy 42 and U.S. Hwy 70 at or near Sparta, TN, over TN Hwy 42; (18) between Jamestown and Crossville, TN, over U.S. Hwy 127; (19) between Jamestown and Livingston, TN, over TN Hwy 52; (20) between McMinnville and Morrison, TN, over TN Hwy 55; (a) serving all intermediate points in connection with (1) through (20) above; (b) serving points in Davidson County, TN, as off-route points in connection with (14) above; (c) serving Jacksonville, FL, as an off-route point in connection with (2) above; (d) serving as off-route points, in connection with (1) through (12) above, Baton Rouge and New Orleans, LA, Jackson, Hattiesburg, Meridian, and Columbus, MS, Brunswick and Savannah, GA, points in AL and MS, those in FL in and west of Hamilton, Suwanee, Gilchrist, and Levy Counties, and those in LA on, east, and north of a line beginning at the LA-MS State line and extending along the Mississippi River to Poydras, LA, then over LA Hwy 46 to Shell Beach, LA, and (e) serving as off-route points, in connection with (13) through above, points in Cumberland, DeKalb, Putnam, Van Buren, and White Counties, TN. (Hearing site: Atlanta, GA, or New Orleans, LA.)

MC 61592 (Sub-444F), filed March 15, 1979. Applicant: JENKINS TRUCK LINE, INC., P.O. Box 697, Jeffersonville, IN, 47130. Representative: E. A. DeVine, P.O. Box 737, Moline, IL 61265. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *iron and steel articles*, from Carlinville, IL, to points in AL, IN, MO, OK, TN, and TX; (2) *steel, pipe-steel tubing, and steel pipe fittings*, from Carlinville, IL, to points in IA, MN, and WI; and (3) *wire products, steel bars, and fabricated steel articles*, from Maryville, MO, to points in AZ, CA, CO, ID, IA, KS, MN, MT, NE, NM, ND, OK,

OR, SD, TX, UT, WA, and WY. (Hearing site: Chicago, IL.)

MC 64932 (Sub-592F), filed March 19, 1979. Applicant: ROGERS CARTAGE CO., A Corporation, 10735 South Cicero Avenue, Oak Lawn, IL 60453. Representative: Edward G. Bazelon, 39 South LaSalle Street, Chicago, IL 60603. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *dry magnesium oxide*, in bulk, in tank vehicles, from Manistee, MI, to Daggett, CA; (2) *waste oil*, in bulk, in tank vehicles, from the facilities of Alcoa, at or near Alcoa, TN, to the facilities of Nalco Chemical Company, at or near Chicago, IL; and (3) *liquid corrosive cleaning compounds*, in bulk, in tank vehicles, from the facilities of Oxy Metal Industries Corp., Parker Division, at Monroeville, MI, to the facilities of (a) Coors Container Co., at Golden, CO; (b) Continental Can Co., at Milwaukee, WI, and (c) Schlitz Container Division, Jos. Schlitz Brewing Co., at Oak Creek, WI. (Hearing site: Chicago, IL.)

MC 80443 (Sub-18F), filed March 19, 1979. Applicant: OVERNITE EXPRESS, INC., 2550 Long Lake Road, Roseville, MN 55113. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *plastic articles*, and (2) *materials, equipment and supplies* used in the manufacture of the commodities in (1) above, between the facilities of the Amoco Chemicals Corp., at Mora and Minneapolis, MN, on the one hand, and, on the other, points in the United States (except AK, HI, MN, ME, NH, and VT), restricted to the transportation of traffic originating at or destined to the named origin facilities. (Hearing site: Minneapolis or St. Paul, MN.)

MC 82492 (Sub-230F), filed March 21, 1979. Applicant: MICHIGAN & NEBRASKA TRANSIT CO., INC., 2109 Olmstead Road, P.O. Box 2853, Kalamazoo, MI 49003. Representative: Dewey R. Marselle, (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts*, and *articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from the facilities of MBPXL Corporation, at or near Rock

Port, MO, to points in IN, KY, MI, OH, those in NY in and west of Oswego, Onondaga, Cortland, and Broome Counties, and those in PA on and west of U.S. Hwy 219. (Hearing site: Chicago, IL, or Washington, DC).

MC 107012 (Sub-348F), filed March 16, 1979. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David D. Bishop, (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *floor coverings, and materials and supplies used in the manufacture, installation, sale, or distribution of floor coverings*, (except commodities in bulk), from the facilities of Bigelow-Sanford, Inc., at or near (a) Lylery, GA, and (b) Greenville and Landrum, SC, to points in KY, CO, KS, OK, and LA (except New Orleans). (Hearing site: Greenville, SC, or Washington, DC.)

MC 107012 (Sub-349F), filed March 14, 1979. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: David Bishop, (same address as applicant). To operate as a *common carrier*, by motor vehicle in interstate or foreign commerce, over irregular routes, transporting (1) *air cooling, heating, and conditioning equipment*, and (2) *parts* for the commodities in (1) above from the facilities of Heil-Quaker Corporation, at or near Nashville, TN, to points in AL, AZ, AR, CA, CO, FL, GA, KS, KY, LA, MS, NV, NM, NC, OK, SC, TX, and VA. (Hearing site: Nashville, TN, or Washington, D.C.)

MC 107012 (Sub-351F), filed March 14, 1979. Applicant: NORTH AMERICAN VAN LINES, INC., 5001 U.S. Hwy 30 West, P.O. Box 988, Fort Wayne, IN 46801. Representative: Gerald A. Burns, (same address as applicant). To operate as a *common carrier*, by motor vehicle in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in by retail department stores (except commodities in bulk and commodities the transportation of which because of size or weight requires the use of special equipment), from New York, NY, Philadelphia, PA, Charlotte, NC, and points in Los Angeles and Orange Counties, CA, to Indianapolis, IN. (Hearing site: Indianapolis, IN, or Washington, D.C.)

MC 107403 (Sub-1171F), filed March 19, 1979. Applicant: MATLACK, INC., Ten West Baltimore Avenue, Lansdowne, PA 19050. Representative:

Martin C. Hynes, Jr., (same address as applicant). To operate as a *common carrier*, by motor vehicle in interstate or foreign commerce, over irregular routes, transporting *ground limestone*, in bulk, from points in Pickens County, GA, to points in FL, NC, SC and TN. (Hearing site: Washington, D.C.)

MC 107403 (Sub-1173F), filed March 19, 1979. Applicant: MATLACK, INC., Ten West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr., (same address as applicant). To operate as a *common carrier*, by motor vehicle in interstate or foreign commerce, over irregular routes, transporting *liquid sulphur*, in bulk, in tank vehicles, from points in Cass, Franklin, Freestone, Titus, and Van Zandt Counties, TX, to points in AR and LA. (Hearing site: Washington, D.C.)

MC 107403 (Sub-1180F), filed March 14, 1979. Applicant: MATLACK, INC., Ten West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr., (same address as applicant). To operate as a *common carrier*, by motor vehicle in interstate or foreign commerce, over irregular routes, transporting *chemicals*, in bulk, between Ludington, MI, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Washington, D.C.)

MC 107403 (Sub-1181F), filed March 14, 1979. Applicant: MATLACK, INC., Ten West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr., (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *petroleum and petroleum products*, in bulk, in tank vehicles, from Princeton, LA, to points in the United States (except AK, HI, and OH). (Hearing site: Washington, D.C.)

MC 107403 (Sub-1182F), filed March 19, 1979. Applicant: MATLACK, INC., Ten West Baltimore Avenue, Lansdowne, PA 19050. Representative: Martin C. Hynes, Jr., (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *sodium bicarbonate*, in bulk and (2) *materials and supplies* used in the manufacture of sodium bicarbonate, in bulk, between Old Fort, OH, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Washington, D.C.)

MC 107403 (Sub-1184F), filed March 14, 1979. Applicant: MATLACK, INC., Ten West Baltimore Avenue, Lansdowne, PA 19050. Representative:

Martin C. Hynes, Jr., (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *asphalt*, in bulk, from Lima, OH, to points in OK and TX. (Hearing site: Washington, D.C.)

MC 109593 (Sub-7F), filed March 19, 1979. Applicant: H. R. HILL, d/b/a H. R. HILL TRUCKING COMPANY, Box 875, 2007 West Shawnee, Muskogee, OK 74401. Representative: David A. Cherry, P.O. Box 1540, Edmond, OK 73034. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *waste paper or scrap paper*, from points in AR, CO, IL, KS, LA, MO, NE, NM, TX, and WI, to the facilities of Gold Bond Building Products, Division of National Gypsum Co., at or near Pryor, OK, under continuing contract(s) with Gold Bond Building Products, Division of National Gypsum Co., of Charlotte, NC. (Hearing site: Oklahoma City or Tulsa, OK.)

MC 110563 (Sub-266F), filed March 20, 1979. Applicant: COLDWAY FOOD EXPRESS, INC., P.O. Box 747, State Route 29 NW, Sidney, OH 45365. Representative: Joseph M. Scanlan, 111 West Washington Street, Chicago, IL 60602. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes transporting *bananas*, from Norfolk, Portsmouth, and Hampton Roads, VA, to points in IL, IN, MD, MA, MI, MO, NJ, NY, NC, OH, PA, SC, TN, VA, WV, DC, and those ports of entry on the international boundary line between the United States and Canada located in ME, NH, VT, MN, ND, MT, ID, and WA, restricted to the transportation of traffic having a prior movement by water. (Hearing site: Washington, DC.)

MC 110923 (Sub-9F), filed March 16, 1979. Applicant: ALBERT LIVEK, d.b.a., AL LIVEK'S TRUCKING SERVICE, 803 Harrison Street, Kewanee, IL 61443. Representative: Joseph Winter, Suite 930, 29 S. LaSalle Street, Chicago, IL 60603. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities as are dealt in or used by manufacturers or dealers of agricultural equipment, industrial equipment, and lawn and leisure products*, (except commodities in bulk), between the facilities of International Harvester Company, at East Moline, Moline, Rock Island, and Canton, IL, on the one hand, and, on the other, those points in the United States in and east of WI, IA, MO, AR, and LA, restricted to the transportation of traffic

originating at or destined to the named facilities. (Hearing site: Chicago, IL.)

MC 111812 (Sub-613F), filed March 16, 1979. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57101. Representative: R. H. Jinks, (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *drugs, toilet preparations, shampoo, chemicals, animal feed supplements, citric acid, natural sugar, and printed matter*, (except commodities in bulk), (1) from Belvidere, Branchburg, and Nutley, NJ, and New York, NY, to Des Plaines, IL, Dallas, TX, and points in CA, and (2) from points in CA, to Dallas, TX, and Branchburg, Belvidere, and Nutley, NJ, and (3) from Belvidere, Branchburg, and Nutley, NJ, to Decatur, GA. (Hearing site: New York, NY.)

MC 111812 (Sub-614F), filed March 16, 1979. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57101. Representative: Lamoyne Brandsma (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *soy flour*, from the facilities of Cargill Protein Products, at Cedar Rapids, IA, to points in CA, OR, and WA. (Hearing site: Chicago, IL.)

MC 111812 (Sub-616F), filed March 19, 1979. Applicant: MIDWEST COAST TRANSPORT, INC., P.O. Box 1233, Sioux Falls, SD 57101. Representative: R. H. Jinks, (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *animal foods*, from Terminal Island, CA, to points in AR, CO, IL, IA, KS, MN, MO, NE, ND, SD, WI, and WY. (Hearing site: Los Angeles CA.)

MC 112713 (Sub-251F), filed March 16, 1979. Applicant: YELLOW FREIGHT SYSTEM, INC., P.O. Box 7270, Shawnee Mission, KS 66207. Representative: Robert E. DeLand (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *shipping racks*, from points in CA, to the facilities of General Tire and Rubber Company, at Ionia, MI. (Hearing site: Chicago, IL, or Washington, DC.)

MC 112713 (Sub-258F), filed March 21, 1979. Applicant: YELLOW FREIGHT SYSTEM INC., P.O. Box 7270, Shawnee Mission, KS 66207. Representative: Robert E. DeLand (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or

foreign commerce, transporting *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), serving the Norrick Plant facilities of Carbon Black, Division of Ashland Chemical Company, at or near Shamrock, TX, as an off-route point in connection with carrier's otherwise authorized regular-route operations. (Hearing site: Dallas, TX, or Washington, DC.)

MC 114273 (Sub-564F), filed March 14, 1979. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *flour, corn meal, and macaroni products*, from Lincoln, NE, to Fogelsville, PA, and Bridgeport, NJ. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114273 (Sub-565F), filed March 14, 1979. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, from York, PA, to points in CO, IA, KS, MN, MO, NE, and TX. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114273 (Sub-566F), filed March 14, 1979. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *aluminum articles*, from the facilities of Consolidated Aluminum Corp., at or near Hannibal, OH, to points in IL, IA, MO, KS, NE, and MN. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114273 (Sub-567F), filed March 14, 1979. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *printing machinery and equipment, and parts for printing machinery*, (1) between Cedar Rapids, IA, and Rockford and Chicago, IL, on the one hand, and on the other, points in CT, DE, IN, KY, MD, MI, MN, NE, NJ, NY, OH, PA, RI, VA, WV, WI, and DC; and (2) from Cedar Rapids, IA,

to points in IL. (Hearing site: Chicago, IL, or Washington, DC.)

MC 114632 (Sub-206F), filed March 14, 1979. Applicant: APPLE LINES, INC., P.O. Box 287, Madison, SD 57042. Representative: David E. Peterson (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *steel pipe, pipe fittings, beams, piling, railing, railway track, assessories for railway track, pile drivers, and pile extractors*, (2) *Parts* for the commodities in (1) above, and (3) *materials, equipment, and supplies* used in the manufacture, installation, dismantling, and distribution of the commodities in (1) above, (except commodities in bulk) between the facilities of L. B. Foster Company, at Parkersburg and Washington, WV, on the one hand, and, on the other, points in DE, IA, IL, IN, KS, KY, MD, MI, MN, MO, ND, NE, NJ, NY, OH, PA, SD, VA, WI, and DC. (Hearing site: Atlanta, GA, or Washington, DC.)

Note.—Dual operations may be involved.

MC 114632 (Sub-207F), filed March 14, 1979. Applicant: APPLE LINES, INC., P.O. Box 287, Madison, SD 57042. Representative: David E. Peterson (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *petroleum and petroleum products*, in containers, from St. Louis, MO, to points in SD and ND. (Hearing site: St. Louis, MO, or Louisville, KY.)

Note.—Dual operations may be involved.

MC 114273 (Sub-560F), filed March 16, 1979. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *frozen foods*, from Downingtown, Philadelphia, and Fogelsville, PA, Baltimore, MD, and Milford, DE, to Omaha, NE. (Hearing site: Chicago, IL, or Washington, D.C.)

MC 114273 (Sub-561F), filed March 16, 1979. Applicant: CRST, INC., P.O. Box 68, Cedar Rapids, IA 52406. Representative: Kenneth L. Core (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *scrap iron and scrap steel*, from Davenport, IA, to points in PA, OH, NJ, and NY. (Hearing site: Chicago, IL, or Washington, DC.)

MC 115162 (Sub-466F), filed March 16, 1979. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL

36401. Representative: Robert E. Tate (same address as applicant). To operate as *common carrier*, by motor vehicle, in foreign commerce only, over irregular routes, transporting *gypsum wallboard*, from the ports of entry on the international boundary line between the United States and Canada located at (a) Detroit, MI, and (b) Buffalo, NY., to the facilities of Wickes Lumber, a Division of the Wickes Corporation, in AL, AR, FL, GA, KY, LA, MS, MO, NC, OK, SC, TN, TX, and VA. (Hearing site: Detroit, MI or Washington, DC.)

MC 115322(Sub-164F), filed March 19, 1979. Applicant: REDWING REFRIGERATED, INC., P.O. Box 10177, Taft, FL 32809. Representative: L. W. Fincher, P.O. Box 426, Tampa, FL 33601. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *wrapping paper, woodpulp board, woodpulp, and scrap paper*, from West Point, VA, to points in CT, DE, MD, MA, NJ, NY, PA, and WV. (Hearing site: Washington, DC.)

MC 116273(Sub-223F), filed March 16, 1979. Applicant: D & L TRANSPORT, INC., 3800 S. Laramie Ave., Cicero, IL 60650. Representative: William R. Lavery (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *liquid chemicals*, in bulk, in tank vehicles, from Madison, IN, and East Liverpool, OH, to points in IL, IN, IA, MI, and WI. (Hearing site: Chicago, IL.)

MC 116763(Sub-492F), filed March 16, 1979. Applicant: CARL SUBLER TRUCKING, INC., North West Street, Versailles, OH 45380. Representative: H. M. Richters (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs*, (except frozen, and except commodities in bulk, in tank-vehicles), from the facilities of Pilgrim Farms, Inc., at or near (a) Benthaim and Hamilton, MI, and (b) Plymouth, IN, to those points in the United States in and east of MN, IA, MO, OK and TX, restricted to the transportation of traffic originating at the named origin facilities and destined to the indicated destinations. (Hearing site: Indianapolis, IN.)

MC 118142(Sub-212F), filed March 16, 1979. Applicant: M. BRUENGER & CO., INC., 6250 N. Broadway, Wichita, KS 67219. Representative: Lester C. Arvin, 814 Century Plaza Bldg., Wichita, KS 67202. To operate as a *common carrier*, by motor vehicle, in interstate or foreign

commerce, over irregular routes, transporting *electric storage batteries, spent batteries, and materials and supplies used in the manufacture or distribution of electric storage batteries*, (except commodities in bulk), between points in the United States (except AK and HI), restricted to the transportation of traffic originating at or destined to the facilities of General Battery Corporation. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC 121372(Sub-5F), filed March 19, 1979. Applicant: EXPRESS TRANSPORT CO., a corporation, 1333 West Seventh Street, Cincinnati, OH 45203. Representative: Paul F. Beery, 275 East State Street, Columbus, OH 43215. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *iron and steel articles*, (1) between points in OH, on the one hand, and, on the other, Kokomo and Seymour, IN, those points in KY on and north of a line beginning at the KY-WV State line and extending along U.S. Hwy 60 to junction U.S. Hwy 31E, then along U.S. Hwy 31E to the KY-IN State line, and those points in IN on and east of U.S. Hwy 31, and (2) between those points in KY on and north of a line beginning at the KY-WV State line, and extending along U.S. Hwy 60 to junction U.S. Hwy 31E, then along U.S. Hwy 31E to the KY-IN State line, on the one hand, and, on the other, Kokomo and Seymour, IN, and those points in IN on and east of U.S. Hwy 31. (Hearing site: Columbus, OH.)

MC 127042 (Sub-250F), filed March 19, 1979. Applicant: HAGEN, INC., P.O. Box 98, Leeds Station, Sioux City, IA 51108. Representative: Robert G. Tessar, (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products and meat byproducts, and articles distributed by meat-packing houses*, as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from the facilities of Oscar Mayer & Company, in IA and WI, to points in CA. (Hearing site: Madison, WI.)

MC 127312 (Sub-2F), filed March 14, 1979. Applicant: CANNON INTERSTATE CARRIERS CORP., 600 Madison Avenue, New York, NY 10022. Representative: Harold L. Reckson, 33-28 Halsey Road, Fair Lawn, NJ 07410. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes,

transporting *synthetic yarn*, from the facilities of Unifi, Inc., at or near Yadkinville, NC, to New York, NY. (Hearing site: New York, NY, or Washington, DC.)

MC 128543 (Sub-15F), filed March 19, 1979. Applicant: CRESCO LINES, INC., 13900 South Keeler Avenue, Crestwood, IL 60445. Representative: Edward G. Bazelon, 39 South LaSalle Street, Chicago, IL 60603. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *zinc, zinc alloys, and zinc products*, between the facilities of St. Joe Zinc Company, at Josephstown, PA, on the one hand, and one the other, points in AL, AR, CT, DE, GA, IL, IN, IA, KY, MD, MI, MO, NJ, NC, TX, and WI, under continuing contract(s) with St. Joe Zinc Company, of Pittsburgh, PA. (Hearing site: Chicago, IL.)

MC 135033 (Sub-8F), filed March 19, 1979. Applicant: SILVEY REFRIGERATED CARRIERS, INC., 7000 West Center Road, Suite 325, Omaha, NE 68106. Representative: Robert M. Cimino, (same address as applicant). To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities as are dealt in by retail department stores* (except foodstuffs other than confectionaries and nuts), from Omaha, NE, to Sioux City, IA, under continuing contract(s) with Richman Gordman Stores, Inc., of Omaha, NE. (Hearing site: Omaha, NE.)

Note.—Dual operations may be involved.

MC 136952 (Sub-6F), filed March 19, 1979. Applicant: ADAMIC TRUCKING, INC., 15522 Rider Road, Burton, OH 44021. Representative: Lewis S. Witherspoon, 88 East Broad Street, Columbus, OH 43215. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *plastic articles*, from Middlefield, OH, to Cheshire, CT, Chicago and Compton, IL, Chicopee, MA, Detroit, MI, St. Louis, MO, Trenton, NJ, Syracuse, NY, Elkhorn, WI, and Millsboro, DE, under continuing contract(s) with Sajar Plastics, Inc., of Middlefield, OH. (Hearing site: Cleveland, OH.)

MC 139482 (Sub-100F), filed March 19, 1979. Applicant: NEW ULM FREIGHT LINES, INC., P.O. Box 877, New Ulm, MN 56073. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs*

(except frozen, and except commodities in bulk), from the facilities of RJR Foods, Inc., at or near Ortonville, MN, to points in IA, NE, ND, and SD. (Hearing site: Minneapolis or St. Paul, MN.)

MC 139973(Sub-65F), filed March 14, 1979. Applicant: J. H. WARE TRUCKING, INC., P.O. Box 398, Fulton, MO 65251. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *vacuum cleaners, floor polishers, and parts* for vacuum cleaners and floor polishers, from Old Greenwich, CT, and Bristol, VA, to Reno, NV. (Hearing site: Kansas City, MO.)

MC 139973(Sub-66F), filed March 15, 1979. Applicant: J. H. WARE TRUCKING, INC., P.O. Box 398, Fulton, MO 65251. Representative: Larry D. Knox, 600 Hubbell Bldg., Des Moines, IA 50309. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *electrical appliances, electrical equipment, and poleline hardware*, and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1) above (except commodities in bulk), between Centralia, MO, on the one hand, and, on the other, those points in the United States in and east of MT, WY, CO, and NM. (Hearing site: St. Louis, MO.)

MC 140452 (Sub-15F), filed March 14, 1979. Applicant: ROSE BROTHERS TRUCKING, INC., 2425 U.S. Business Hwy 41 North, Suite 204, Evansville, IN 47711. Representative: David Konnersman, 5101 Madison Avenue, Indianapolis, IN 46227. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *coal*, in bulk, in dump vehicles, from the facilities of Pyro Mining, Inc., in Union and Webster Counties, KY, to Holt, AL. (Hearing site: Indianapolis or Evansville, IN.)

MC 140563 (Sub-25F), filed March 15, 1979. Applicant: W.T. MYLES TRANSPORTATION CO., a corporation, P.O. Box 321, Conley, GA 30027. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *such commodities* as are dealt in by manufacturers and distributors of containers, and (2) *materials, equipment, and supplies* used in the

manufacture and distribution of the commodities in (1) above, between those points in the United States in and east of MN, IA, MO, OK, and TX, restricted in (1) and (2) above against the transportation of commodities in bulk and further restricted in (1) and (2) above to the transportation of traffic originating at or destined to the facilities of Brockway Glass Company, Inc. (Hearing site: Atlanta, GA.)

Note.—Dural operations may be involved.

MC 141402 (Sub-27F), filed March 8, 1979. Applicant: LINCOLN FREIGHT LINES, INC., P.O. Box 427, Lapel, IN 46051. Representative: Norman R. Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *paper products and ink*, from the facilities of Samson-Midamerica, Inc., at Indianapolis, IN, to points in IL, KY, MI, OH, WI, and TN; and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), in the reverse direction, under continuing contract(s) in (1) and (2) above with Samson-Midamerica, Inc., of Indianapolis, IN. (Hearing site: Indianapolis, IN, or Chicago, IL.)

MC 141402 (Sub-28F), filed March 14, 1979. Applicant: LINCOLN FREIGHT LINES, INC., P.O. Box 427, Lapel, IN 46051. Representative: Norman R. Garvin, 1301 Merchants Plaza, Indianapolis, IN 46204. To operate as a *contract carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs* (except frozen), and *materials, equipment, and supplies* used in the manufacture of foodstuffs, (except commodities in bulk), between the facilities of Curtice-Burns, Inc., Brooks Foods Division, at or near Mt. Summit, IN, on the one hand, and, on the other, Collinsville, IL, and points in St. Louis County, MO, under continuing contract(s) with Curtice-Burns, Inc., Brooks Foods Division, of Mt. Summit, IN. (Hearing site: Indianapolis, IN, or Chicago, IL.)

MC 143623 (Sub-3F), filed March 19, 1979. Applicant: CITY COAL AND SUPPLY COMPANY, INC., Box 788, Princeton, WV 24740. Representative: Kemper Powell (same address as applicant). To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *crushed stone*, in bulk, in dump vehicles, from the facilities of Mercer Crushed Stone, Inc., at or near

Ingleside, WV, to points in Bland, Buchanan, Carroll, Craig, Dickenson, Floyd, Giles, Grayson, Henry, Montgomery, Patrick, Pulaski, Russell, Scott, Smyth, Tazewell, Washington, Wise, and Wythe Counties, VA. (Hearing site: Washington, DC, or Roanoke, VA.)

MC 143702 (Sub-5F), filed March 12, 1979. Applicant: ALL FREIGHT SYSTEMS, INC., 1026 South 10th Street, Kansas City, KS 66105. Representative: Donald J. Quinn, Suite 900, 1012 Baltimore, Kansas City, MO 64105. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs* (except commodities in bulk), in vehicles equipped with mechanical refrigeration, between Kansas City, MO, on the one hand, and, on the other, points in AZ, AR, CA, CO, ID, IL, IN, IA, MI, MN, MT, NE, ND, OH, OK, OR, SD, TX, UT, WA, WI, and WY. (Hearing site: Kansas City, MO.)

Note.—Dual operations may be involved.

MC 144503 (Sub-13F), filed March 19, 1979. Applicant: ADAMS REFRIGERATED EXPRESS, INC., P.O. Box E, Forest Park, GA 30050. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Blvd., Atlanta, GA 30349. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *foodstuffs*, from the facilities of (1) LaChoy Food Products, Division of Beatrice Foods Co., and (2) Beatrice Foods Co., at Archbold, OH, to points in AL, GA, FL, LA, NC, SC, and TN. (Hearing site: Atlanta, GA.)

MC 144622 (Sub-41F), filed March 13, 1979. Applicant: GLENN BROS. TRUCKING, INC., P.O. Box 9343, Little Rock, AR 72219. Representative: Theodore Polydoroff, Suite 301, 1307 Dolly Madison Blvd., McLean, VA 22101. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *such commodities* as are dealt in by grocery stores and food and farm feedhouses, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the United States (except AK and HI), restricted in (1) and (2) above to the transportation of traffic originating at or destined to the facilities of Ralston Purina Company. (Hearing site: Washington, DC.)

Note.—Dual operations may be involved.

MC 146162 (Sub-3F), filed March 15, 1979. Applicant: TRANSPORT EQUIPMENT CORP., 240 E. 112th Street,

Hammond, IN 46320. Representative: Joseph Winter, 29 South LaSalle Street, Chicago, IL 60603. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *iron and steel articles*, from the facilities of Republic Steel Corporation, at Chicago, IL, to points in MI; and (2) *metal articles, building materials, and building supplies*, between the facilities of Master Jobbers, Inc., at Hammond, IN, on the one hand, and, on the other, points in MI. (Hearing site: Chicago, IL.)

MC 146573F, filed March 13, 1979. Applicant: LA SALLE TRUCKING, INC., P.O. Box 46, Peru, IL 61354. Representative: E. Stephen Heisley, 805 McLachlen Bank Bldg., 666 Eleventh Street, NW., Washington, DC 20001. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *chemicals, plastic, and plastic products*, (except commodities in bulk), and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), between the facilities of Northern Petrochemical Company, at or near (a) Mankato, MN, (b) Newark, OH, (c) Clinton, MA, and (d) Chicago, Morris, and Mapleton, IL, on the one hand, and, on the other, points in the United States (except AK and HI). (Hearing site: Chicago, IL, or Washington, DC.)

MC 146743F, filed March 16, 1979. Applicant: YAGER TRUCKING, INC., Route 1, Box 868, Woodland, CA 95695. Representative: Milton W. Flack, 4311 Wilshire Blvd., Suite 300, Los Angeles, CA 90010. To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting (1) *beer*, from the facilities of (a) Budweiser Brewery, at or near Fairfield, CA, (b) Miller Brewery, at or near Azusa, CA, (c) Pabst Brewery, at or near Los Angeles, CA, and (d) Joseph Schlitz Brewing Co., at Los Angeles, CA, to points in OR and WA; and (2) *wine*, from the facilities of (a) Italian Swiss Colony Winery, at or near Madera, CA, (b) Almaden Winery, at or near San Jose, CA, and (c) Paul Masson Vineyards, at or near San Jose and Saratoga, CA, to points in OR and WA. (Hearing site: San Francisco, CA.)

Note.—The purpose of this application, in part, is to convert contract carriers authority held in Permit No. MC-142929 (Sub-3) to common carrier authority. Condition: Prior or coincidental cancellation, at applicant's written request, of Permit No. MC-142929 Sub-3, issued May 19, 1978.

MC 12862 (Sub-1F), filed March 15, 1979. Applicant: ANTHONY TOUR

SERVICE, INC., Suite 672, 6060 N. Central Expressway, Dallas, TX 75206. Representative: Terrell Hinds, (same address as applicant). To engage in operations, in interstate or foreign commerce, as a *broker*, at Dallas, TX, in arranging for the transportation by motor vehicle, in interstate or foreign commerce, of *passengers and their baggage*, in the same vehicle with passengers, in special and charter operations, in tour service, between points in the United States (including AK and HI). Condition: Issuance of a license in this proceeding is subject to the coincidental cancellation, as requested by applicant, of the outstanding license in MC-12862, issued March 26, 1965. (Hearing site: Dallas, TX.)

Note.—Applicant is cautioned that arrangements for charter parties or groups should be made in conformity with the requirements set forth in *Tauck Tours, Inc., Extension—New York, NY*, 54 M.C.C. 291 (1952).

[FR Doc. 79-20335 Filed 7-2-79; 8:45 am]
BILLING CODE 7035-01-M

[Amdt. No. 2 to I.C.C. Order No. 40 under Service Order No. 1344]

Rerouting Traffic

To: *All railroads:*

Upon further consideration of I.C.C. Order No. 40 and good cause appearing therefore:

It is ordered:

I.C.C. Order No. 40 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 P.M., June 22, 1979, unless otherwise modified, changed or suspended.

Effective date. This amendment shall become effective at 11:59 p.m., June 8, 1979.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this amendment shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D. C., June 8, 1979.
Interstate Commerce Commission.
Joel E. Burns,
Agent.

[FR Doc. 79-20544 Filed 7-2-79; 8:45 am]
BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register

Vol. 44, No. 129

Tuesday, July 3, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CIVIL AERONAUTICS BOARD.

Notice of deletion of item from the June 28, 1979 meeting agenda.

TIME AND DATE: 9:30 a.m., June 28, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUBJECT: 2. Dockets 35455 and 35521; Applications of Braniff for restriction removal under section 401(e)(7)(B) of the Act and expedited, nonhearing procedures under Subpart Q (BIA, OGC, BL), memo 8937).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

SUPPLEMENTARY INFORMATION: Item 2 was deleted from the June 28, 1979 agenda because additional staff coordination is required. Accordingly, the following Members have voted that agency business requires that Item 2 be deleted from the June 28, 1979 agenda and that no earlier announcement of this deletion was possible:

Chairman Marvin S. Cohen
Member Richard J. O'Melia
Member Elizabeth E. Bailey
Member Gloria Schaffer

[S-1306-79 Filed 6-29-79; 3:02 pm]

BILLING CODE 6320-01-M

2

CIVIL AERONAUTICS BOARD.

Notice of deletion of item from the June 28, 1979 meeting agenda.

TIME AND DATE: 9:30 a.m., June 28, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue, N.W., Washington, D.C.

SUBJECT: 26. Docket 34138, In the Matter of Commuter/Certificated Joint Fares (8311-F, OGC).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

SUPPLEMENTARY INFORMATION: Item 26 was deleted from the June 28, 1979 agenda because it was contingent on the adoption of Item 25. Both Items 25 and 26 will be coming back to the Board by the Notation process. Accordingly, the following Members have voted that agency business requires the deletion of Item 26 from the June 28, 1979 agenda and that no earlier announcement of this deletion was possible:

Chairman Marvin S. Cohen
Member Richard J. O'Melia
Member Elizabeth E. Bailey
Member Gloria Schaffer

[S-1307-79 Filed 6-29-79; 3:02 pm]

BILLING CODE 6320-01-M

3

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 9:30 a.m., July 9, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428.

SUBJECT:

1. Dockets 33112 and 33283, TXI-National Acquisition Case and Pan Am-National Acquisition Case (Instructions to staff).
2. Docket 33465, Continental-Western Merger Case (Instructions to staff).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary (202) 673-5068.

[S-1303-79 Filed 6-29-79; 3:02 pm]

BILLING CODE 6320-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:30 a.m. on Thursday, June 28, 1979, the Corporation's Board of Directors met in open session, by telephone conference call, to consider certain matters which it determined, on motion of Chairman Irvine H. Sprague, seconded by Director William M. Isaac (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director John G. Heimann (Comptroller

of the Currency), required its consideration on less than seven days' notice to the public. The Board of Directors then adopted a resolution, on motion of Chairman Sprague, seconded by Director Isaac, concurred in by Mr. Selby, approving and adopting a new Part 346 of the Corporation's rules and regulations, entitled "Foreign Banks," and the amendment of Part 330 of the Corporation's rules and regulations, entitled "Clarification and Definition of Deposit Insurance Coverage," in order to implement the International Banking Act of 1978. The Board further stated that it would solicit additional comments with respect to sections 346.3 and 346.6 upon publication of the regulation in the Federal Register.

The Board further determined, by the same majority vote, that no earlier notice of the meeting was practicable.

Dated: June 28, 1979.

Federal Deposit Insurance Corporation.

Hannah R. Gardiner,

Assistant Secretary.

[S-1302-79 Filed 6-29-79; 10:50 am]

BILLING CODE 6714-01-M

5

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

TIME AND DATE: 10 a.m., Friday, July 6, 1979.

PLACE: 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed statement to be presented before Subcommittees of the House Committee on Banking, Finance and Urban Affairs regarding a range of issues related to the Eurodollar market, including comments on H.R. 3962, "Eurocurrency Market Control Act of 1979."

2. Personal actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any agenda items carried forward from a previously announced meeting.

[S-1298-79 Filed 6-29-79; 4:10 pm]

BILLING CODE 6210-01-M

6

U.S. INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10:00 a.m., Tuesday, July 10, 1979.

PLACE: Room 117, 701 E Street, N.W., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary.
5. Thermometer Sheath Packages (Inv. 337-TA-56)—vote.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-1330-79 Filed 6-29-79; 10:13 am]

BILLING CODE 7020-02-M

7

METRIC BOARD.

TIME AND DATE: July 18, 1979 at 11:00 a.m.; July 19, 1979 at 10:00 a.m.

PLACE: The meeting on July 18 will be held at Airlie House, Warrenton, Virginia. The July 19 meeting will be held in the Ravensworth Center, 2nd floor, Arlington Hyatt House, 1325 Wilson Boulevard, Arlington, Virginia 22209.

STATUS: July 18—closed under exemption Section (c)(2) of U.S.C. 522b. July 19—Open to the public.

MATTERS TO BE CONSIDERED:

Wednesday, July 18. Discussion of internal policy matters.

Thursday, July 19. Review of past year activities. Discussion of Board goals and objectives for fiscal year 1980 and 1981.

SUPPLEMENTARY INFORMATION: Anyone wishing to attend the open session on July 19 is asked to call the Metric Board office on (703)235-1933 so that adequate seating may be arranged.

CONTACT PERSON FOR MORE INFORMATION: Joan Phillips, 703-235-1933.

Louis Polk,
Chairman.

[S-1301-79 Filed 6-29-79; 10:28 am]

BILLING CODE 3510-13-M

8

POSTAL RATE COMMISSION.

June 29, 1979.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 38049, June 29, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE CLOSED MEETING: 10:30 a.m., July 6, 1979.

CHANGES IN THE MEETING: Prior to the "closed" meeting [closed pursuant to 39 U.S.C. § 552b(c)(2)(6)] there will be an

"open" meeting at 10:30 a.m. to elect a Vice Chairman.

CONTRACT PERSON FOR MORE INFORMATION: Ned Callan, Information Officer, Postal Rate Commission, Room 500, 2000 L Street, N.W., Washington, D.C. 20268, telephone (202)254-5614.

[S-1303-79 Filed 6-29-79; 1:23 pm]

BILLING CODE 7715-01-M

9

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Friday, June 29, 1979.

PLACE: Commissioners' conference room, 1717 H Street N.W., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

Friday, June 29

11 a.m.: Briefing by EPA on Radiation Standards and Criteria for Waste Management (approximately 1 hour, public meeting).

12 noon: Discussion of Personnel Matter (approximately 1 hour, closed—Exemption-6) (Continued from June 28).

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634-1410.

Walter Magee,

Office of the Secretary.

[S-1304-75 Filed 6-29-79; 1:23 pm]

BILLING CODE 7590-01-M

10

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Friday, June, 29, 1979 (additional item).

PLACE: Commissioner's conference room, 1717 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Friday, June 29

12:15 p.m. (approximately): Commission meeting on status of TMI-1.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee, (202) 634-1410.

Walter Magee.

Office of the Secretary.

[S-1305-79 Filed 6-29-79; 1:23 pm]

BILLING CODE 7590-01-M

11

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during

the week of July 2, 1979, in Room 825, 500 North Capitol Street, Washington, D.C.

Closed meetings will be held on Tuesday, July 3, 1979, at 10:00 a.m., and Thursday, July 5, 1979, at 9 a.m. and immediately following the 10 a.m. open meeting. An open meeting will be held on Thursday, July 5, 1979, at 10 a.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402 (a)(8)(9)(i) and (10).

Chairman Williams and Commissioners Evans, Pollack and Karmel determined to hold the aforesaid meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, July 3, 1979, at 10 a.m., will be:

Settlement of administrative proceedings of an enforcement nature.

Order compelling testimony.

Access to investigative files by Federal, State, or Self-Regulatory Authorities.

Formal orders of investigation.

Settlement of injunctive action.

Institution of administrative proceedings of an enforcement nature.

Institution and settlement of administrative proceedings of an enforcement nature.

Institution of injunctive action.

Institution of injunctive action and administrative proceedings.

Litigation matter.

Freedom of Information Act appeal.

The subject matter of the closed meeting scheduled for Thursday, July 5, 1979, at 9:00 a.m., will be:

Regulatory matter bearing enforcement implications.

The subject matter of the closed meeting scheduled for Thursday, July 5, 1979, immediately following the 10:00 a.m. open meeting, will be:

Formal order of investigation.

Institution of injunctive actions.

Administrative proceedings of an enforcement nature.

The subject matter of the open meeting scheduled for Thursday, July 5, 1979, at 10 a.m., will be:

1. Consideration of whether to publish for notice and comment two rule proposals submitted by the Institute for Public Representation, a public interest group affiliated with Georgetown University, which would: (a) amend the Commission's Rules of Practice to set forth the responsibilities of lawyers to report fraud or other violations of

the law by corporate clients or others to the Commission, to management and to the board of directors; and (b) amend the Commission's disclosure forms to require disclosure of information concerning (i) the obligations of corporate attorneys to report violations of law to the board of directors, (ii) agreements between corporations and outside counsel and (iii) resignations or dismissals of corporate counsel. For further information, please contact Frederic Townsend at (202) 376-3561.

2. Consideration of whether to adopt a rule under the Investment Advisers Act of 1940 ("Act") which would set forth clear guidelines concerning when and under what circumstances an investment adviser could pay a cash referral fee to a person who solicits clients for him ("solicitor"). As an alternative, the Commission will also consider whether to adopt a rule which would completely prohibit such payments. Should the Commission decide to permit such payments under specified circumstances, it will also consider whether to amend certain of the record-keeping requirements under the Act and whether to express a view concerning the status under the Act of solicitors who engage in solicitation activities in accordance with the new rule. For further information, please contact Thomas D. Maher at (202) 755-0214.

3. Consideration of applications by Banque Nationale de Paris, Credit Lyonnais, Kansallis-Osake-Pankki, Post-och Kreditbanken, Skandinaviska Enskilda Banken, Societe Generale and Svenska Handelsbanken (collectively "Applicants"). Each foreign bank Applicant seeks an order exempting it from all provisions of the Investment Company Act of 1940 ("Act"). For further information, please contact Arthur J. Brown at (202) 755-1742.

4. Consideration of Cincinnati Stock Exchange ("CSE") rule filing (File No. SR-CSE-78-4) which constitutes a complete revision of virtually all the rules of the CSE. For further information, please contact Thomas C. Etter, Jr., at (202) 755-7915.

5. Consideration of whether to authorize the issuance of a release suggesting techniques in drafting trust indentures which permit expedited review of registration statements for debt securities under the Securities Act of 1933. For further information, please contact Norman Schou at (202) 755-1240.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: John Ketels at (202) 755-1129.

June 28, 1979.

[S-1299-79 Filed 6-29-79; 4:19 pm]

BILLING CODE 8010-01-M

DEPARTMENT OF AGRICULTURE**Food and Nutrition Service**

[7 CFR Part 226]

Child Care Food Program**AGENCY:** Food and Nutrition Service, USDA.**ACTION:** Proposed rule.

SUMMARY: The Department is proposing a revision of the Child Care Food Program regulations to implement the provisions of P.L. 95-627, the Child Nutrition Amendments of 1978. Interested parties are offered an opportunity to comment on this proposal.

DATE: Comments must be received by August 17, 1979, to be assured of consideration in final rulemaking.

ADDRESS: Written comments should be sent to Jordan Benderly, Director, Child Care and Summer Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250. A draft Impact Analysis Statement concerning the major proposals and copies of all written comments received will be available for inspection by the public during normal business hours in room 644, 500 12th Street, SW., Washington, D.C. 20250. A copy of the draft impact Analysis Statement can be obtained from Mr. Benderly.

FOR FURTHER INFORMATION CONTACT: Either Mr. Benderly or Beverly Walstrom at the above address or by telephone at (202) 447-6509.

SUPPLEMENTARY INFORMATION: The Child Care Food Program is authorized by section 17 of the National School Lunch Act. Pub. L. 95-627, enacted November 10, 1978, substantially revised the Program and authorizes the Program on a permanent basis.

Comprehensive Program regulations were last issued on June 25, 1976. Three amendments to those regulations have since been published to provide audit funds, delete the time for securing IRS nonprofit status, and announce the opening of the Mountain Plains Regional Office. The proposed regulations implement Pub. L. 95-627. This statute prescribes several major nondiscretionary changes, such as mandatory advance payments, a new method of assigning reimbursement rates, separate food service and administrative rates for family day care programs, establishment of fair hearing procedures, time frames for application

approvals and payment of claims, and annual notification of Program availability to nonparticipating facilities. (The new statutory formula for earning State administrative expense (SAE) funds is codified in a different part of this title—7 CFR Part 235.) In addition, the proposed regulations incorporate recommendations, based on three years of Program experience under the current regulations, from various sources, including a national meeting held in January of this year to solicit public comment. A 45 day public comment period is afforded to allow interested people and organizations to submit criticisms, favorable opinions, and information to affect regulatory policies.

The President directed each Executive Agency to adopt procedures to improve the notice and comment rulemaking process (Executive Order 12044, issued March 24, 1978 (43 FR 12661)). This Executive Order establishes a 60 day comment period for significant rulemakings except under certain circumstances which justify a shorter amount of time. The Department is concerned about issuing final regulations as expeditiously as possible to permit implementation of the benefits authorized by P.L. 95-627. In evaluating the importance of providing 60 days of public comment against the public interest in timely implementation of the law, Robert M. Greenstein, Acting Administrator, Food and Nutrition Service, has decided to allow 45 days, rather than 60 days, for comment.

The proposed regulations reflect the Department's view that there are now three distinct types of operations in the CCFP: child care centers, family day care homes, and outside-school-hours care centers. These different facilities vary in administrative complexity, operational stability, and managerial expertise. The proposed administrative and operational requirements set forth in these regulations reflect an attempt to recognize these differences. Separate regulatory sections are established for each type of child care facility.

The following describes the proposed changes to the CCFP regulations:

I. Definitions

1. *Classifications.* The proposed regulations attempt to more clearly differentiate institutions and sponsoring organizations. Any organization which directly enters into a Program agreement with the State agency is categorized as an institution; institutions may be sponsoring organizations, independent child care centers, or independent

outside school hours care centers. Sponsoring organizations are institutions which administer the Program at one or more family day care homes, or two or more centers, or at one center which is organizationally distinct (i.e., has separate tax-exempt status) from the sponsoring organization. Day care outlets under the auspices of a sponsoring organization are classified as child care facilities and may be child care centers, outside-school-hours care centers, or family (or group) day care homes. Outside-school-hours care centers are centers which provide day care to children, mostly of school-age, before or after school hours.

II. Eligibility

1. *Nonprofit status.* The legislation requires participating institutions to have public or private nonprofit status. To be considered nonprofit, an institution must have IRS tax-exempt status, be moving toward compliance with IRS requirements for tax-exempt status, or operate another Federal program requiring nonprofit status. An institution may now evidence tax-exempt status under any section of the Internal Revenue Code of 1954—prior legislation Section 501(c)(3). Pub. L. 95-627 directs the Department to establish standards for moving toward compliance with IRS requirements for tax-exempt status. Current regulations provide for open-ended eligibility of institutions which have filed an application with IRS. This may result in an institution attempting to participate indefinitely by filing an incomplete application with IRS with no intent of securing tax-exempt status. The proposed regulations prevent this result by providing for the termination of institutions which have not supplied IRS with all requested information after 12 months. Institutions may participate beyond 12 months as long as their complete application is pending IRS determination. This approach is consistent with the recommendation from the national meeting to establish a flexible 12 month deadline for achieving nonprofit status. (226.16(a))

2. *Licensing.* Licensing or approval to provide child care continues to be a basic requirement for Program eligibility. The statute requires all institutions to have Federal, State or local licensing or approval, unless licensing is not available. This requirement pertains to all independent centers and all sponsored facilities (sponsoring organizations do not have to be licensed or approved). Most

institutions, as in the past, will continue to be eligible for the CCFP based on Federal, State or local licensing or approval. However, there are cases where, for one reason or another, licensing is not available to institutions. Pub. L. 95-627 addresses situations where the initiation of the Program is thwarted by a lack of access to child care licensing services. No State or local child care standards may exist for some types of child care facilities. Other licensing authorities restrict licensing or approval determinations to certain categories of child care facilities. For example, in some States no licensing mechanism exists for family day care homes serving fewer than four children. In other areas, licensing may be technically available, but delays in the licensing process force facilities to endure long waiting periods before determinations are granted.

The Department's study of the Congressional committee reports found a legislative intent to ensure that Program benefits are accessible to institutions which, despite maintaining quality child care standards, cannot obtain licensing because of problems with licensing mechanisms. The Department recognizes that the primary mission of State agencies which administer the Program is the enhancement of child nutrition, and that some parties may view alternate licensing/approval procedures as a deviation from this mission. The Department maintains that the expeditious resolution of problems with licensing mechanisms is necessary to improve nutritional services to many needy children. The proposed regulations attempt to minimize the administrative burden attendant to resolving these problems. The following is a summary of the procedures and issues related to licensing contained in the proposed regulations.

(a) *Eligibility criteria.* Either Federal, State or local licensing or approval for child care remains as the primary means of establishing Program eligibility. Institutions which are complying with applicable requirements for license renewals retain eligibility for the Program. If such licensing or approval is not available to an institution, it may participate if it receives Title XX funds for child care. If the institution does not receive Title XX funds, it may then establish eligibility under alternate approval procedures by demonstrating compliance with any of the following standards: (1) any applicable State child care standards, or (2) any applicable local child care standards, or (3) the Federal Interagency Day Care

Requirements, as amended by Title XX (FIDCR). The institution may select which one of these three sets of standards for which it will demonstrate compliance.

(b) *Alternate approval procedures.* The Department is aware that administering agencies have neither the staff resources or expertise to administer complex child care standards. The proposed regulations permit streamlined determinations of eligibility which are consistent with protecting the health and safety of participating children. State agencies will provide institutions with information on FIDCR and applicable State standards. However, if an institution chooses to demonstrate compliance with applicable local standards, it must identify and submit these standards to the State agency. State agencies may permit institutions to self-certify compliance with child care standards during the application process; however, health/sanitation and fire/building safety permits must be presented for all food service outlets. This approach limits administering agency involvement with licensing/approval procedures, while proper scrutiny of the hygiene and safety of the child's environment is not sacrificed. State agencies will be expected to verify compliance with the applicable child care standards during Program reviews. No separate compliance reviews are proposed. However, if Program reviews of selected sponsored facilities reveal compliance problems, a more extensive review of the sponsoring organization's facilities is warranted. Any determinations of compliance by State agencies under these alternate approval procedures are solely for the purpose of establishing Program eligibility, and do not relieve an institution from its responsibilities under any State or local laws or regulations.

(c) *Backlogs.* Institutions for which licensing is technically available may be denied timely access to licensing (and eligibility for Program benefits) because of the licensing authority's administrative backlogs. To ensure that Program benefits are not withheld because of circumstances beyond an institution's control, the proposed regulations consider licensing or approval to be not available to an institution if the licensing authority does not make a determination on an application for licensing or approval within 90 days. The Department envisions the process as working in the following manner: unlicensed institutions applying for Program participation may indicate the date on

which they applied to the licensing authority for licensing or approval. The administering agency must, according to Pub. L. 95-627, respond to the applicant within 15 days and inform the institution that the application for Program participation cannot be approved because it is incomplete. At this point, the applicant will be provided with the necessary forms to demonstrate compliance with State child care standards or FIDCR and informed that it may demonstrate compliance with these standards to the administering agency if no determination is made on its application for licensing. During this period, the institutions will have time to complete any forms, secure health/sanitation and building safety permits and return this information to the administering agency. If the institution cannot secure a determination on its application for licensing after 90 days (from the point its Program application was received by the administering agency), the administering agency must consider that licensing is not available to the institution and, according to Pub. L. 95-627, act on its Program application within 30 days. The institution may then be approved to participate in the Program for one year; however, it must continue to pursue licensing or approval from the licensing authority. If the licensing authority later rules that the institution is not in compliance with its licensing code, the institution will be responsible for informing the administering agency about this determination. The administering agency will then terminate the institution's Program participation until licensing is secured through regular channels.

—In setting the proposed 90 day time frame to determine when backlogs make licensing not available, the Department sought a time span which would facilitate access to the Program, while making sure that most institutions establish eligibility through normal licensing procedures. A shorter time period would expedite eligibility determinations, but force administering agencies to deal with more licensing/approval situations. A longer time period would allow for more reliance on established licensing mechanisms, but increase the time institutions must wait before getting an opportunity to participate in the Program. The Department seeks information about the extensiveness and duration of actual licensing backlogs. Data available to the Department during the development of the proposed regulations indicate that most State licensing authorities act on licensing applications from day care

homes within three months. However, these data are subject to question. Additional information will be used to evaluate the proposed time frames to ensure that administering agency involvement with alternative licensing/approval procedures is limited to addressing delays which exceed routine waiting periods.

(d) *FIDCR*. The statute directs the Department to establish child care standards to use as an alternate, approval procedure. After consultation with the Department of Health, Education, and Welfare, the Department proposes, in the interest of promoting quality child care, to use the Federal Interagency Day Care Requirements (FIDCR), as amended by Title XX of the Social Security Act. These amendments to the 1968 FIDCR: (1) make educational services optional rather than mandatory, (2) set child-staff ratios for children under 3 years of age, and (3) provide for more flexible staffing standards for school-age children (a 15:1 child-staff ratio for children aged six to 14, and a 20:1 child-staff ratio for older children are required, as opposed to the minimum 10:1 ratio stipulated in the original 1968 FIDCR). Under the proposed regulations, FIDCR at times will be applicable to outside-school-hours care centers as well as child care centers and family and group day care homes. Under the CCFP's predecessor program (the year-round component of the Special Food Service Program for Children), licensing or approval was not a criterion for eligibility. Upon implementation of Pub. L. 94-105, licensing or approval, or compliance with the 1968 FIDCR, was established as a prerequisite for participation. The Department recognized that most State and local governments did not have licensing standards for recreation centers, and that most of the 1968 FIDCR were too comprehensive for most participating recreation programs. To enable these after-school programs to continue program operations, current regulations allowed State agencies to develop approval standards tailored to the operations of recreation centers. Pub. L. 95-627 addresses the eligibility of day care programs for school-age children; however, because the statutory language specifically relates day care to programs for school children in outside-school-hours situations, the current approval provisions for after-school-recreation programs are eliminated and replaced by FIDCR—a set of standards designed specifically for child care. The Department solicits comments on how these changes in eligibility standards

may affect participating after-school recreation programs.

The Department is concerned that not all FIDCR components may be appropriate for all child care facilities, particularly family day care programs and outside-school-hours child care programs. Accordingly, the following list indicates which Title XX FIDCR components (for all types of facilities) are under consideration for retention or modification in the final regulations:

(1) "Day Care Facilities" (child-staff ratios) will be retained.

(2) "Environmental Facilities" will retain subitems applicable to safety, sanitation, and suitability of facilities, but eliminate the subitems for location of facilities.

(3) "Educational Services" are optional under the Title XX FIDCR.

(4) "Social Services" will be consolidated to require that families are provided with information on community social services.

(5) "Health and Nutrition Services" will be modified to require provisions for first aid and emergency medical care and for ensuring that children's families are informed about available health services. Nutrition services, of course, are an integral program component.

(6) "Training of Staff" will be modified to permit referrals to other child care training programs in situations where sponsoring organizations cannot provide comprehensive training on day care services.

(7) "Parent Involvement" will be simplified to require opportunities for parents to observe their children in day care or volunteer their services in the day care program.

(8) "Administration and Coordination" will be limited to compliance with Federal nondiscrimination requirements.

(9) "Self-Evaluation" will be retained.

The Department welcomes comments on particular problems encountered in complying with specific FIDCR components, and solicits suggestions on revising these components with a view toward clarity and appropriateness. The Department of Health, Education, and Welfare proposed significant revisions of FIDCR for public comment on June 15, 1979. The Department invites comments on these proposed changes in the FIDCR. The Department will consider any DHEW alterations in promulgating standards for final regulations. (§ 226.7(d), § 226.17(a), § 226.18(a), and § 226.19(a)).

3. *Eligibility of handicapped*. Pub. L. 95-627 broadens the definition of children to include handicapped persons over 18 years of age attending eligible

child care institutions. The Department interprets this provision to apply only to mentally or physically handicapped people enrolled in child care institutions which serve a majority of children 18 years of age or below. The eligibility of individuals is broadened, but there is no expansion of institutional eligibility. The legislation does not envision the Program participation of adult sheltered workshops or day care centers for handicapped adults. (§ 226.2(g))

III. State Responsibilities

1. *Outreach*. Pub. L. 95-627 mandates annual notification of Program availability to all nonparticipating centers and homes which are licensed, approved, registered, or receiving Title XX funds. To allow for a more efficient outreach effort, State agencies may exclude private profit-seeking centers from annual notification. This notification procedure is a mandatory component of outreach efforts, but does not suffice as an outreach plan. The legislation requires State plans to provide an action program for extending the Program to all eligible institutions and assisting family day care homes in obtaining sponsoring organizations. The Department views notification as an essential first step in a series of efforts toward Program expansion (§ 226.6(c)(1), § 226.7(f))

2. *Application approval*. The statute requires administering agencies to act on complete applications for participation within 30 days and notify applicants filing incomplete forms or information within 15 days. The proposed regulations specify that the standards are based on calendar days to ensure prompt action. State agencies may choose to require participating institutions to submit a complete reapplication each year or comply with simplified agreement renewal procedures. At a minimum, these regulations require an annual extension of the Program agreement, submission of current family-size and income information, issuance of a nondiscrimination statement, and (only for sponsoring organizations) submission of a management plan. Licensing or approval is an ongoing requirement and State agencies should implement procedures to ensure that centers or homes with expiring licenses comply with applicable renewal procedures.

In addition, State agencies must annually permit institutions to express a preference to receive commodities or cash-in-lieu payments and to choose to receive reimbursement on the basis of either a tiering method or the present

means of calculating payments. To facilitate management of the agreement renewal process, State agencies may stagger agreements throughout the year to avoid a deluge of renewals at the start of each fiscal year. The Department will provide guidance on implementing a staggered agreement renewal process. (§ 226.7(b))

3. *Commodity preferences.* Pub. L. 95-627 shifts the initial decision authority for electing commodities or cash payments from the State level to the institution level. State agencies must survey the preferences of participating institutions for commodities or cash payments at least once a year. To assist institutions in making informed selections, State agencies should provide institutions with available information on what types of commodities are expected to be available and how the commodity distribution system operates. Institutions will receive their choice of commodities or cash. However, if the number of institutions requesting commodities is so small that the State can demonstrate that distribution would be impracticable, the State agency may, with the concurrence of the Food and Nutrition Service, provide cash-in-lieu of commodities to all institutions. (§ 226.7(e)(5) and (g))

4. *Program assistance.* Sound Program management is contingent on the timely identification and resolution of problems through the ongoing evaluation of administrative and food service operations at the institutional level. The Department believes that administrative oversight of the Program at both the Federal and State levels must be improved to manage the administrative complexity and higher payment levels promised by the implementation of Pub. L. 95-627. Moreover, the Department interprets the statutory requirement for sufficient technical assistance and monitoring and the authorization of higher levels of State administrative expense (SAE) funds as intent to ensure more comprehensive Program assistance.

The Department examined retention of the current policy of requiring plans for monitoring in the State Plan of Child Care Food Program operations without stipulating minimum levels of assistance. This approach has permitted such wide variations in the frequency and scope of reviews that many institutions fail to receive adequate assistance. The Department has noted continuing problems with meeting meal patterns and recordkeeping requirements. These problems often result from misunderstandings which

can be corrected by supervisory and technical assistance. To ensure appropriate attention to all institutions, three types of minimum monitoring standards were originally considered during the development of the proposed rule: pre-approval visits, child care standards compliance visits, and program reviews.

The Department endorses visits to applicants prior to approval to provide instruction on Program requirements. However, the law's 30 day time limit on application approvals virtually precludes mandatory preapproval visits as timely scheduling would be impossible in many instances. While the proposed regulations do not require pre-approval visits, the Department encourages providing as much pre-operational assistance as possible to facilitate the smooth beginning of Program operations.

Visits to verify compliance with child care standards (in situations where the administering agency acts as a surrogate for the licensing authority) were considered as a separate monitoring requirement. The Department's analysis of licensing problems indicated that such a requirement could impose an undue hardship on agencies administering States which lack comprehensive licensing services and could divert staff resources from more vital administrative tasks. The proposed rule integrates child care standards compliance evaluations with the general supervisory assistance requirement. Program reviews will encompass an assessment of compliance with child care standards when the administering agency has extended approval based on a certification of compliance with these standards. If the initial reviews of a sponsoring organization's facilities reveals serious problems, administering agencies will be expected to extend their review coverage beyond the minimum requirement.

Program reviews are required for institutions and sponsored facilities. The proposed rule requires reviews of one-third of all institutions and fifteen percent of sponsored facilities each year. To ensure that all institutions receive proper attention, each institution must be visited within four years. This stipulation is designed to ensure that each institution is reviewed within a reasonable period of time. Otherwise, in a State with a growing Program, the requirement for visiting one-third of the participating institutions annually, coupled with the provision for visiting certain new institutions during their initial period of Program operations, could allow some institutions to operate

for many years without a supervisory assistance visit.

To ensure that new sponsoring organizations receive help in the early stages of Program activities, visits to all sponsoring organizations with five or more facilities are required during their first 90 days of Program operations. While the Department encourages according priority to all newly participating institutions, the proposed rule limits the requirement to sponsoring organizations of this size to assuage the potential administrative burden in States with a rapidly expanding Program.

Various minimum levels of monitoring were considered during the development of the proposed rule, ranging from 20 to 50 percent of institutions and from 10 to 20 percent of sponsored facilities. Five options were developed which specified different monitoring frequencies for independent child care centers, sponsoring organizations for child care centers, sponsoring organizations for family day care homes, and sponsored child care facilities. The Department analyzed the impact of these options for monitoring requirements by projecting FY 1980 participation levels for 18 States and examining the workload implications based on the following assumptions: all reviews require one staff-day, except for family day care reviews, which require one-half of a staff-day; the total number of staff-days indicated by the proposed requirements must be incremented by 50 percent to allow for preparation, travel, and reports, and 220 staff-days translate into one staff-year. The figures resulting from the proposed requirements appear to represent a reasonable allocation of staff resources for a vital administrative function. The Department is aware of the numerous demands on limited staff, but believes that these proposals are warranted and manageable. Monitoring activities must be supplemented by guidance and training to form a comprehensive Program assistance effort. The Department will issue operational and nutritional guidance materials to aid State agencies.

5. *Fair hearing procedure.* The statute requires administering agencies to afford a fair hearing to institutions aggrieved by State agency decisions on Program participation or reimbursement claims. The proposed regulations identify eight specific actions which may be appealed:

- (1) Denial of an institution's application for participation;
- (2) Denial of a sponsoring organization's application for participation for a child care facility;

(3) Termination or suspension of an institution's participation;

(4) Termination or suspension of a sponsored child care facility's participation;

(5) Denial of an applicant sponsoring organization's request for start-up payments;

(6) Denial of all or part of an institution's claim for reimbursement (including disallowances of meals served);

(7) Denial of advance payments;

(8) Demand for the remittance of an overpayment;

(9) Any other action of the State agency affecting the participation of an institution in the Program or the institution's claims for reimbursement.

State agencies must inform institutions in writing about their right to invoke the fair hearing process whenever an appealable action is taken. Appellant institutions may review all the evidence pertinent to an adverse action. The appellant may participate in an oral hearing or limit rebuttal to written documentation. State agency hearing officials must be independent and impartial for the appeal procedure to meet the accepted standards for due process. While the proposed regulations do not set standards for hearing officials' qualifications, the Department expects States to select officials who are versed in administrative procedures and regulatory interpretations.

The proposed time frames are more flexible than those specified for the Summer Food Service Program for Children, because the year-round nature of the Program justifies a lesser need for immediate action. Institutions must initiate an appeal within 10 to 15 days of notice of an adverse action. State agencies must schedule a review and issue a written decision within 45 days of receipt of a request for a hearing. To afford institutions sufficient time to prepare their appeals, State agencies must provide at least 10 days advance notice of the time and place of the review. The State's decision remains in effect during the appeal process; however, participating institutions may continue Program operations during an appeal of termination actions (unless the action is based on an imminent danger to the health or welfare of children). (§ 226.7(j))

6. *Standard contracts.* Many institutions depend on vendors to provide meals. The proposed regulations require State agencies to develop and implement a mandatory institution-vendor contract to ensure that each institution's interests are protected. Unitization is required only for meals

delivered to outside-school hours care centers. Program monitoring shows a widespread problem with meals missing components in these programs. In other types of programs, unitization may be required when State agency evidence indicates that this requirement is necessary for meal pattern compliance. The Department will provide State agencies with guidance on developing standard contracts. (§ 226.7(h) and § 226.22(d))

7. *Sponsoring organization management contracts.* The Department believes that sponsoring organizations must be capable of managing Program operations in a basically independent fashion. Likewise, the statute stipulates that institutions must provide adequate supervisory and operational staff to manage Program operations. Accordingly, these regulations prohibit sponsoring organizations from contracting for the management of the Program. (§ 226.16(d))

8. *Procurement standards.* Current regulations limit the applicability of the procurement standards to food service equipment assistance. The proposed regulations fully implement OMB Circular A-102, Attachment O, by extending these requirements to all transactions involving Program finds. These standards are designed to promote open and free competition and generally require a formal bid procedure for all procurement transactions of \$10,000 or more. The Department is concerned about the clarity of these standards and welcomes comments on specific areas which should be addressed in guidance. (§ 226.7(i), § 226.22)

IV. Financial Management

1. *Financial management instruction.* The Department will issue a financial management instruction to establish criteria for State agency instructions. As each institution is to be audited once every two years, clear guidance on cost allowability and recordkeeping standards is needed. (§ 226.8(j))

2. *Rate assignments.* P.L. 95-627 offers institutions, other than family day care home sponsors, a choice between the present means of determining reimbursement and a tiering method in which a single national average payment rate is assigned for all meals served on the basis of the combined percentages of enrolled children eligible for free and reduced-price school meals. The tiering method should simplify reimbursement computations and permit institutions serving high proportions of needy children to receive more assistance. Institutions in which at least

two-thirds of the enrolled children are eligible for free or reduced-price school meals will be assigned the applicable rate for free meals. Institutions in which less than two-thirds, but at least one-third of the children are eligible for free or reduced-price meals will be assigned the applicable reduced-price rate. Other institutions will receive the applicable paid rate. The proposed regulations require State agencies to offer and explain this choice to institutions at least once a year while permitting more frequent choice with the consent of both the State agency and the institution.

Current regulations permit State agencies either to base reimbursement on separate counts of meals served to children in each need category (free, reduced-price, and paid) at each meal service or to use claiming percentages or blended-rates. State agencies retain the choice of establishing either method as the alternative to the tiering method. Once a method of reimbursement is selected by the institution, the State agency must assign rates annually on the basis of family-size and income information reported by the institution. While semi-annual rate adjustments to reflect changes in the national average payment rates are required, rate reassignments based on updated family-size and income information are optional to the State agency. (§ 226.10)

3. *Start-up payments.* The lack of available sponsoring organizations has precluded family day care home participation in many communities. A major barrier to recruiting organizations for Program sponsorship has been the absence of funds to defray the expenses of planning and developing a food program in day care homes. The statute entitles sponsoring organizations for family day care homes which satisfy regulatory criteria for start-up payments to receive such assistance. No other institutions may receive start-up payments. The proposed regulations limit start-up payments to sponsoring organizations making initial application for the Program. The Department believes that the legislative intent was to provide special assistance to developing sponsoring organizations to defray the initial costs of planning a food service program.

Applicant sponsoring organizations which request start-up payments are to evidence public or private nonprofit status and a record of managing ongoing activities (such as administering public programs or operating a church). In addition, the applicant must submit a realistic plan for recruiting family day care homes (such as the method for contacting homes) and organizing the

Program (such as plans for pre-approval visits and training) to the State agency for review and approval.

Applicants which satisfy these criteria will enter into an agreement which details specific start-up activities, budgets anticipated administrative costs, and specifies a time frame for initiating food service operations. The amount of start-up assistance will reflect not less than one, or more than two, month's anticipated administrative reimbursement, based on the number of homes expected to initiate Program operations. The State agency will determine the specific dollar amount by considering cost levels and other resources available to the sponsoring organization in approving the start-up budget. However, to ensure that new sponsoring organizations do not overextend their administrative capabilities, start-up payments may not be made for more than 50 homes.

If the sponsoring organization cannot develop a program of the size expected at the end of the time frame allotted in the agreement, its responsibility to remit the start-up monies would depend on whether it carried out start-up activities and incurred related costs. The Department is aware that this approach dictates a case-by-case scrutiny of each situation, but believes that some provisions must be made for sponsoring organizations which conduct outreach plans in good faith, but nevertheless fail to develop a program. Comments are solicited to suggest ways to more clearly direct the criteria for eligibility for start-up payments at responsible community organizations and to clarify State agency responsibilities for monitoring the use of start-up payments. (§ 226.4(e), § 226.8(e), § 226.13)

4. *Advance payments.* Pub. L. 95-627 mandates monthly advance payments to institutions at the full amount of claims customarily paid. The Department proposes to base the initial advance payments on an approximation of the average monthly claim for reimbursement earned during each institution's prior six months of operations. The intent is to obtain a representative amount based on reasonably current rates and program size. New institutions will receive advance payments based on the State agency's estimate of their first month's earnings. Institutions may choose to decline advance payments, or to receive partial advances. The intent of the law is to improve cash flow. The proposed regulations require a sponsoring organization which receives advance payments to disburse these payments to their facilities within 15 days of receipt.

The Department has not required all sponsoring organizations to accept advance payments because many umbrella organizations could not handle the additional administrative workload incurred in transmitting advance payments to their facilities.

State agencies are to establish procedures to ensure that the continuity of advance payments is supported by uninterrupted submission of valid claims for reimbursements. The logistics of processing payments almost require that three advances be paid before a reimbursement claim is approved for payment. However, the fourth advance may not be issued until at least one claim is validated. The fifth advance is contingent on validation of the second claim, etc. This system maintains an incentive for institutions to submit claims on time. Advances may be withheld if the State agency has reason to believe that an institution will not be able to submit a valid claim for the month to be covered by the advance. If an institution fails to submit a claim after three months, the State agency may notify the institution that its agreement may be suspended or that the claim may be denied if the claim is not received or postmarked within 15 calendar days. State agencies may adjust the levels of advance payments if available information indicates that the current advance amount will result in an improper payment. (§ 226.8(f), § 226.11 (a) and (b))

5. *Claims against institutions.* The statutory provisions for start-up and advance payments generated many questions about State liability for recovering improper payments. The proposed regulations codify the Program's current policy on State responsibility to recover improper payments to institutions. Minimum standards for recovering funds entail two written demands to the institution for the return of funds, and, if the matter cannot be settled within 60 days, referral to appropriate State or Federal authorities for legal action. FNS will evaluate State agency compliance with these procedures in determining any State liability for unrecovered funds. (§ 226.15)

6. *Audits.* The statute renews the authorization for audit funds, based on two percent of the Program funds used in each State during the second preceding fiscal year. These funds are to be used to assist State agencies in meeting the biennial requirement of Federal Management Circular A-102. This circular mandates establishing an audit system which ensures that all

institutions are audited at least once every two years.

The Department invites comments as to whether audits should be required for all institutions which withdraw or are terminated from Program participation. Organization-wide audits of institutions which receive other Federal funds may be counted toward the Program audit requirement. In the absence of information indicating that institutions have sufficient resources to bear audit expenses, the current prohibition against requiring institutions to pay for any audit costs is retained. The Department believes that the legislative intent in authorizing the two percent funds was to relieve institutions of this burden. The administrative cost study will analyze the feasibility of requiring institutions to pay for the costs of auditing their programs. (§ 226.4(h), § 226.9)

7. *Authorized capacity.* The proposed regulations clarify the authority of State agencies to deny payment for meals served at a child care facility in excess of its authorized capacity. State licensing or approval standards generally specify a limit on the number of children who may participate in a facility's child care program. In situations where monitoring activities indicate a facility is clearly violating this standard, State agencies should deny reimbursement for meals served in excess of its limit.

V. Rates of Reimbursement

1. *Food service rates.* The statute authorizes a new method for reimbursing family day care home sponsoring organizations. Food service payments will be clearly separated from administrative payments. The Department was directed to develop a food service rate adequate to cover the cost of obtaining food and prescribed labor costs for each meal type. The rate is independent of family size and income levels and no cost records may be required. These rates will govern Federal funding to the States, State payments to sponsoring organizations, and sponsoring organization disbursements to family day care providers. Since this rate structure is the only means of assistance authorized for family day care, higher Program payments cannot be authorized for providers who substantiate higher costs. The food service rate was developed by adjusting the national average payment rates for free meals by subtracting out a reasonable amount for administrative costs. In order to estimate a reasonable amount, the Summer Food Service Program payments structure was examined. The food service rate was

determined by (1) determining the ratio of the Summer Food Service Program administrative rate to the sum of the SFSP food service and administrative rates, (2) multiplying this ratio by the free CCFP national average payment rate for each meal type, and (3) subtracting these products from each applicable national average payment rate. This approach recognizes that a portion of the current free rates normally covers administrative costs (which are to be covered by a separate administrative rate under the proposed regulations). The national average payment rates which were adjusted did not include the rate for cash-in-lieu of commodities, because this extra assistance now generally raises the sponsoring organization's earnings and supports administrative costs, rather than raising food service payments to providers.

The proposed food service rates include the cash value of commodity assistance. As the Department anticipates that most family day care home sponsoring organizations will choose to receive cash instead of commodities, a single rate structure which includes cash-in-lieu of commodity assistance was deemed more comprehensible than two separate rates for food service and commodity assistance. For sponsoring organizations which receive commodities, the proposed lunch/supper rate will be lowered by the rate for cash-in-lieu of commodities to reflect the extra assistance (as opposed to centers, in which reimbursement rates are supplemented by commodities or cash-in-lieu payments).

The Department has received many inquiries about the relationship between Program payments to family day care providers and the personal income of providers. The statute does not exempt Program payments to providers from income tax, and only the Internal Revenue Service may establish policy and procedures regarding any Federal tax liability. However, the Department is concerned about maintaining procedural simplicity in family day care home operations and is exploring ways to easily distinguish reimbursement for the costs of obtaining food (a business expense deduction) from the remainder of the payment which is intended for food service labor. For all meal types, approximately 65 percent of the payment represents reimbursement for the costs of obtaining food, while 35 percent is intended as payment for food service labor. (These percentages are based on the proportion of the current food cost factors to the proposed food

service rates.) The Department is consulting with IRS as to the acceptability of using percentage allocations of Program payments in lieu of cost records to substantiate business expense deductions for food costs. Information is solicited on any recordkeeping problems encountered by family day care providers in meeting tax or welfare procedural requirements. The study of food service costs mandated by the law is being initiated by the Department. Food service rates may be revised on the basis of this study. As considerable time may elapse before the results are analyzed and implemented, the Department is proposing a semi-annual adjustment of the rates to the nearest quarter cent, based on the food away from home series of the Consumer Price Index for All Urban Consumers. This series was selected as it contains both food and labor cost components. (§ 226.4(c), § 226.14).

2. *Administrative rate.* Pub. L. 95-627 provides for separate administrative cost payments to sponsoring organizations for family day care homes. The Department is directed to prescribe maximum allowable levels for these payments. The Department's primary concern was to identify an appropriate base for aligning payments with administrative costs and responsibilities. The main responsibilities of a sponsoring organization include developing an application package, training providers, visiting homes, preparing claims for reimbursement, and disbursing payments to homes. The amount of work involved in these duties is most directly tied to the number of homes under the sponsor's jurisdiction.

Information available to the Department indicates that small sponsoring organizations require relatively more assistance to support their operation. The proposed rates (\$40 per month for each of the first 25 homes, \$30 per month for each of the next 25 homes, and \$25 per month for each additional home) are designed to allow small, community-based organizations to sponsor the Program. The lower rate for administering large numbers of homes anticipates that cost levels will decline once an organization has established a basic administrative structure.

At this time, limited reliable information on cost levels is available. While the legislation authorizes a comprehensive administrative cost study, rates must be implemented well before the study's completion. The proposed rates were developed on the basis of available cost data pertinent to

the sponsoring organization administrative tasks specified in this proposed rule. The adequacy of these rates must be assessed in terms of the proposed requirements. The Department is aware that the present flexibility of the reimbursement structure and sponsoring organization requirements permits enormous variation in administrative payments and the level of services provided to day care homes. In some cases, the proposed rates may not provide as much administrative money to sponsoring organizations as the present payment structure. The Department specifically requests comments and information from such sponsoring organizations on current administrative expenditures and service levels (monitoring frequency, training, publications, etc.), and how the proposed rates may affect the delivery of specific services.

Administrative payments to each sponsoring organization for family day care homes will be based on the lowest of (1) the product of the applicable rates multiplied by the number of family day care homes operating at least 10 days each month, (2) actual administrative costs, or (3) the cost level specified in the administrative budget approved by the State agency.

However, to ensure a reasonable balance between payments for food assistance and administration, administrative costs payments may not exceed 30 per cent of total payments. State agencies will be expected to review the reasonableness of cost levels and the availability of other sources of income in proposed sponsoring organization administrative budgets prior to approval. Sponsoring organizations which receive other funding to administer family day care networks should require less assistance than organizations which must rely on the Program for total support.

The proposed regulations provide for an annual rate adjustment to the nearest dollar based on the series for all items less food of the Consumer Price Index for All Urban Consumers.

3. *Administrative costs in centers.* The proposed regulations require State agencies to review and approve an administrative budget for each institution and permit limiting reimbursement for administrative costs during the fiscal year to the approved budgetary level. The intent is to encourage improved budgetary planning and to ensure that administering agencies are aware of the amount of payments that institutions intend to use for administrative costs. The administrative cost study will analyze

these costs for all types of institutions and may lead to the development of a set-aside for administrative expenses. (§ 226.8(d)).

VI. Institution Provisions

1. *Staffing.* The statute cites adequate staffing for program monitoring and management as a condition for participation. The Department recognizes the importance of appropriate staffing, especially at the sponsoring organization level, and will issue guidance to State agencies on recommended staffing patterns. (§ 226.16(e)).

2. *Program assistance.* The proposed regulations set standards for sponsoring organization supervisory and technical assistance. Current regulations require training and monitoring, but the lack of minimum standards has permitted some sponsoring organizations to neglect these responsibilities. The Department considers reasonably frequent training and monitoring essential to ensure that basic Program requirements are met. Specific requirements for assistance include:

(a) *Training:* All child care facilities must be visited before application submission and trained before Program operations begin. Training must be provided to all facilities at least once a year on an ongoing basis.

(b) *Monitoring:* Different standards are set for child care centers, family day care homes, and outside-school-hours care centers. The differences reflect the different needs for assistance based on monitoring and audit experience. The requirements are structured to set standards for an initial review, annual reviews, and time intervals between reviews. The intent is to ensure that each new child care facility is reviewed during its initial operations to enable the early correction of deficiencies. The annual review requirement applies to all child care facilities and determines the minimum frequency of reviews. The time interval requirement is designed to ensure that problems are detected before an inordinate amount of time elapses. In some cases, the time interval requirement may necessitate more reviews during the year than dictated by the annual frequency requirement. For example, three yearly reviews are required for child care centers, but visits may not be spaced more than six months apart. If a review during the month of operations reveals serious problems, good management practice dictates a prompt revisit. If deficiencies are not resolved by the second visit, a third review in the near future is warranted. Assuming that operations

are satisfactory at the time of this review, the time interval requirement would dictate a fourth review during the year to prevent more than six months from passing between visits. (§ 226.16(f)).

3. *Disbursements.* All Program payments received, including advances, must be passed through to the sponsoring organization's child care facilities within 15 working days. Sponsoring organizations for family day care homes must disburse the full amount of food service payments. The regulations permit the sponsoring organization to withhold advance payments only if a child care facility fails to submit required reports. The Department's intention is to ensure that the interests of both the sponsoring organization and child care facility are properly protected. (§ 226.16(j) and (k)).

4. *Agreements with family day care homes.* The legislation authorizes the Department to require a standard form of agreement between sponsoring organizations and family day care homes to clarify the rights and responsibilities of both parties. These regulations mandate such an agreement and require specific provisions for State agencies to incorporate. Sponsoring organizations must use the agreement form prescribed by the State agency with all family day care homes under their jurisdiction. (§ 226.7(n), § 226.18(b)).

5. *School participation.* These regulations establish the eligibility of extended-day care programs in schools and allow for reimbursing the costs of a breakfast, supplement, or supper. In many areas, schools provide day care for school children before or after school hours as a service to community parents. FNS has always delegated the determination of whether an organization is a school to the State. While the Department continues to maintain that each State can best make this determination, the proposed regulations permit the Program to operate in schools outside-of-school hours. The program must be regularly scheduled and designed to provide supervision and care for enrolled children as a substitute for parental supervision. While the day care program may include a schedule of activities, child care must be its primary purpose. Programs designed to offer supplemental educational services, such as extracurricular scholastic, cultural, recreational, or athletic activities, are not eligible child care programs. When care is provided to school children outside-of-school hours, children must be enrolled for care for at least two

consecutive hours before or after the school day. The school must be public or private nonprofit, the day care program must be licensed or approved, and separate Program records must be maintained. Comments on the need for the proposed two hour time frame are welcome. (§ 226.17(f) and (g), § 226.19(b))

6. *Meal service time frames.* Reviews of many outside-school-hours care programs indicate problems with excessive meal deliveries and lack of organization. To facilitate control of the meal service, time frames governing the length of each meal service and the intervals between each meal service are proposed only for outside-school-hours care centers. For these facilities, the duration of the lunch or supper service is confined to two hours; breakfasts and supplements must be served in one hour. Three hours must elapse between each meal service, except a four hour interval is required between lunch and supper when no snacks are served. The Department solicits comments on the advisability of prohibiting the supper service from beginning prior to 5 p.m. in these programs. (§ 226.19(f))

VII. Meal Patterns

1. *Supplemental food.* To permit more flexibility in menu planning, the supplemental meal pattern is broadened to permit a choice of two of four components: fluid milk, meat or meat alternate, fruit or vegetable or juice, and bread or cereal. Milk and juice may not be served as the only two components to avoid excess consumption of fluids. (§ 226.20(c))

2. *Rice and pasta.* The proposed regulations allow for serving rice or pasta as alternatives to the bread component in the lunch/supper and supplemental food patterns. Rice may be served as cereal at breakfast. To ensure sufficient nutritional value, rice must be enriched or whole-grain, and noodles, macaroni, or other pasta products must be made from enriched or whole-grain flour. Allowing rice and pasta as creditable food items should permit menus to incorporate greater variety and better reflect community food-preferences. (§ 226.20(c)).

3. *Meal pattern assessments.* The Department is conducting a nutritional evaluation of the School Breakfast Program, and will examine the breakfast pattern for all child nutrition programs. The infant food package for the Special Supplemental Food Program is being reassessed and recommended changes will be considered for the CCFP infant meal pattern.

VIII. Food Service Equipment Assistance

1. *Funding.* P.L. 95-627 increases the funds authorization for food service equipment assistance from \$3,000,000 to \$6,000,000. The Department has included this increase in issuing letters-of-credit for this fiscal year. (226.24(a))

2. *Notification.* Pub. L. 95-627 requires State agencies to notify participating institutions about the availability of food service equipment assistance no later than 30 days after the date when FNS informs the State agency of the amount of funds allocated. The notification must describe the State agency's application procedures and criteria for determining especially needy institutions. (226.24(c))

3. *Approval criteria.* Pub. L. 95-627 requires the Department to prescribe a priority system for disbursing food service equipment assistance. These regulations propose broad criteria which will be interpreted and applied by the State agency during the application review and approval process. Comments are invited on the comprehensiveness and reasonableness of these approval criteria. (§ 226.24(f))

4. *Application procedures.* The law directs the Department to establish standards for prompt action on applications for food service equipment assistance. Because funding for food service equipment assistance is limited, the Department believes that all institutions deserve an equal opportunity to demonstrate their need for assistance. The proposed regulations require State agencies to establish a deadline date for application submission to permit ranking submitted applications on the basis of the priority system for approval. State agencies must within 30 days review applications and inform the applicant as to whether the application is complete and correct. (§ 226.24(f))

5. *Direct disbursement.* State agencies may issue food service equipment assistance funds directly to suppliers in situations where lack of food service equipment is an institution's only barrier to licensing and Program participation. (§ 226.24(g))

IX. Implementation

The analysis and review of the proposed regulations has delayed their publication. At this point, even with the shortening of the comment period to 45 days, final regulations may not be published in time to permit full implementation by October 1, 1979, as originally planned. Administering agencies will require time to revise payments systems and issue guidance to

institutions. The Department solicits information on the length of time which State agencies will need to implement the new regulatory provisions.

Commentors are encouraged to address specific areas and explain how much time will be needed for implementation. As the Department believes that the benefits authorized by Pub. L. 95-627 must be provided as quickly as possible, consideration will be given to various means of expediting implementation. For example, a final rule announcing certain payment provisions could be published as quickly as possible, and followed by publication of other provisions at a later date. Alternatively, several provisions could be scheduled for an earlier implementation, either effective on or retroactive to a specific date. However, the Department is concerned about the administrative burden of retroactive reimbursement and invites comments on the feasibility of this procedure.

The Department is therefore proposing implementation within 120 days after final regulations are issued. This approach would permit State agencies to implement at any time between publication of final regulations and 120 days afterward.

PART 226—CHILD CARE FOOD PROGRAM

Accordingly, the Department proposes to revise and reissue 7 CFR 226 as follows:

Subpart A—General

- Sec.
226.1 General purpose and scope.
226.2 Definitions.
226.3 Administration.

Subpart B—Assistance to States

- 226.4 Payments to States and use of funds.
226.5 Donation of commodities.

Subpart C—State Agency Provisions

- 226.6 State Plan of Child Care Food Program Operations.
226.7 State agency administrative responsibilities.
226.8 State agency responsibilities for financial management.
226.9 Audits.

Subpart D—Payment Provisions

- 226.10 Assignment of rates of reimbursement for centers.
226.11 Program payment procedures.
226.12 Program payments to child care centers and outside-school-hours care centers.
226.13 Administrative payments to sponsoring organizations for family day care homes.
226.14 Food service payments to sponsoring organizations for family day care homes.
226.15 Claims against institutions.

Subpart E—Operational provisions

- 226.16 Sponsoring organization provisions.
226.17 Child care center provisions.
226.18 Family day care homes.
226.19 Outside-school-hours care centers.
226.20 Requirements for meals.
226.21 Vendors.
226.22 Procurement standards.
226.23 Free and reduced-price meals.

Subpart F—Food Service Equipment Assistance

- 226.24 Food service equipment assistance.
226.25 Property management requirements.

Subpart G—Other Provisions

- 226.26 Other provisions.
226.27 Program information.

Authority: Sec. 2, 10, Pub. L. 95-627, 92 Stat. 3603 (42 U.S.C. 1771); Sec. 10, Pub. L. 89-642, 80 Stat. 889 (42 U.S.C. 1779).

Subpart A—General

§ 226.1 General purpose and scope.

This part announces the regulations under which the Secretary of Agriculture will carry out the Child Care Food Program. Section 17 of the National School Lunch Act, as amended, authorizes assistance to States through grants-in-aid and other means to initiate, maintain, and expand nonprofit food service programs for children in nonresidential institutions which provide child care. The Program is intended to enable child care institutions to integrate a nutritious food service with organized child care services for enrolled children. In general, the Program embodies two phases: payments will be made to State agencies or FNS Regional Offices (a) to enable them to reimburse institutions the net costs incurred in providing a food service to children (food assistance), and (b) to the extent funds are available, enable them to reimburse institutions in whole or in part for the acquisition cost of the purchase or for the rental of equipment for the storage, preparation, transportation or serving of food to children (food service equipment assistance).

§ 226.2 Definitions.

(a) "Acquisition cost" means the net invoice price of nonexpendable personal property acquired by purchase. This property may include any attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Ancillary charges such as taxes, duty, protective transit insurance, freight or installation may be included in, or excluded from acquisition cost in accordance with the State agency's regular accounting practices.

(b) "Act" means the National School Lunch Act, as amended.

(c) "Administrative costs" means costs incurred by an institution related to planning, organizing and managing a food service under the Program.

(d) "Advance payments" means financial assistance made available to an institution for its Program costs prior to the month in which such costs will be incurred.

(e) "Child care center" means any public or private nonprofit organization licensed or approved to provide nonresidential child care services to enrolled children, primarily of pre-school age, including but limited to day care centers, settlement houses, neighborhood centers, Head Start centers and organizations providing day care services for handicapped children. Child care centers may participate in the program as independent institutions or under the auspices of a sponsoring organization.

(f) "Child care facility" means a child care center, family day care home, or outside school hours care center under the auspices of a sponsoring organization.

(g) "Children" means (1) persons 18 years of age and under, and (2) mentally or physically handicapped persons, as defined by the State, over 18 years of age enrolled in an institution or a child care facility serving a majority of persons 18 years of age and under.

(h) "Claiming percentage" means the ratio of the number of enrolled children in an institution in each reimbursement category (free, reduced-price or paid) to the total of enrolled children in the institution.

(i) "Department" means the U.S. Department of Agriculture.

(j) "Delivery costs" means the costs incurred in transporting allowable food service equipment from point of shipment to point of destination as specified in the procurement document. It includes all costs associated with delivery, but does not include the alteration of buildings to accommodate equipment during the delivery process.

(k) "Especially needy institution" means an institution meeting eligibility requirements of this part and serving a high percentage (as determined by the State agency in its approved State Plan of Child Care Food Program Operations) of children from families meeting the State's family-size income standards.

(1) "Family day care home" means an organized nonresidential child care program for children enrolled in a private home, licensed or approved as a family or group day care home and

under the auspices of a sponsoring organization.

(m) "FIDCR" means the Federal Interagency Day Care Requirements as established in 45 CFR Part 71 and as revised by 45 CFR 228.42(a).

(n) "Fiscal year" means a period of 12 calendar months beginning October 1 of any year and ending with September 30 of the following year.

(o) "FNS" means the Food and Nutrition Service of the Department.

(p) "FNSRO" means the appropriate Food and Nutrition Service Regional Office of the Food and Nutrition Service.

(q) "Food service equipment assistance" means Federal financial assistance made available to State agencies to assist institutions in the purchase or rental or equipment to enable the institutions to establish, maintain and expand food service under the Program.

(r) "Free meal" means a meal served under the Program to a child from a family which meets the income standards for free school meals and for which neither the child nor any member of his family pays or is required to work in the food service program.

(s) "Income standards" means the family-size and income standards prescribed annually by the State, on the basis of the Secretary's Guideline for Determining Eligibility for Free and Reduced-Price Meals under the National School Lunch Program and the School Breakfast Program.

(t) "Income to the program" means any funds used in an institution's food service program, including, but not limited to all monies, other than Program payments, received from other Federal, State, intermediate, or local government sources; children's payments for meals and food service fees; income from any food sales to adults; and other income, including cash donations or grants from organizations or individuals.

(u) "Infant cereal" means any iron-fortified dry cereal specially formulated for and generally recognized as cereal for infants that is routinely mixed with formula or milk prior to consumption.

(v) "Infant formula" means any iron-fortified infant formula, intended for dietary use as a sole source of food for normal, healthy infants, served in liquid state at manufacturer's recommended dilution.

(w) "Installation costs" means necessary and reasonable costs incurred in uncrating, setting up, and making final connection of allowable equipment to existing utilities in the location in which the equipment is to operate.

(x) "Institution" means a sponsoring organization, child care center, or

outside-school-hours care center which enters into an agreement with the State agency to assume final administrative and financial responsibility for Program operations.

(y) "Meal" means food which is served to enrolled children at an institution or child care facility and which meets the nutritional requirements set out in this part.

(z) "Milk" means pasteurized fluid types of unflavored or flavored whole milk, lowfat milk, skim milk, or cultured buttermilk which meet State and local standards for such milk except that, in the meal pattern for infants (8 months up to 1 year of age), "milk" means unflavored whole fluid milk or an equivalent quantity of reconstituted evaporated milk which meet such standards. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands, if a sufficient supply of such types of fluid milk cannot be obtained, "milk" shall include reconstituted or recombined milk. All milk should contain vitamins A and D at levels specified by the Food and Drug Administration and consistent with State and local standards for such milk.

(aa) "Nonexpendable personal property" means tangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit. The State agency may use its own definition of nonexpendable personal property provided that such a definition would at least include all tangible personal property as defined herein.

(bb) "Nonresidential" means that children are not maintained for more than 24 hours on a regular basis.

(cc) "OIG" means the Office of the Inspector General of the Department.

(dd) "Operating costs" means expenses incurred by an institution in serving meals to children under the Program, and allowed by the State agency financial management instruction.

(ee) "Outside-school-hours care center" means a public or private nonprofit organization licensed or approved to provide organized nonresidential child care services to enrolled children, primarily of school-age, outside of school hours. Outside-school-hours care centers may participate in the Program as independent institutions or under the auspices of a sponsoring organization.

(ff) "Personal property" means property of any kind except real property. It may be tangible—having physical existence—or intangible—

having no physical existence such as patents, inventions, and copyrights.

(gg) "Program payments" means financial assistance in the form of start-up payments, advance payments, or reimbursement paid or payable to institutions for operating costs and administrative costs.

(hh) "Program" means the Child Care Food Program authorized by Section 17 of the National School Lunch Act, as amended.

(ii) "Reduced-price meal" means a meal served under the Program to a child from a family which meets the income standards for reduced-price school meals; any separate charge imposed shall be less than the full price of the meal, but in no case more than 20 cents for a lunch or supper, 10 cents for a breakfast, and five cents for a supplemental meal, and for which neither the child nor any member of his family is required to work in the food service program.

(jj) "Reimbursement" means Federal financial assistance paid or payable to institutions for Program costs within the rates assigned by the State agency.

(kk) "School year" means a period of 12 calendar months beginning July 1 of any year and ending June 30 of the following year.

(ll) "Sponsoring organization" means a public or nonprofit private organization which is entirely responsible for the administration of the food program in: (1) one or more family day care homes; (2) a child care center or outside-school-hours care center which is a legal entity distinct from the sponsoring organization; or (3) two or more child care centers or outside-school-hours care centers.

(mm) "Start-up payments" means financial assistance made available to a sponsoring organization for its administrative expenses associated with developing a food service program at family day care homes and initiating successful Program operations.

(nn) "State" means any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(oo) "State agency" means the State educational agency or any other State agency that has been designated by the Governor or other appropriate executive, or by the legislative authority of the State, and has been approved by the Department to administer the Program within the State or, in States in which FNS administers the Program, FNSRO.

(pp) "Tier 1" means an institution where no less than two-thirds of the enrolled children are members of families that satisfy the income standards for free and reduced-price school meals.

(qq) "Tier 2" means an institution where less than two-thirds but not less than one-third of the enrolled children are members of families that satisfy the income standards for free and reduced-price school meals.

(rr) "Tier 3" means an institution where less than one-third of the enrolled children are members of families that satisfy the income standards for free and reduced-price school meals.

(ss) "Title XX" means Title XX of the Social Security Act.

(tt) "Vendor" means an organization, other than a public or private nonprofit school, with which an institution may contract for preparing and, unless otherwise provided for, delivering meals, with or without milk for use in the Program.

§ 226.3 Administration.

(a) Within the Department, FNS shall act on behalf of the Department in the administration of the Program

(b) Within the States, responsibility for the administration of the Program shall be in the state agency, except that FNSRO shall administer the Program in any State where the State agency is not permitted by law or is otherwise unable to disburse Federal funds under the Program to any institution in the State.

(c) Each State agency desiring to take part in the Program shall enter into a written agreement with the Department for the administration of the Program in the State in accordance with the provisions of this part. This agreement shall cover the operation of the Program during the period specified therein and may be extended by consent to both parties.

(d) When the Department determines that the State is not operating the Program in accordance with the provisions of this part, it shall, through FNSRO, assume the administration of the Program in the State as provided for in § 226.30.

(e) FNSRO shall, in each State in which it administers the Program, have available all funds and assume all responsibilities of a State agency as set forth in this part.

Subpart B—Assistance to States

§ 226.4 Payments to States and use of funds.

(a) *Availability of funds.* For the fiscal year beginning October 1, 1979, and for

each fiscal year thereafter, FNS shall make funds available to each State agency to reimburse institutions for their costs in connection with food service operations, including administrative expenses, under this part. Funds shall be made available in an amount no less than the sum of the totals obtained under paragraphs (b), (c), (d), (e) and (h) of this section. However, in any fiscal year, the aggregate amount of assistance provided to a State under this part shall not exceed the sum of the Federal funds provided by the State to participating institutions within the State for that fiscal year and any funds used by the State under paragraphs (h) and (j) of this section.

(b) *Center funds.* For meals served to children in child care centers and outside-school-hours care centers, funds shall be made available to each State agency in an amount no less than the sum of the products obtained by multiplying:

(1) The number of breakfasts served in the Program within the State by the national average payment rate for breakfasts under section 4 of the Child Nutrition Act of 1966. (All breakfasts served in the State, including tier 3 institutions, are funded under this provision.)

(2) The number of breakfasts served in the Program within the State to (i) children in tier 1 institutions and (ii) children from families that satisfy the income standards for free school meals enrolled in institutions which have elected to receive reimbursement in accordance with the eligibility of each enrolled child for free, reduced-price or paid school meals, by the national average payment rate for free breakfasts under section 4 of the Child Nutrition Act of 1966.

(3) The number of breakfasts served to (i) children in tier 2 institutions, and (ii) children from families that satisfy the income standard for reduced-price school meals enrolled in institutions which have elected to receive reimbursement in accordance with the eligibility of each enrolled child for free, reduced-price or paid school meals, by the national average payment rate for reduced-price school breakfasts under section 4 of the Child Nutrition Act of 1966.

(4) The number of lunches and suppers served in the Program within the State by the national average payment rate for lunches under section 4 of the National School Lunch Act. (All lunches and suppers served in the State, including tier 3 institutions, are funded under this provision.)

(5) The number of lunches and suppers served in the Program within the State to (i) children in tier 1 institutions, and (ii) children from families that satisfy the income standard for free school meals enrolled in institutions which have elected to receive reimbursement in accordance with the eligibility of each enrolled child for free, reduced-price or paid school meals, by the national average payment rate for free lunches under section 11 of the National School Lunch Act.

(6) The number of lunches and suppers served in the Program within the State to (i) children in tier 2 institutions and (ii) children from families that satisfy the income standard for reduced-price school meals enrolled in institutions which have elected to receive reimbursement in accordance with the eligibility of each enrolled child for free, reduced-price or paid school meals, by the national average payment rate for reduced-price lunches under section 11 of the National School Lunch Act.

(7) The number of supplements served in the Program within the State to (i) children in tier 3 institutions, and (ii) children from families that do not satisfy the income standards for free and reduced-price school meals enrolled in institutions which have elected to receive reimbursement in accordance with the eligibility of each enrolled child for free, reduced-price and paid school meals, by 6.5 cents.

(8) The number of supplements served in the Program within the State to (i) children in tier 1 institutions, and (ii) children from families that satisfy the income standard for free school meals enrolled in institutions which have elected to receive reimbursement in accordance with the eligibility of each enrolled child for free, reduced-price and paid school meals, by 26.00 cents.

(9) The number of supplements served in the Program within the State to (i) children in tier 2 institutions, and (ii) children from families that satisfy the income standard for reduced-price school meals enrolled in institutions which have elected to receive reimbursement in accordance with the eligibility of each enrolled child for free, reduced-price, and paid school meals, by 19.75 cents.

(c) *Family day care funds.* For meals served to children in family day care homes, funds shall be made available to each State agency in an amount no less than the sum of the products obtained by multiplying:

(1) The number of breakfasts served in the Program within the State by 41.50 cents.

(2) The number of lunches and suppers served in the Program within the State by 81.25 cents.

(3) The number of supplements served in the Program within the State by 24.0 cents.

(d) *Administrative funds.* For administrative payments to family day care home sponsoring organizations, funds shall be made available to each State agency in an amount no less than the product obtained each month by multiplying the number of family day care homes participating under each sponsoring organization, for no less than 10 days in the Program, within the State by the applicable rates specified in § 226.13(a)(3).

(e) *Start-up funds.* For start-up payments to family day care home sponsoring organizations, funds shall be made available to each State agency in an amount equal to the total amount of start-up payments made in the most recent period for which reports are available for that State or on the basis of estimates by FNS.

(f) *Availability of funds.* FNS shall ensure that, to the extent funds are appropriated, each State has sufficient Program funds available for providing start-up and advance payments in accordance with this part.

(g) *Rate adjustments.* Semi-annually, on January 1 and July 1, and beginning July 1, 1979, FNS shall publish a notice in the Federal Register to announce the following rate adjustments:

(1) The rates for meals served in family day care homes and the rate for supplements served in child care centers and outside-school-hours care centers shall be adjusted on the basis of changes in the series for food away from home of the Consumer price Index for All Urban Consumers published by the Department of Labor. Such adjustments shall be made to the nearest \$.0025 based on changes measured over the most recent six-month period for which data are available.

(2) The rate for administrative payments to family day care home sponsoring organizations shall be adjusted on the basis of changes in the series for all items less food of the Consumer Price Index for All Urban Consumers published by the Department of Labor. Such adjustments shall be made to the nearest dollar based on changes measured over the most recent twelve-month period for which data are available.

(3) Rate adjustments shall adjust each originally authorized rate for price changes since the establishment of such rate.

(h) *Audit funds.* For the expense of conducting audits and reviews under § 226.9, funds shall be made available to each State agency in an amount equal to two percent of the Program reimbursement and food service equipment assistance provided to institutions within the State during the second fiscal year preceding the fiscal year for which these funds are to be made available. The amount of assistance provided to a State under this paragraph in any fiscal year may not exceed the State's expenditures under § 226.9 during such fiscal year.

(i) *Method of Funding.* This section sets forth FNS methods of authorizing funds for State agencies. (Different procedures will be used to make funds available to FNSRO.) These methods minimize the time between the transfer of funds from the United States Treasury to the State agency and their final disbursement.

(1) The "Letter of Credit" (SF 1193A) is the document by which an official of FNS authorizes a State agency to draw funds from the United States Treasury.

(2) State agencies shall request payment(s) by submitting a Request for Payment on Letter of Credit and Status of Funds Report (Treasury Form SF-183) to the appropriate United States Treasury Regional Disbursing Office with a copy to FNS.

(3) State agencies shall submit requests for funds only at such times and in such amounts as will permit prompt payment of obligations.

(4) State agencies shall use the funds received from such requests without delay for the purpose for which drawn.

(j) *Special developmental projects.* The State agency may use in carrying out special developmental projects an amount not to exceed one percent of Program funds used in the second prior fiscal year. Special developmental projects shall conform to FNS guidance and be approved in writing by FNS.

§ 226.5 Donation of commodities.

(a) USDA foods available under section 6 of this Act, section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431) or purchased under section 32 of the Act of August 24, 1935 (7 U.S.C. 1431), section 709 of the Food and Agriculture Act of 1965 (7 U.S.C. 1446a-1), or other authority, and donated by the Department shall be made available to each State.

(b) The value of such commodities (or cash-in-lieu of commodities) donated to each State for each school year shall be, at a minimum, the amount obtained by multiplying the number of lunches and suppers served in participating

institutions, other than sponsoring organizations for family day care homes which are not receiving commodities, in that State during that school year by the rate for commodities or cash-in-lieu thereof established for that school year under the provisions of section 6(e) of this Act.

(c) Any State receiving assistance under section 6(e) of this Act for institutions participating in the Program, may, upon application to FNS no later than 60 days prior to the beginning of the school year, receive cash in lieu of some or all of the commodities to which it would otherwise be entitled under section 6(e) of this Act.

Subpart C—State Agency Provisions

§ 226.6 State Plan of Child Care Food Program Operations.

(a) *Submission:* Not later than May 15 of each year, each State agency shall submit to FNS, for approval, a State Plan of Child Care Food Program Operations. Approval of the Plan of Child Care Food Program Operations by FNS shall be a prerequisite to the payment of Program funds to the State agency under this part and to the donation by the Department of any commodities under Part 250 of this title for use in institutions under this part.

(b) *Program Data:* A State Plan of Child Care Food Program Operations, as a minimum, shall include the following data:

(1) The number of sponsoring organizations, independent child care centers, and independent outside-school-hours care centers in the State participating in the Program, as well as the number of child care centers, outside-school-hours care centers, and family day care homes participating under sponsoring organizations, together with the average daily attendance for each category.

(2) The number of child care centers, outside-school-hours care centers, and family day care homes in the State that are licensed, approved or registered or that receive funds under Title XX.

(3) The number of child care centers, outside-school-hours care centers, and family day care homes in the State that are licensed, approved, or registered or that receive funds under Title XX that participate in the Program. (This item differs from paragraph (b)(1) of this section only in that it excludes non-registered centers and family day care homes approved under § 226(7)(d).)

(c) *Operations:* The State Plan of the Child Care Food Program shall also describe:

(1) The detailed outreach plan the State agency proposes to take to:

(i) Extend the Program to all eligible child care centers, outside-school-hours centers and family day care homes (placing priority on reaching centers or homes in needy areas first);

(ii) Identify the number of sponsoring organizations, child care centers, outside-school-hours care centers, and family day care homes targeted for outreach;

(iii) Assist family day care homes in obtaining sponsoring organizations.

(2) The State agency's procedures for (i) permitting institutions for which licensing or approval is not available to demonstrate compliance with applicable child care standards, and (ii) determining that licensing or approval is not available to institutions because of delays in the licensing or approval process.

(3) The detailed action plan the State proposes to undertake to provide sufficient training, technical assistance, and monitoring to facilitate expansion and effective operations of the program.

(4) The State's criteria for determining which institutions are eligible for especially needy equipment assistance and a plan for disseminating the criteria to all institutions in the State,

(5) The State agency's procedures for offering and providing a hearing and prompt determination to an applicant or institution requesting a review of an appealable action under this part.

(6) The State agency's procedures for issuing and monitoring start-up payments and advance payments.

(7) The State agency's procedures and criteria for approving applications for food service equipment assistance.

(d) *Audits:* The State Plan of Child Care Food Program Operations must include a plan for the conduct of audits which shall:

(1) State the frequency of audits of the State agency and institutions to achieve an audit frequency of not less than once every two years.

(2) Provide a description of the organization of the State agency in adequate detail to demonstrate the independence of the audit function.

(3) Provide a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(e) *Administration:* The State Plan of Child Care Food Program Operations shall provide budget and expenditures data for the program for Federal-State administrative expense funds assistance.

(f) *Evaluation:* The State Plan of Child Care Food Program Operations shall provide a plan to monitor Program

performance and measure progress toward achieving Program goals.

(g) *Comment:* The State agency shall give the Governor, or his delegated agency, the opportunity to comment on the relationship of the State Plan of Child Care Food Program Operations to other programs operating within the State and the effect on areawide or local jurisdictions. A period of 45 days from the date of receipt of the State Plan by the Governor, or his delegated agency, shall be afforded to make such comments.

§ 226.7 State agency administrative responsibilities.

(a) *State agency personnel.* Each State agency shall provide sufficient consultative, technical and managerial personnel to administer the Program, provide sufficient training and technical assistance to institutions, and monitor performance to facilitate expansion and effective operation of the Program.

(b) *Approval of applications.* Each State agency shall establish an application procedure to determine the eligibility under this part of applicant institutions. State agencies shall annually renew agreements with sponsoring organizations, independent child care centers, and independent outside-school-hours care centers. A State agency may establish an ongoing agreement renewal process for the purpose of reviewing and approving applications from participating institutions throughout the fiscal year. Any institution applying for participation in the Program shall be notified of approval or disapproval by the State agency in writing within 30 calendar days of filing a complete and correct application. If an institution submits an incomplete application, the State agency shall notify the institution within 15 calendar days of receipt of the application and shall provide technical assistance, if necessary, to the institution for the purpose of completing its application. Any disapproved applicant shall be notified of its right to a fair hearing under paragraph (j) of this section.

(c) *Seriously deficient institutions.* The State agency shall not enter into an agreement with any institution, identifiable through its corporate organization, officers, employees, or otherwise, as an institution which participated in any Federal child nutrition program during the previous three fiscal years and which was seriously deficient in its program operations. The State agency shall afford an institution every reasonable opportunity to correct problems before

deeming the institution seriously deficient. Serious deficiencies, which are grounds for disapproval include, but are not limited to, any of the following:

(1) Non compliance with the applicable bid procedures and contract requirements of federal child nutrition program regulations;

(2) The submission of false information to the State agency;

(3) Failure to return to the State agency any advance payments which exceeded the amount earned for serving eligible meals, failure to return disallowed start-up payments;

(4) Failure to maintain adequate records;

(5) Failure to adjust meal orders to conform to variations in the number of participating children;

(6) The claiming of Program payments for meals not served to participating children;

(7) Service of a significant number of meals which did not include required quantities of all meal components;

(8) Continued use of vendors that are in violation of health codes.

(9) Failure of a sponsoring organization to disburse payments to its facilities in accordance with its management plan.

(d) *Licensing/approval.* This section prescribes State agency responsibilities to ensure that institutions meet the licensing/approval criteria set forth in this part.

(1) *General.* Each State agency shall establish procedures to annually review information submitted by institutions to ensure that all participating child care centers, family day care homes, and outside-school-hours care centers either:

(i) are licensed or approved by Federal, State, or local authorities; or

(ii) are complying with applicable procedures to renew licensing or approval in situations where the State agency has no information that licensing or approval will be denied; or

(iii) receive Title XX funds for providing child care, if licensing or approval is not available; or

(iv) demonstrate compliance with applicable State or local child care standards to the State agency, if licensing is not available and title XX funds are not received; or

(v) demonstrate compliance with FIDCR to the State agency, if licensing or approval is not available and Title XX funds are not received.

(2) *Alternate procedures.* Each State agency shall establish procedures to review information submitted by institutions for which licensing or approval is not available for the purpose of establishing eligibility for the

Program. Licensing or approval is not available when (i) no Federal, State, or local licensing/approval standards have been established for a type of institution or facility; or (ii) no mechanism exists to determine compliance with licensing/approval standards; or (iii) licensing authorities do not make a determination on an application for licensing/approval within a reasonable period of time. In these situations, institutions may choose to demonstrate compliance with either FIDCR, or applicable State child care standards, or applicable local child care standards. State agencies shall provide information about applicable State child care standards and FIDCR to institutions, but may require institutions opting to demonstrate compliance with applicable local child care standards to identify and submit these standards. State agency procedures may permit institutions to certify compliance with child care standards, but shall require evidence of compliance (such as permits or certificate) with applicable State or local health/sanitation and fire/building safety requirements.

(3) *Backlogs.* If an institution has applied for licensing and has not yet secured a determination on this application from the licensing authority the State agency shall, in notifying the institution that its Program application is incomplete, provide the institution with information on demonstrating compliance with FIDCR and applicable State child care standards. However, the State agency shall not make any determination of eligibility under this section until 90 calendar days have lapsed from the date the State agency received both a Program application and information indicating that an application for licensing was submitted to the licensing authority. Each institution approved under this section shall be informed of its responsibility to notify the State agency if licensing or approval is later granted or denied by the licensing authority. The State agency shall terminate the Program participation of any institution or facility so denied licensing or approval, effective the date of the denial. The State agency may terminate the Program participation of institutions if, after one year from the date of Program approval, the State or local licensing authority indicated that the institution has failed to act on instructions on completing its application for licensing.

(e) *Annual requirements.* State agencies shall require institutions to comply with applicable provisions of this part. Each State agency shall annually:

(1) Renew agreements with each institution.

(2) Require each sponsoring organization to submit a management plan with its application for review and approval. Such a plan shall include detailed information on the organizational administrative structure, the staff assigned to Program management and monitoring, administrative budget, and procedures which will be used by the sponsoring organization to administer the Program in and disburse payments to the child care facilities under its jurisdiction.

(3) Determine that all meal procurements with vendors are in conformance with the bid and contractual requirements of §§ 226.21 and 226.22.

(4) Enter into and execute written Program agreements with institutions. The Program agreement shall provide that the institution shall accept final financial and administrative responsibility for management of an effective food service, comply with all requirements under this part, and comply with all requirements under the Civil Rights Act of 1964 and the nondiscrimination regulations of the Department, as now or later amended (7 CFR Part 15), to the end that no person shall, on the ground of race, color, handicap or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under the Program.

(5) Inquire as to the preference of institutions for commodities or cash-in-lieu of commodities.

(6) Provide institutions with information on foods available in plentiful supply, based on information provided by the Department.

(7) Inform institutions with separate meal charges of their responsibility to ensure that free and reduced price meals are served to children unable to pay the full price and provide to all institutions a copy of the State's income standards to assist them in meeting their responsibility.

(f) *Program expansion.* Each State agency shall take affirmative action to expand the availability of benefits under this Program. At a minimum, the State shall annually notify each eligible nonparticipating child care facility within the State that is licensed, approved, registered, or receiving funds under Title XX of the availability of the Program, the requirements for Program participation, the availability of food service equipment funds under the Program and the application procedures to be followed in the Program. The State agency shall make the list of institutions

notified each year available to the public upon request.

(g) *Commodity distribution.* A list of institutions which have elected to receive donated commodities, with accompanying information on the average daily number of lunches and suppers to be served to children by such institutions, shall be annually prepared and promptly transmitted to the agency of the State which handles the distribution of donated commodities. The State agency shall be responsible for promptly revising the information to reflect additions or deletions of institutions which have elected to receive donated commodities and for providing such adjustments in participation data as are determined necessary by the State agency. However, if the State agency, after consultation with the State commodity distribution agency, demonstrates to FNS that the distribution of commodities to the number of institutions which have elected to receive commodities would be impracticable, the State agency may, with the concurrence of FNS, provide cash-in-lieu of commodities to all institutions. Each institution which has elected to receive cash in lieu of commodities shall receive such payments. The State agency may, with the concurrence of the State commodity distribution agency, permit institutions to change their choice between commodities and cash-in-lieu of commodities during the same fiscal year.

(h) *Standard contract.* Each State agency shall develop a standard contract in accordance with § 226.21 and provide for its use between institutions and vendors. The contract shall expressly and without exception stipulate:

(1) The institution shall provide the vendor with a list of the State agency approved child care centers, family day care homes, and outside-school-hours care centers to be furnished meals by the vendor, and the number of meals, by type, to be delivered to each location;

(2) The vendor shall maintain such records (supported by invoices, receipts or other evidence) as the institution will need to meet its responsibilities under this part, and shall promptly submit invoices and delivery reports to the institution no less frequently than monthly;

(3) The vendor shall have Federal, State, or local health certification for the plant in which it proposes to prepare meals for use in the Program, and it shall insure that health and sanitation requirements are met at all times. In addition, the State agency may require

the vendor to provide for meals which it prepares to be periodically inspected by the local health department or an independent agency to determine bacteria levels in the meals being prepared. These bacteria levels shall conform to the standards which are applied by the local health authority with respect to the level of bacteria which may be present in meals prepared or served by other establishments in the locality. Results of these inspections shall be submitted to the institution and to the State agency;

(4) The meals served under the contract shall conform to the cycle menus upon which the bid was based, and to menu changes agreed upon by the institution and vendor;

(5) The books and records of the vendor pertaining to the institution's food service operation shall be available for inspection and audit by representatives of the State agency, of the Department, and of the U.S. General Accounting Office at any reasonable time and place, for a period of 3 years from the date of receipt of final payment under the contract;

(6) The vendor shall operate in accordance with current Program regulations;

(7) The vendor shall not be paid for meals which are delivered outside of the agreed upon delivery time, are spoiled or unwholesome at the time of delivery, or do not otherwise meet the meal requirements contained in the contract;

(8) Meals shall be delivered in accordance with a delivery schedule prescribed in the contract;

(9) Increases and decreases in the number of meal orders may be made by the institution, as needed, within a prior notice period mutually agreed upon in the contract;

(10) All meals served under the Program shall meet the requirements of § 226.20; and

(11) All breakfasts, lunches, and suppers delivered for service in outside-school-hours care centers shall be unitized, with or without milk. For meals delivered to child care centers and family day care homes, the State agency shall require unitization, with or without milk, of all breakfasts, lunches, and suppers only if the State agency has evidence which indicates that this requirement is necessary to ensure compliance with § 226.20.

(i) *Procurement provisions.* State agencies shall require institutions to adhere to the procurement provisions set forth in § 226.21 and § 226.22.

(j) *Institution hearing procedure.* Each State agency shall establish a fair hearing procedure to be followed by an

appellant requesting a review of a denial of an institution's application for participation, a termination or a suspension of the participation of an institution or child care facility, a denial of an institution's application for start-up payments, a denial of an advance payment, a denial of all or a part of a claim for reimbursement, demand for the remittance of an overpayment, and any other action of the State agency affecting the participation of an institution in the program or the institution's claim for reimbursement. At a minimum, the procedure shall provide that:

(1) The appellant be advised in writing of the grounds upon which the State agency based the denial;

(2) The appellant be advised in writing that the request for review be made within a specified time. The State agency may establish this period of time at not less than 10 days or at not more than 15 days from the date of receipt of the letter of denial;

(3) The appellant be provided with at least 10 days advance written notice of the time and place of the review and be afforded the opportunity to review, prior to the hearing, any information upon which the denial was based;

(4) The hearing official be an independent and impartial official other than and not accountable to the one directly responsible for the original determination;

(5) The appellant may refute the charges contained in the letter of denial either in person or by written documentation to the reviewing officials. The appellant may retain legal counsel, or may be represented by another person;

(6) The hearing official shall reach a decision based solely on the evidence presented during the review and the Program regulations.

(7) Within 45 days of the receipt of the request for the review, the hearing official shall inform the State agency and the appellant of the determination of the review; and

(8) The determination by the State hearing official is the final administrative determination to be afforded an appellant.

(k) *Program assistance.* Each State agency shall provide technical and supervisory assistance to institutions to facilitate effective Program operations, monitor progress toward achieving Program goals, and ensure compliance with the Department's nondiscrimination regulations (Part 15 of this title), issued under title VI of the Civil Rights Act of 1964. Documentation of supervisory assistance activities,

including corrective action prescribed and taken, shall be maintained on file by the State agency.

Program reviews shall assess institutional compliance with meal requirements, family-size and income documentation, financial management standards, and nondiscrimination regulations. Reviews of each child care center, family day care home, or outside-school-hours care center approved by the State agency under paragraph (d)(2) of this section shall determine compliance with the child care standards used to establish eligibility. Program reviews shall annually include 33.3 percent of all institutions, including reviews of 15 percent of the child care facilities administered by each sponsoring organization reviewed. Such reviews shall be made for newly participating sponsoring organizations with five or more child care facilities within the first 90 days of Program operations. The State agency review system shall ensure that all institutions are reviewed at least once every four years.

(1) *Program irregularities.* Each State agency shall promptly investigate complaints received or irregularities noted in connection with the operation of the Program, and shall take appropriate action to correct any irregularities. State agencies shall maintain on file evidence of such investigations and actions. FNS and OIG may make investigations at the request of the State agency, or whenever FNS or OIG determines that investigations are appropriate.

(m) *Child care standards violations.* Each State agency shall promptly refer any observed violations of applicable safety, health, or staff-child ratio requirements to the appropriate licensing authority for corrective action. If the institution or facility was approved by the State agency under paragraph (d)(2) of this section, the State agency shall ensure that the violation is corrected. If the violation is not corrected within 60 calendar days of notification to the institution, the State agency shall terminate the Program participation of the violating institution or facility; however, if the health or safety of the children is imminently threatened, the State agency may immediately terminate the institutions participation.

(n) *Sponsoring organization agreement.* Each State agency shall develop and provide for the use of a standard form of agreement between each family day care home sponsoring organization and all family day care homes participating in the Program

under such organization. State agencies may develop a similar form for use between sponsoring organizations and other types of facilities.

§ 226.8 State agency responsibilities for financial management.

(a) *General.* This section prescribes standards for financial management systems in administering Program funds by the State agency and institutions.

(b) *State level responsibilities.* Financial management systems for Program funds in the State agency shall provide for:

(e) *Rate assignment.* Each State agency shall require institutions (other than sponsoring organizations for family day care homes) to submit, not less frequently than annually, information necessary to assign institutional rates of reimbursement or claiming percentages and establish rates or claiming percentages as outlined in § 226.10.

(f) *Administrative budget approval.* The State agency shall approve institution administrative budgets, and may limit allowable administrative costs claimed by any institution to the administrative costs approved in its annual budget. Administrative budget levels may be adjusted to reflect changes in Program activities.

(g) *Start-up payments.* Each State agency shall establish procedures for evaluating requests for start-up payments, issuing these payments to eligible sponsoring organizations, and monitoring the use of these payments.

(h) *Advance Payments.* Each State agency shall establish procedures for issuing advance payments by the first day of each month and comparing these payments with earned reimbursement on a periodic basis.

(i) *Recovery of overpayments.* Each State agency shall establish procedures to recover outstanding start-up and advance payments from institutions which, in the opinion of the State agency, will not be able to earn these payments.

(j) *Claims processing.* Each State agency shall establish procedures for institutions to properly submit claims for reimbursement. All valid claims shall be paid within 45 days of receipt. Within 15 days of receipt of any incomplete or incorrect claim which must be revised for payment, the State agency shall notify the institution as to why and how such claim must be revised. If the State agency disallows partial or full payment for a claim for reimbursement, it shall notify the institution which submitted the claim of its right to a fair hearing procedure under § 226.7(j). State agencies may permit disallowances to

be appealed separately from claims for reimbursement.

(k) *Participation controls.* The State agency may establish control procedures to ensure that payment is not made for meals served to children attending in excess of the authorized capacity of each institution.

(l) *Financial management system.* Each State agency shall establish a financial management system in accordance with OMB Circulars A-102 and FMC 74-4, and with FNS guidance to identify allowable Program costs and establish standards for institutional recordkeeping and reporting. These standards shall (1) prohibit claiming reimbursement for meals provided by a child's parents, except as authorized by § 226.18(e), and (2) allow the costs of meals served to adults who perform necessary food service labor under the Program. The State agency shall provide guidance on financial management requirements to each institution.

§ 226.9 Audits.

(a) In accordance with the Plan submitted under § 226.6(c), the State agency shall provide for audits at the State and institution levels of Program funds, payments and operations. Such audits shall be conducted at least once every 2 years for each institution. Organization-wide audits of institutions receiving other Federal funds may be counted toward meeting this requirement. The audits shall determine the fiscal integrity of financial transactions and reports, and compliance with applicable laws and regulations. Audits may be made by: (1) State agency internal auditors; (2) State Auditors General; (3) State Comptrollers Office; (4) other comparable State or local audit groups; (5) certified public accountants; (6) public accountants licensed on or before December 31, 1970, currently certified or licensed by the regulatory authority of the State or other political subdivision of the United States.

(b) In conducting audits during any fiscal year, the State agency shall establish priorities for using the funds provided for in § 226.4(g) first to meet the fiscal audit requirements outlined in this section. Costs pertaining to such audits shall not be borne in whole or in part by the institution. Such audits shall be fiscal audits conducted in accordance with the Department's guidelines. After fulfilling the audit requirements, any remaining funds may be used by the State agency during the fiscal year for which the funds are allocated to conduct administrative reviews of program operations in institutions. If the funds

provided under § 226.4(g) are not sufficient to meet the requirements of this section, the State agency may use available State administrative expense funds to conduct audits.

(c) Use of audit guides available from OIG is encouraged. When these guides are utilized, OIG will coordinate its audits with State sponsored audits to form a network of intergovernmental audit systems.

(d) In making management evaluations or audits for any fiscal year, the State agency or OIG may disregard any overpayment which does not exceed \$35 or, in the case of State agency administered programs, does not exceed the amount established under State law, regulations or procedures as a minimum amount for which claims will be made for State losses generally. No overpayment shall be disregarded, however, where there are unpaid claims of the same fiscal year from which the overpayment can be deducted, or where there is evidence of violation of criminal law or civil fraud statutes.

(e) While OIG shall rely to the fullest extent feasible upon State sponsored audits, OIG may, whenever it considers necessary: (1) Make audits on a statewide basis; (2) perform on-site test audits; (3) review audit reports and related working papers of audits performed by or for State agencies.

Subpart D—Payment Provisions

§ 226.10 Assignment of rates of reimbursement for centers.

(a) Each State agency shall, not less frequently than annually, notify each participating institution of its option to receive reimbursement on the basis of either (1) the tier determined by percentage of enrolled children who are eligible for free and reduced-price meals or (2) the eligibility of each enrolled child for free, reduced-price, or paid meals. This notification shall include an explanation of the methods of reimbursement. The method of determining reimbursement to an institution may be changed more frequently than annually only with the concurrence of both the State agency and the institution. The State agency may reassign rates of reimbursement more frequently than annually when warranted by changes in family-size and income information. Assigned rates of reimbursement shall be adjusted semi-annually to reflect changes in the national average payment rates.

(b) For institutions which elect to receive reimbursement on the basis of the percentage of enrolled children from families meeting the State's income

standards for free and reduced-price meals, the State agency shall, not less frequently than annually, assign rates of reimbursement as follows: (1) Rates of reimbursement not less than the national average payment rates for free meals shall be assigned to meals served in tier 1 institutions; (2) rates of reimbursement not less than the national average payment rates for reduced-price meals shall be assigned for meals served in tier 2 institutions; and (3) rates of reimbursement not less than the national average payment rates for paid meals shall be assigned to tier 3 institutions. The State agency shall assign such rates of reimbursement, not less frequently than annually, on the basis of family-size and income information reported by each institution. Assigned rates of reimbursement may be changed more frequently than annually if warranted by changes in family-size and income information.

(c) For institutions which elect to receive reimbursement on the basis of the eligibility of each enrolled child for free, reduced-price, or paid meals, the State agency shall either:

(1) Require that institutions submit each month figures for meals served daily to children from families meeting the State's family-size income standards for free meals, to children from families meeting the State's family-size income standards for reduced-price meals and to children from families not meeting such guidelines; or

(2) Establish claiming percentages, not less frequently than annually for each institution on the basis of the number of enrolled children eligible for free, reduced-price, and paid meals; or

(3) Determine a blended per-meal rate of reimbursement, not less frequently than annually, by adding the products obtained by multiplying the applicable national average payment rate of reimbursement for each category (free, reduced-price, paid) by the claiming percentage for that category.

(d) The State agency may elect to pay an institution's final claim for reimbursement for the fiscal year at higher reassigned rates of reimbursement for lunches and suppers; however, the reassigned rates may not exceed the applicable maximum rates of reimbursement established under § 210.11(b) of the National School Lunch Program regulations.

§ 226.11 Program payment procedures.

(a) Each State agency shall provide advance payments to each institution by the first day of each month of operation. However, any institution may decline to receive all or part of advance payment.

The first advance payment of the fiscal year to each institution shall approximate the full amount of the average monthly reimbursement paid to the institution during the prior 6 months of operation, except that the State agency may limit the amount of the advance payment to the full amount of reimbursement which the State agency has estimated the institution will earn in the month for which the advance payment is made. Advance payments to newly participating institutions shall equal the amount of reimbursement which the State agency has estimated the institution will earn in the month for which the advance payment is made.

(b) If the State agency has reason to believe that an institution will not be able to submit a valid claim for reimbursement, such as failure to submit a claim for reimbursement as required by this section or audit or monitoring evidence of extensive Program deficiencies, the subsequent's month advance payment shall be withheld until the claim is received or the deficiencies are corrected. The State agency shall notify the institution of the reasons for withholding the advance and allow the institution full opportunity to submit evidence on appeal as provided for in § 226.7(j). After three advance payments have been made to an institution, the State agency shall establish procedures to ensure that no subsequent advance payment is made to such institution until the State agency has validated the institution's claim for reimbursement for the third month prior to the month for which the advance is to be paid. Claims for reimbursement and other information should be utilized to adjust the amount of advance payments to reflect the current amount needed by the institution for one month's operation. During the fiscal year, if the State agency determines that the amount of advance payments paid to an institution, less reimbursement earned by the institution, will not be earned by claims for reimbursement anticipated for the remainder of the fiscal year, the State agency may demand full or partial repayment of the outstanding balance. At the end of the fiscal year, unearned payments advanced to institutions shall be repaid to the State agency upon demand, or deducted from payments during the following fiscal year.

(c) Claims for reimbursement shall be filed with the State agency by the 10th day of the month following the month covered by the claim. Not more than 10 days of the beginning or ending month of Program operations in a fiscal year may be combined on a claim with the operations of the month immediately

following the beginning month, or preceding the ending month. Claims for reimbursement may not combine the last month of a fiscal year with the first month of the next fiscal year. Claims for reimbursement shall report information in accordance with the financial management system established by the State agency, and in sufficient detail to justify the reimbursement claimed. In submitting a claim for reimbursement, each institution shall certify that the claim is correct and that records are available to support the claim. Such records shall be retained for a period of three years after the date of submission of the final claim of the fiscal year to which they pertain, except that if audit findings have not been resolved, the records shall be retained beyond the end of the three-year period as long as required for the resolution of the issues raised by the audit. All accounts and records pertaining to the Program shall be made available, upon request, to representatives of the State agency, of the Department, and of the U.S. General Accounting Office for audit or review, at a reasonable time and place.

(d) An agreement with an institution may be suspended if any claim for reimbursement has not been submitted within 90 days after the end of the month covered by the claim. Upon expiration of such 90 days, the State agency shall notify the institution and afford 15 calendar days for submission of the missing claim. If the claim is not postmarked or received within 15 days, the State agency may suspend the institution's agreement, or disallow the claim, or elect not to take action. A suspended agreement shall remain suspended until such time as the claim is received by the State agency. The State agency shall notify any institution suspended from participation under this paragraph of its right to a fair hearing procedure under § 226.7(i).

(e) The State agency shall not be responsible for acting upon any claim for reimbursement which is not received by the State agency within 90 days after the end of the prior fiscal year, except where the State agency determines that the claim has been filed late because of circumstances beyond the control of the institution.

(f) If a State agency has reason to believe that an institution or vendor has engaged in unlawful acts with respect to Program operations, evidence found in audits, investigations or other reviews shall be a basis for non-payment of claims for reimbursement.

§ 226.12 Program payments to child care centers and outside-school hours care centers.

(a) Payments shall be made only to institutions operating under an agreement with the State agency for the meal types specified in the agreement served at approved child care centers and outside-school-hours center. A State agency may make payments for meals served in accordance with provisions of the Program in the calendar month preceding the calendar month in which the agreement is executed.

(b) Each institution shall report each month to the State agency the total number of meals, by type (breakfasts, lunches, suppers, and supplements), served to children.

(c) Each State agency shall base reimbursement to each institution on the number of meals, by type, served to children multiplied by the assigned rates of reimbursement. For institutions which have elected to receive reimbursement on the basis of the eligibility of each enrolled child for free, reduced-price, or paid meals, the State agency shall either: (1) base reimbursement to institutions on actual daily counts of meals served, and multiply the number of meals, by type, served to children from families meeting the State's family-size income standards for free meals, served to children from families meeting the State's family-size income standards for reduced-price meals, and served to children from families not meeting such standards by the applicable national average payment rate, (2) apply the applicable claiming percentage or percentages to the total number of meals served to children, by type, and multiply the product or products by the assigned rate of reimbursement for each meal type, or (3) multiply the assigned blended per-meal rate of reimbursement by the total number of meals served to children by type.

(d) During any fiscal year, total payments to an institution, including any cash payments in lieu of commodities, shall not exceed allowable Program operating and administrative costs, less income to the program. The State agency may limit payments for administrative costs to the amount approved in the annual administrative budget of the institution. The State agency may prohibit an institution from using payments for operating costs to pay for administrative expenses.

(e) Supplemental food shall not be reimbursed if the institution also participates in the Special Milk Program for Children (7 CFR Part 215).

(f) Each institution shall maintain records as prescribed by the State agency financial management system.

§ 226.13 Administrative payments to sponsoring organizations for family day care homes.

(a) Sponsoring organizations for family day care homes shall receive payments for administrative costs. During any fiscal year, administrative costs payments to a sponsoring organization may not exceed the lesser of (1) actual expenditures for the costs of administering the Program less income to the Program, or (2) the amount of administrative costs approved by the State agency in the sponsoring organization's budget, or (3) the sum of the products obtained by multiplying each month the sponsoring organization's:

(i) Initial 25 family day care homes by 40 dollars;

(ii) Next 25 family day care homes by 30 dollars; and

(iii) Additional family day care homes by 25 dollars. Payment shall not be made for any family day care home which operates the Program for less than 10 days during the month. If the sponsoring organization also administers the Program in child care centers or outside-school-hours care centers, the administrative payment rate for homes shall be calculated by counting the number of centers first, followed by the number of homes. (For example, a sponsoring organization which administer 20 centers and 30 homes shall be eligible to receive administrative payment rates of 40 dollars for five homes, the first 20 slots being assigned to centers, and 30 dollars for the next 25 homes.) During any fiscal year, administrative payments to a sponsoring organization may not exceed 30 percent of the total amount of administrative and food service payments for family day care home operations.

(b) Applicant sponsoring organizations which meet the criteria of this paragraph shall be entitled to receive start-up payments from the State agency to plan and initiate successful Program operations in family day care homes. No sponsoring organization which has participated in the Program during any previous fiscal year shall receive start-up payments. Sponsoring organizations which apply for start-up payments shall evidence (1) public or nonprofit status in accordance with § 226.16(a), except that sponsoring organizations which are moving toward compliance with the requirements for IRS tax-exempt status must demonstrate

current tax-exempt status under State laws and regulations; (2) an organizational history of managing funds and ongoing activities (i.e., administering public or private programs); (3) an acceptable and realistic plan for recruiting family day care homes to participate in the Program, which may be based on estimates of the number of family day care homes to be recruited and information supporting their existence (e.g., the method of contacting providers); (4) an acceptable preliminary sponsoring organization management plan (e.g., plans for pre-operational visits, training). The State agency shall deny start-up payments to applicant sponsoring organizations which fail to meet any of these criteria or which have demonstrated financial irresponsibility in the operation of other programs funded by Federal, State, or local governments. The State agency shall notify the sponsoring organization of the reasons for denial and allow the sponsoring organization full opportunity to submit evidence on appeal as provided for in § 226.7(j).

(c) Applicant sponsoring organizations which apply for and meet the criteria for start-up payments shall enter into an agreement with the State agency. The agreement shall specify:

(1) Activities which the applicant sponsoring organization shall undertake to initiate Program operations;

(2) A budget detailing the costs which the applicant sponsoring organization shall incur, document, and claim;

(3) The time allotted to the applicant sponsoring organization for the initiation of Program operations;

(4) The responsibility of the applicant sponsoring organization to repay, upon demand by the State agency, start-up payments not expended in accordance with the agreement.

(d) Upon execution of the agreement, the State agency shall issue a start-up payment to the sponsoring organization in an amount equal to not less than one, but not more than two, month's anticipated administrative reimbursement to the sponsoring organization as determined by the State agency. However, no sponsoring organization may receive start-up payments for more than 50 family day care homes or for a greater amount than requested by the sponsoring organization. In making this determination, the State agency shall consider the level of costs and alternate sources of funding.

(e) Upon expiration of the time the State agency allots to the sponsoring organization for initiating Program

operations, the State agency shall review the sponsoring organization's activities to plan and develop the Program. If the sponsoring organization has not made every reasonable effort to carry out the activities specified in the agreement, the State agency shall demand repayment of all or part of the payment. However, the sponsoring organization may retain start-up payments for all family day care homes which initiate Program operations. No sponsoring organization may retain any start-up payments in excess of its actual costs for the expenditures specified in the agreement.

§ 226.14 Food Service payments to sponsoring organizations for family day care homes.

(a) Payments shall be made only to sponsoring organizations operating under an agreement with the State agency for the meal types specified in the agreement served at approved family day care homes.

(b) Each sponsoring organization shall report each month to the State agency the total number of meals, by type (breakfasts, lunches, suppers, and supplements) served to children enrolled in approved family day care homes.

(c) Each sponsoring organization shall receive payments for meals served to children enrolled in approved family day care homes at the rate of 41.50 cents for each breakfast, 81.25 cents for each lunch and supper, and 24 cents for each supplement. However, the rate for lunches and suppers shall be reduced by the value of commodities established under § 226.5(b) for all sponsoring organizations for family day care homes which have elected to receive commodities. The full amount of food service payments shall be disbursed to each family day care home on the basis of the number of meals, by type, served to children.

§ 226.15 Claims against institutions.

(a) State agencies shall disallow any portion of a claim for reimbursement and recover any payment to an institution not properly payable under this part. However, the State agency shall notify the institution of the reasons for any disallowance or demand for repayment, and allow the institution full opportunity to submit evidence on appeal as provided for in § 226.7(j). Minimum State agency collection procedures for unearned payments shall include: (1) written demand to the institution for the return of improper payments; (2) if, after 30 calendar days, the institution fails to remit full payment or agree to a satisfactory

repayment schedule, a second written demand for the return of improper payments, sent by certified mail, return receipt requested; and (3) if, after 60 days, the institution fails to remit full payment or agree to a satisfactory repayment schedule, the State agency shall refer the claim against the institution to appropriate State or Federal authorities for pursuit of legal remedies.

(b) In the event that the State agency finds that an institution which prepares its own meals is failing to meet the meal requirements of § 226.20, the State agency need not disallow payment or collect an overpayment arising out of such failure if the institution takes such other action as, in the opinion of the State agency, will have a corrective effect.

(c) If FNS does not concur with the State agency's action in paying an institution or in failing to collect overpayment, FNS shall notify the State agency of its intention to assert a claim against the State agency. In all such cases, the State agency shall have full opportunity to submit evidence concerning the action taken. The State agency shall be liable to FNS for failure to collect an overpayment, unless FNS determines that the State agency has conformed with this part in issuing the payment and has exerted reasonable efforts to recover the improper payment.

Subpart E—Operational Provisions

§ 226.16 Sponsoring organization provisions.

(a) *Tax-exempt status.* Sponsoring organizations shall be public, or have tax-exempt status under the Internal Revenue Code of 1954, or be moving toward compliance with the requirements for tax-exempt status, or be currently operating another Federal program requiring nonprofit status. A sponsoring organization which has applied to IRS for tax-exempt status any participate in the Program while its application is pending review by IRS. If IRS denies the application for tax-exempt status, the sponsoring organization shall immediately notify the State agency of such denial. The State agency shall then terminate the participation of the sponsoring organization. If IRS certification of nonprofit status has not been received within 12 months of filing the application and IRS indicates that the sponsoring organization has failed to provide all required information, the State agency shall terminate the participation of the sponsoring

organization until such time as IRS tax-exempt status is obtained.

(b) *Disqualification.* No sponsoring organization which the State agency, in accordance with § 226.7(c), has determined to have been seriously deficient in operating any Federal child nutrition program during the previous three fiscal years may participate in the Program. Any sponsoring organization which operates a seriously deficient Program may be terminated in accordance with § 226.7(j).

(c) *Applications.* Each sponsoring organization shall submit to the State agency all information required for its approval and the approval of all child care facilities under its jurisdiction. At a minimum, such information shall include:

(1) A sponsoring organization management plan, in accordance with § 226.7(d)(2), and evidence of nonprofit status, in accordance with § 226.16(a);

(2) An application for participation, or agreement renewal materials, for each child care facility under its jurisdiction, accompanied by all necessary supporting documentation;

(3) A nondiscrimination and free and reduced-price meal policy statement in accordance with § 226.23;

(4) Documentation of compliance with any applicable competitive bid procedures for vended meals as specified in § 226.21. Each sponsoring organization shall promptly submit to the State agency any information concerning the eligibility of child care facilities under its jurisdiction (such as license/approval actions).

(d) *Responsibility.* Each sponsoring organization shall accept final administrative and financial responsibility for food service operations in all child care facilities under its jurisdiction. No sponsoring organization may contract out for the management of the Program.

(e) *Staffing.* Each sponsoring organization shall provide adequate supervisory and operational personnel for the effective management and monitoring of the Program at all child care facilities under its jurisdiction.

(f) *Program assistance.* Each sponsoring organization shall provide adequate supervisory and technical assistance to all child care facilities under its jurisdiction. At a minimum, such assistance shall include:

(1) Pre-approval visits to each child care facility for which application is made to discuss Program benefits and responsibilities and verify that the proposed food service does not exceed the capability of the child care facility.

(2) Staff training for all child care facilities in Program duties and responsibilities prior to beginning Program operations;

(3) Additional training sessions, to be provided not less frequently than annually;

(4) Reviews of food service operations to assess compliance with meal pattern, recordkeeping, and other Program requirements. Such reviews shall be made not less frequently than:

(i) Three times each year at each child care center, provided at least one review is made during each child care center's first six weeks of Program operations and not more than six months elapses between reviews;

(ii) Four times each year at each family day care home, provided at least one review is made during each family day care home's first four weeks of Program operations and not more than six months elapses between reviews;

(iii) Six times each year for each outside-school-hours care center, provided at least one review is made during each outside-school-hours care center's first four weeks of Program operations and not more than three months elapses between reviews.

(g) *Recordkeeping.* Each sponsoring organization shall establish procedures to collect and maintain all necessary records. Such records shall include:

(1) Copies of all applications and supporting documents submitted by the sponsoring organization;

(2) Copies of family-size and income information used to determine eligibility for free and reduced-price meals at child care centers and outside-school-hours care centers;

(3) Daily records from each child care facility indicating the number of children in attendance and the number of meals, by type (breakfast, lunch, supper, and supplements), served to children;

(4) Copies of invoices, receipts, or other records required by the State agency financial management instruction to document:

(i) The administrative costs of the sponsoring organization;

(ii) The operating costs of each child care center and outside-school-hours care center;

(iii) Income to the program;

(5) Copies of all claims for reimbursement submitted to the State agency;

(6) Receipts for all Program payments received from the State agency;

(7) Information concerning the time and amount of disbursements to each child care facility;

(8) Copies of menus, and any other food service records required by the State agency, for each child care facility;

(9) Information on supervisory and technical assistance including:

(i) The location and date of each training session, topics presented, and the names of attendants;

(ii) The location and date of each child care facility review, any problems noted, and the corrective action prescribed.

(h) *Claims submission.* Each sponsoring organization shall submit a claim for reimbursement to the State agency in accordance with § 226.11.

(i) *Program agreement.* Each sponsoring organization shall enter into a Program agreement with the State agency in accordance with § 226.7(d)(7). The State agency may require a sponsoring organization to enter into separate agreements for the administration of separate types of child care facilities, child care centers, family day care homes, and outside-school-hours care centers).

(j) *Disbursements to family day care homes.* Each sponsoring organization for family day care homes shall disburse within 15 working days of receipt from the State agency the full amount of food service payments among each of the operating family day care homes under its jurisdiction. Disbursement of any advance payments for food service shall be based on the number of meals projected to be served to children at each family day care home during the period covered by the advance, multiplied by the applicable payment rate as specified in § 226.4(c). Disbursement of reimbursement payments for food service shall be based on the number of meals served to children at each family day care home, less any payments advanced such home. If payments from the State agency are not sufficient to provide all the family day care homes under the sponsoring organization's jurisdiction with advance payments and reimbursement payments, available monies shall be used to provide all due reimbursement payments before advances are disbursed.

(k) *Disbursements to centers.* Disbursements from sponsoring organizations for child care centers or outside-school-hours care centers shall be made within fifteen working days of receipt of payment, on the basis of the management plan approved by the State agency, and may not exceed the Program costs documented at each facility during any fiscal year.

(1) *Withholding payments.* Disbursements of advance payments may be withheld from child care

facilities which fail to submit reports , required by paragraph (g) of this section.

(m) *Commodities.* If the sponsoring organization receives commodities, it shall be responsible for ensuring proper commodity utilization at all child care facilities under its jurisdiction.

§ 226.17 Child care center provisions.

(a) Child care centers shall have Federal, State, or local licensing or approval to provide day care services to children. Child care centers which are complying with applicable procedures to renew licensing or approval may participate in the Program during the renewal process, unless the State agency has information which indicates that renewal will be denied. If licensing or approval is not legally available to a child care center, it may participate if:

(1) It receives Title XX funds for child care; or

(2) It demonstrates compliance with the FIDCR or any applicable State or local child care standards to the State agency.

(b) Child care centers shall be public, or have tax-exempt status under the Internal Revenue Code of 1954, or be moving toward compliance with the requirements for tax-exempt status, or be currently operating another Federal program requiring nonprofit status. A child care center which has applied to the Internal Revenue Service (IRS) for tax-exempt status may participate in the Program while its application is pending review by IRS. If IRS denies the application for tax-exempt status, the child care center shall immediately notify the State agency of such denial and the State agency shall terminate the participation of the child care center. If IRS certification of nonprofit status has not been received within 12 months of filing the application and IRS indicates that the child care center has failed to provide all required information, the State agency shall terminate the participation of the child care center until such time as IRS tax-exempt status is obtained.

(c) Child care centers may participate in the Program is independent institutions or under the auspices of a sponsoring organization. Child care centers which participate as independent institutions shall provide adequate supervisory and operational personnel for overall monitoring and management of the Program, and annually submit application or agreement renewal materials required by the State agency, report current information on the number of children eligible for free and reduced-price meals, and enter into a Program agreement as specified in § 226.7(d)(7).

(d) Each child care center

participating in the Program shall serve one or more of the following meal types:

(1) Breakfast, (2) Lunch, (3) Supper, and (4) Supplemental food. Not more than two services of supplemental food and not more than one service of any other meal type may be provided daily to the same group of children.

(e) Each child care center participating in the Program shall serve only the meal types specified in its approved application in accordance with the meal pattern requirements specified in § 226.20. Menus and any other nutritional records required by the State agency shall be maintained to document compliance with such requirements.

(f) A child care center with pre-school children may also be approved to serve a breakfast, supplement, and supper to school-age children enrolled in an outside-school-hours care program meeting the criteria of § 226.7(d)(5) which is distinct from its day care program for pre-school-age children. However, if the majority of children served by the center participate in such program, the center shall be classified as an outside-school-hours care center for monitoring and reporting purposes.

(g) No child care center which the State agency, in accordance with § 226.7(c), has determined to have been seriously deficient in operating any Federal child nutrition program during the previous three fiscal years may participate in the Program. Any child care center which operates a seriously deficient Program may be terminated in accordance with § 226.7(j).

(h) A child care center may utilize existing school food service facilities or obtain meals from a school food service facility, and the pertinent requirements of this part shall be embodied in a written agreement between the child care center and the school. The center shall maintain responsibility for all Program requirements set forth in this part.

(i) Child care centers shall maintain current family-size and income information for children classified as eligible for free and reduced-price meals.

§ 226.18 Family day care homes.

(a) Family day care homes shall have current Federal, State or local licensing or approval to provide day care services to children. Family day care homes which are complying with applicable procedures to renew licensing or approval may participate in the Program during the renewal process, unless the State agency has information which indicates that renewal will be denied. If licensing or approval is not available to

a family day care home, it may participate in the Program if:

(1) It receives Title XX funds for providing child care; or

(2) It demonstrates compliance with FIDCR or applicable State or local child care standards to the State agency.

(b) Family day care homes participating in the Program shall operate under the auspices of a sponsoring organization. Sponsoring organizations shall enter into a written agreement, approved by the State agency, with each sponsored family day care home to specify the rights and responsibilities of both parties. At a minimum, the agreement shall embody:

(1) The right of the sponsoring organization, the State agency, and the Department to visit the family day care home and review its meal service and records during its hours of child care operations;

(2) The responsibility of the sponsoring organization to train the family day care home's staff in Program requirements;

(3) The responsibility of the family day care to prepare and serve meals which meet the meal patterns specified in § 226.20;

(4) The responsibility of the family day care home to maintain records of the number of meals served to children, by type, and menus;

(5) The responsibility of the family day care home to promptly inform the sponsoring organization about any change in the number of children enrolled for care or in its licensing or approval status;

(6) The meal types approved for reimbursement to the family day care home by the State agency;

(7) The right of the family day care home to receive in a timely manner the full food service rate for each meal served to enrolled children for which the sponsoring organization has received payment from the State agency;

(8) The right of the sponsoring organization or the family day care home to terminate the agreement for cause or convenience; and

(9) A prohibition of any sponsoring organization fee to the family day care home for its Program services.

(c) Each family day care home shall serve one or more of the following meal types: (1) Breakfast, (2) Lunch, and (3) Supper. In addition, each family day care home may serve supplemental food. Not more than two services of supplemental food and not more than one service of any other meal type may be provided daily to the same child.

(d) Each family day care home participating in the Program shall serve

the meal types specified in its approved application in accordance with the meal pattern requirements specified in § 226.20. Menu records shall be maintained to document compliance with these requirements. Meals shall be served at no separate charge to enrolled children.

(e) Each family day care home shall maintain daily records of the number of children in attendance and the number of meals, by type, served to children. Payment may be made for meals served to the children of the family day care home's staff only if such children are enrolled in the child care program during the time of the meal service. Payment may not be made for meals served to children who are not enrolled for child care or for meals served in excess of the capacity for which the family day care home is licensed or approved.

(f) No State agency may require a family day care home or its sponsoring organization to maintain documentation of operating costs or family-size and income information.

§ 226.19 Outside-school-hours care centers.

(a) Outside-school-hours care centers shall have current Federal, State or local licensing or approval to provide organized child care services to enrolled school-age children outside of school hours. The main purpose of the Program shall be the care and supervision of children. Outside-school-hours care centers which are complying with applicable procedures to renew licensing or approval may participate in the Program during the renewal process, unless the State agency has information which indicates that renewal will be denied. If licensing or approval is not legally available to an outside-school-hours care center, it may participate in the Program if:

(1) It receives Title XX funds for providing child care; or

(2) It demonstrates compliance with FIDCR or any applicable State or local child care standards to the State agency.

(b) Nonresidential schools which provide organized child care programs for schoolchildren may participate in the Program as outside-school-hours care centers if:

(1) Children are enrolled in a regularly scheduled child care program which meets the criteria of paragraph (a) of this section. The program shall be distinct from any extracurricular programs organized primarily for scholastic cultural, and athletic purposes.

(2) Children are enrolled for care for no less than 2 consecutive hours;

(3) Separate Program records are maintained; and

(4) The school demonstrates compliance with paragraph (c) of this section.

(c) Outside-school-hours care centers shall be public, or have tax-exempt status under the Internal Revenue Code of 1954, or be moving toward compliance with the requirements for tax-exempt status, or be currently participating in another Federal program requiring nonprofit status. Centers which have applied to IRS for tax-exempt status may participate in the program while their application is pending review by IRS. If IRS denies the application, the center shall immediately notify the State agency of such denial and the State agency shall terminate the participation of the center. If IRS certification of nonprofit status has not been received with 12 months of filing the application and IRS indicates that the center has failed to provide all required information, the State agency shall terminate the participation of the center in the Program until such time as IRS certification is obtained.

(d) Outside-school-hours care centers may participate in the Program as independent institutions or under the auspices of a sponsoring organization. Outside-school-hours care centers which participate as independent institutions shall provide adequate supervisory and operational personnel for overall monitoring and management of the Program, and annually submit application or agreement renewal materials required by the State agency, report current information on the number of children eligible for free and reduced-price meals, and enter into a Program agreement as specified in § 226.7(d)(7).

(e) No outside-school-hours care center which the State agency, in accordance with § 226.7(c), has determined to have been seriously deficient in operating any Federal child nutrition program during the previous three fiscal years may participate in the Program. Any outside-school-hours care center which operates a seriously deficient Program may be terminated in accordance with § 226.7(j).

(f) Outside-school-hours care centers shall be eligible to serve a breakfast, supplement, and supper to enrolled children outside of school hours. Lunches and a second supplement may be served only during periods of school vacation, including weekends and holidays. Requests to add a meal service not authorized in the outside-school-

hours care center's current agreement shall be submitted to the State agency not later than 30 days prior to the planned expansion of the meal service.

(g) Three hours shall elapse between the beginning of one meal service and the beginning of another, except that 4 hours shall elapse between the service of a lunch and supper when no supplement is served between lunch and supper. The service of a supper shall begin no later than 7 p.m. and end no later than 8 p.m. The duration of the meal service shall be limited to 2 hours for lunches and suppers and 1 hour for other meals.

(h) Each outside-school-hours care center shall ensure that each meal service is supervised by an adequate number of operational personnel trained in Program requirements. Operational personnel shall ensure that: (1) Meals are served only to children enrolled for care and adults who perform necessary food service labor; (2) meals served to children meet the meal pattern requirements specified in § 226.20; (3) each meal service is consistent with the meal time requirements of paragraph (d) of this section; (4) meals served are consumed on the premises of the center; (5) accurate records are maintained; and (6) the number of meals prepared or ordered is promptly adjusted on the basis of participation trends.

(i) Each outside-school-hours care center shall accurately maintain the following records: (1) Names of enrolled children; (2) current family-size and income information for children classified as eligible for free and reduced-price meals; (3) number of meals prepared or delivered for each meal service; (4) daily menu records for each meal service; (5) number of meals served to enrolled children at each meal service; (6) number of enrolled children in attendance during each meal service; (7) number of meals served to adults performing necessary food service labor for each meal service; and (8) all other records required by the State agency financial management system.

(j) An outside-school-hours care center may utilize existing school food service facilities or obtain meals from a school food service facility, and the pertinent requirements of this part shall be embodied in a written agreement between the outside-school-hours care center and the school. The center shall maintain responsibility for all Program requirements set forth in this part.

§ 226.20 Requirements for meals.

(a) *Basic requirements.* Except as otherwise provided in this section and any appendices to this part, each meal

meal served in the Program shall contain, as a minimum, the indicated food components:

(1) A breakfast shall contain:

(i) A serving of fluid milk as a beverage or on cereal, or used in part for each purpose.

(ii) A serving of fruit or vegetable, or both, or full-strength fruit or vegetable juice.

(iii) A serving of whole-grain or enriched bread; or an equivalent serving of cornbread, biscuits, rolls, muffins, etc., made of whole-grain or enriched meal or flour; or a serving of whole-grain or enriched or fortified cereal; or an equivalent quantity of any combination of these foods.

(2) Both lunch and a supper shall contain:

(i) A serving of fluid milk as a beverage.

(ii) A serving of lean meat, poultry or fish; or cheese; or an egg; or cooked dry beans or peas; or peanut butter; or an equivalent quantity of any combination of these foods. These foods must be served in a main dish, or in a main dish and one other menu item, to meet this requirement.

(iii) A serving of two or more vegetables or fruits, or a combination of both. Full-strength vegetable or fruit juice may be counted to meet not more than one-half of this requirement.

(iv) A serving of whole-grain or enriched bread; or an equivalent serving of cornbread, biscuits, rolls, muffins, etc., made of whole-grain or enriched meal or flour; or a serving of cooked enriched or whole-grain rice, macaroni, noodles or other pasta products.

(3) Supplemental food shall be served between other meal types and contain two of the following four components:

(i) A serving of fluid milk.

(ii) A serving of meat or meat alternate.

(iii) A serving of full-strength fruit or vegetable juice or a serving of fruit or vegetable; however, juice may not be served when milk is served as the only other component.

(iv) A serving of whole-grain or enriched bread; or an equivalent serving of cornbread, biscuits, rolls, muffins, etc., made of whole-grain or enriched meal or flour; or a serving of whole-grain or enriched or fortified cereal; or a serving of cooked enriched or whole-grain rice, macaroni, noodles or other pasta products; or an equivalent quantity of any combination of these foods.

(b) *Infant meal pattern.* When infants aged up to 1 year participate in the Program, an infant meal shall be offered. Foods within the infant meal pattern

shall be of texture and consistency appropriate for the particular age group being served. The total amount of food authorized in the meal patterns set forth below must be provided to the infant in order to qualify for reimbursement but may be served during a span of time consistent with the infant's eating habits. The infant meal shall contain, as a minimum, each of the following components in the amounts indicated for the appropriate age group.

(1) *Age 0 up to 4 months.* (i) Breakfast—4-6 fluid ounces of infant formula; 0-1 tablespoon of infant cereal.

(ii) Lunch or supper—4-6 fluid ounces of infant formula; 0-1 tablespoon of infant cereal; 0-1 tablespoon of fruit or vegetable of appropriate consistency or a combination of both.

(iii) Supplemental food—4-6 fluid ounces of infant formula.

(2) *4 up to 8 months.* (i) Breakfast—6-8 fluid ounces of infant formula; 1-3 tablespoons of infant cereal.

(ii) Lunch or supper—6-8 fluid ounces of infant formula; 1-2 tablespoons of infant cereal; 1-2 tablespoons of fruit or vegetable of appropriate consistency or a combination of both; 0-1 tablespoon of meat, fish, poultry or egg yolk or 0-½ ounce (weight) of cheese or 0-1 ounce (weight or volume) of cottage cheese or cheese food or cheese spread of appropriate consistency.

(iii) Supplemental food—2-4 fluid ounces of infant formula or full-strength fruit juice; 0-¼ slice of crusty bread or 0-2 cracker type products made from whole-grain or enriched meal or flour that are suitable for an infant for use as a finger food when appropriate.

(3) *8 months up to 1 year.* (i) Breakfast—6-8 fluid ounces of infant formula, or 6-8 fluid ounces of whole fluid milk and 0-3 fluid ounces of full-strength fruit juice; 2-4 tablespoons infant cereal.

(ii) Lunch or supper—6-8 fluid ounces of infant formula, or 6-8 fluid ounces whole fluid milk and 0-3 fluid ounces of full-strength fruit juices; 3-4 tablespoons of fruit or vegetable of appropriate consistency or infant cereal or combinations of such foods; 1-4 tablespoons of meat, fish, poultry, or egg yolk or ½-2 ounces (weight) of cheese or 1-4 ounces (weight or volume) of cottage cheese or cheese food or cheese spread of appropriate consistency.

(iii) Supplementary food—2-4 fluid ounces of infant formula or whole fluid milk or full-strength fruit juice; 0-¼ slice of crusty bread or 0-2 cracker type products made from whole-grain or enriched meal or flour that are suitable for an infant for use as a finger food when appropriate.

(c) *Minimum quantities.* The minimum amounts of component foods to serve at meals set forth in paragraphs (a)(1), (2) and (3) of this section are as follows:

(1) *Age 1 up to 3.* (i) Breakfast—½ cup of milk; ¼ cup of juice or fruit or vegetables; ½ slice of bread or equivalent, or ¼ cup (volume) or ⅓ ounce (weight), whichever is less, of cereal or an equivalent quantity of both bread and cereal.

(ii) Lunch or supper—½ cup of milk; 1 ounce (edible portion as served) of lean meat, poultry, or fish, or 1 ounce of cheese, or 1 egg, or ¼ cup of cooked dry beans or peas, or 2 tablespoons of peanut butter; ¼ cup of vegetables or fruits or both consisting of two or more kinds; ½ slice of bread of equivalent of ¼ cup of cooked enriched or whole-grain rice, macaroni, noodles, or other pasta products.

(iii) Supplemental food—select two of the following four components—½ cup of milk; ½ ounce of meat or meat alternate; ½ cup of juice, or equivalent quantity of fruit, or vegetables; ½ slice of bread or equivalent, or ¼ cup (volume) or ⅓ ounce (weight), whichever is less, of cereal, or ¼ cup of cooked enriched or whole-grain rice, macaroni, noodles or other pasta products.

(2) *Age 3 up to 6.* Breakfast—¾ cup of milk; ½ cup of juice or fruit or vegetables; ½ slice of bread or equivalent or ⅓ cup (volume) or ½ ounce (weight), whichever is less, of cereal or an equivalent quantity of both bread and cereal.

(ii) Lunch or supper—¾ cup of milk; 1½ ounces (edible portion as served) of lean meat, poultry, or fish, or 1½ ounces of cheese, or 1 egg, or ⅓ cup of cooked dry beans or peas, or 3 tablespoons of peanut butter; ½ cup of vegetables or fruits or both consisting of two or more kinds; ½ slice of bread or equivalent, or ¼ cup of cooked enriched or whole-grain rice, macaroni, noodles or other pasta products.

(iii) Supplemental food—select two of the following components—½ cup of milk; ½ ounce of meat or meat alternate; ½ cup of juice or an equivalent quantity of fruit or vegetables; ½ slice of bread or equivalent, or ⅓ cup (volume) or ½ ounce (weight), whichever is less, of cereal, or ¼ cup of cooked enriched or whole-grain rice, macaroni, noodles, or other pasta products.

(3) *Age 6 up to 12.* (i) Breakfast—cup of milk; ½ cup of juice or fruit or vegetables; 1 slice of bread or equivalent or ¾ cup (volume) or 1 ounce (weight), whichever is less, of cereal or equivalent quantity of both bread and cereal.

(ii) Lunch or supper—1 cup of milk; 2 ounces (edible portion as served) of lean meat, poultry, or fish, or 2 ounces of cheese, or 1 egg, or ½ cup of cooked dry beans or peas, or 4 tablespoons of peanut butter; ¾ cup of vegetables or fruits or both consisting of two or more kinds; 1 slice of bread or equivalent, or ½ cup of cooked enriched or whole-grain rice, macaroni, noodles or other pasta products.

(iii) Supplemental food—select two of the following four components—1 cup of milk; 1 ounce of meat or meat alternate; ¾ cup of juice or equivalent quantity of fruit or vegetables; 1 slice of bread or equivalent, or ¾ cup (volume) or 1 ounce (weight), whichever is less, of cereal or ½ cup of cooked, enriched or whole-grain rice, macaroni, noodles or other pasta products.

(iv) Younger children of this group (age 6 up to 9) may be served lesser quantities of the foods (other than bread and milk) in the above types of meals, provided that the quantities are based on the lesser food needs of such children.

(4) *Age 12 and up.* May be served adult-sized portions based on the greater food needs of older boys and girls, but shall be served not less than the minimum quantities specified in this section for children aged six to 12.

(5) For purposes of the requirements outlined in this subsection a cup means a standard measuring cup.

(d) *Additional foods.* To improve the nutrition of participating children over 1 year of age additional foods may be served with each meal as follows:

(1) *Breakfast.* Include as often as practical an egg; or a 1-ounce serving (edible portion as served) of meat poultry or fish; or 1 ounce of cheese; or 2 tablespoons of peanut butter or an equivalent quantity of many combination of these foods. Additional foods may be served as desired.

(2) *Lunch or supper.* Additional foods may be served as desired.

(e) *Temporary unavailability of milk.* If emergency conditions prevent an institution normally having a supply of milk from temporarily obtaining milk deliveries, the State agency may approve the service of breakfasts, lunches or suppers without milk during the emergency period.

(f) *Continuing unavailability of milk.* The inability of an institution to obtain a supply of milk on a continuing basis shall not bar it from participation in the Program. In such cases, the State agency may approve service of meals without milk, provided that an equivalent amount of canned, whole dry or nonfat dry milk is used in the preparation of the

components of the meals set forth in subparagraphs (a)(1) (2) and (3) of this section.

(g) *Statewide substitutions.* In American Samoa, Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, the following variations from the meal requirements are authorized: a serving of a starchy vegetable, such as yams, plantains, sweet potatoes, or a serving of enriched rice or enriched or whole-grain cereal products such as macaroni, dumplings, or noodles may be substituted for the bread requirements.

(h) *Individual substitutions.* Substitutions may be made in food listed in paragraphs (b) and (c) of this section if individual participating children are unable, because of medical or other special dietary needs, to consume such foods. Substitutions because of medical needs shall be made only when supported by a statement from a recognized medical authority which includes recommended alternate foods.

(i) *Special variations.* FNS may approve variations in the food components of the meals on an experimental or a continuing basis in any institution where there is evidence that such variations are nutritionally sound and are necessary to meet ethnic, religious, economic, or physical needs.

(j) *Meal planning.* Institutions shall plan for and order meals on the basis of current participation trends, with the objective of providing only one meal per child at each meal service. Records of participation and of ordering or preparing meals shall be maintained to demonstrate positive action toward this objective. In recognition of the fluctuation in participation levels which makes it difficult to estimate precisely the number of meals needed and to reduce the resultant waste, any excess meals that are ordered may be served to children and may be claimed for reimbursement, unless the State agency determines that the institution has failed to plan and prepare or order meals with the objective of providing only one meal per child at each meal service.

(k) *Sanitation.* Institutions shall ensure that in storing, preparing, and serving food, proper sanitation and health standards are met which conform with all applicable State and local laws and regulations. Institutions shall ensure that adequate facilities are available to store food or hold meals.

(l) *Donated Commodities.* Institutions shall efficiently use in the Program any foods donated by the Department and accepted by the institution.

(m) *Plentiful foods.* Institutions shall, insofar as practicable, purchase and efficiently use in the Program foods designated as plentiful by the Department.

§ 226.21 Vendors.

(a) Any institution may contract with a vendor. An institution that contracts with a vendor shall remain responsible for seeing that the food program operation conforms to its agreement with the State agency. All procurements for vended meals shall adhere to the procurement standards set forth in § 226.22. Any public institution shall follow applicable State or local laws governing bid procedures. In the absence of any applicable State or local laws, and in addition to the procurement provisions set forth in § 226.22, each institution which is required to use a bid procedure is recommended to adhere to the following minimum requirements:

(1) All proposed contracts shall be publicly announced at least once 14 calendar days prior to the opening of bids. The announcement shall include the time and place of the bid opening;

(2) The institution shall notify the State agency at least 14 calendar days prior to the opening of the bids of the time and place of the bid opening.

(3) The invitation to bid shall not provide for loans or any other monetary benefit or terms or conditions to be made to institutions by vendors;

(4) Nonfood items shall be excluded from the invitation to bid, except where such items are essential to the conduct of the food service;

(5) The invitation to bid shall not specify special meal requirements to meet ethnic or religious needs unless special requirements are necessary to meet the needs of the children to be served;

(6) The bids shall be publicly opened;

(7) All bids totaling \$50,000 or more shall be submitted to the State agency for approval before acceptance. All bids shall be submitted to the State agency for approval before accepting a bid which exceeds the lowest bid. State agencies shall respond to any request for approval within 10 working days of receipt.

(8) The institutions shall inform the State agency of the reason for selecting the vendor chosen. State agencies may require institutions to submit copies of all bids submitted under this section.

(b) The institution and the vendor shall enter into a standard contract as required by § 226.7(g). However, public institutions may, with the approval of the State agency, use their customary

form of contract if it incorporates the provisions of § 226.7(g).

(c) A copy of the contract between each institution and vendor shall be submitted to the State agency prior to the beginning of Program operations under the subject contract.

(d) Each proposed additional provision to the standard form of contract shall be submitted to the State agency for approval.

(e) A vendor may not subcontract for the total meal, with or without milk, or for the assembly of the meal.

§ 225.22 Procurement standards.

(a) This section provides standards for State agencies in establishing procedures for institutions in procuring foods, supplies, equipment, and other goods or services with Program payments. The standards are furnished to ensure that such goods and services are obtained in an effective manner and in compliance with the provisions of applicable Federal laws and Executive Orders.

(b) The standards contained in this section do not relieve the institution of the contractual responsibilities arising under its contracts. The institution is the responsible authority, without recourse to the Department regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into under the Program. This includes, but is not limited, to disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State, or Federal authorities as may have proper jurisdiction.

(c) Institutions may use their own procurement regulations which reflect applicable State and local laws, rules and regulations; however, all procurements made with Program payments must adhere to the provisions of Office of Management and Budget Circular A-102, Attachment O, and to the standards set forth, as follows:

(1) The institution shall maintain a code or standards of conduct which shall govern the performance of its officers, employees, or agents in contracting with and expending Program payments. The officers, employees, or agents of an institution shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors on their own behalf or for others. To the extent permissible by State or local laws, rules or regulations, such standards shall provide for penalties, sanctions, or other disciplinary actions

to be applied for violations of such standards by either the institution's officers, employees, or agents, or by contractors or their agents.

(2) All procurement transactions shall be conducted in a manner so as to provide maximum open and free competition. The institution shall be alert to organizational conflicts of interest or noncompetitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade.

(3) Institutions shall establish procurement procedures which provide for the following minimum procedural requirements:

(i) Proposed procurement actions shall be reviewed by institution officials to avoid purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(ii) Invitations for bids or requests for proposals shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement, and, when so used, the specific features of the name brand which must be met by offerors should be clearly specified.

(iii) Positive efforts shall be made by institutions to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts to be performed utilizing Program payments.

(iv) The type of procuring instruments used (i.e., fixed price contracts) shall be appropriate for the particular procurement and for promoting the best interests of the Program. The "cost-plus-a-percentage-of-cost" method of contracting shall be not be used.

(v) Formal advertising, with adequate purchase description, sealed bids, and public openings shall be the required method of procurement unless negotiation pursuant to paragraph (c)(3)(vi) of this section is necessary to accomplish sound procurement. However, procurements of \$10,000 or less need not be so advertised unless otherwise required by State or local law or regulations. Where such advertised bids are obtained the awards shall be made to the responsible bidder whose

bid is responsive to the invitation and is most advantageous to the institution, price and other factors considered. (Factors such as discounts, transportation costs and taxes may be considered in determining the lowest bid.) Invitations for bids shall clearly set forth all requirements which the bidder must fulfill in order for his bid to be evaluated by the institution and/or all bids may be rejected when it is in the institution's interest to do so, and such rejections are in accordance with applicable State and local laws, rules, and regulations.

(vi) Procurements may be negotiated if it is impracticable and unfeasible to use formal advertising. Generally, procurements may be negotiated by the institution if:

(A) The contract is for any service to be rendered by a university, college, or other educational institution;

(B) The public exigency will not permit the delay incident to advertising;

(C) The material or service to be procured is available from only one person or firm: (All contemplated sole source procurements where the aggregate expenditure is expected to exceed \$5,000 shall be referred to the State agency for prior approval);

(D) The aggregate amount involved does not exceed \$10,000;

(E) The contract is for personal or professional services;

(F) No acceptable bids have been received after formal advertising;

(G) The purchases are for highly perishable material, for material or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, for supplies purchased for authorized resale, and for technical or specialized supplies requiring substantial initial investment for manufacture;

(H) Otherwise authorized by law, rules or regulations. Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable.

(vii) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources, or accessibility to other necessary resources.

(viii) Procurement records for purchases in amounts in excess of

\$10,000 shall provide at least the following pertinent information: justification for the use of negotiation in lieu of advertising, contractor selection, and the basis for the cost or price negotiated.

(ix) A system for contract administration shall be maintained to assure contractual conformity with terms, conditions, and specifications of the contract or order, and to assure adequate and timely follow-up of all purchases.

(d) The institution shall include, in addition to provisions to define a sound and complete agreement, the following provisions on all contracts and subcontracts:

(1) Contracts shall contain contractual provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for appropriate sanctions and penalties.

(2) All contracts in amounts which are in excess of \$10,000 shall contain suitable provisions for termination by the institution, including the manner by which it will be effected and the basis for settlement. In addition, contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) All contracts awarded by institutions and their contractors or subcontractors having a value of more than \$10,000 shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity", as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

(4) Where applicable, all contracts awarded by institutions in excess of \$2,500 which involve the employment of mechanics or laborers shall include a provision for compliance with section 103 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day or 40 hours in the work week.

(5) Contracts or agreements, the principal purpose of which is to create, develop, or improve products, processes or methods, or for exploration in fields which directly concern public health, safety, or welfare, or contracts in the fields of science or technology in which there has been little significant experience outside of work funded by Federal assistance, shall contain a notice to the effect that matters regarding rights to inventions, and materials generated under the contract or agreement are subject to the regulations issued by the Department. The contractor shall be advised by the State agency of additional information regarding these matters.

(6) All negotiated contracts (except those of \$10,000 or less) awarded by institutions shall include a provision to the effect that the State agency, the Comptroller General of the United States, or OIG, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts, and transcriptions.

(7) Contracts and subcontracts of amounts in excess of \$100,000 shall contain a provision which requires the recipient to agree to comply with all applicable standards, order, or regulations issued pursuant to the Clean Air Act of 1970. Violations shall be reported to the State agency and to the Regional Office of the Environmental Protection Agency.

§ 226.23 Free and reduced-price meals.

(a) The State agency shall require each institution to submit, at the time the institution applies for Program participation, a written policy statement concerning free and reduced-priced meals to be used uniformly in all child care facilities under its jurisdiction as required in this section. Institutions shall not be approved for participation nor agreements renewed unless the free and reduced-price policy statement has been approved. Pending approval of a revision of a policy statement, the existing policy shall remain in effect.

(b) An institution which serves meals at no separate charge to attending children shall develop a policy statement which consists of an assurance to the State agency that all children are served the same meals at no separate charge, regardless of race, color, handicap, or national origin, and that there is no discrimination in the course of the food service.

(c) An institution which charges separately for meals shall develop a policy statement for determining eligibility for free and reduced price meals which shall include the following:

(1) The specific criteria to be used in determining eligibility for free and reduced-price meals. The institution's standards of eligibility shall conform to the State's income standards.

(2) A description of the method or methods to be used in accepting applications from families for free and reduced-price meals.

(3) A description of the method or methods to be used to collect payments from those children paying the full or reduced price of the meal which will protect the anonymity of the children receiving a free or reduced-price meal.

(4) An assurance which provides that the institution will establish a hearing procedure for challenging, for cause, eligibility for free and reduced-price meals: (i) A simple, publicly announced method for a family to make an oral or written request for a hearing; (ii) an opportunity for the family to be assisted or represented by an attorney or other person in presenting its appeal; (iii) an opportunity to examine, prior to and during the hearing, the documents and records presented to support the decision under appeal; (iv) that the hearing shall be held with reasonable promptness and convenience to the family and that adequate notice shall be given to the family as to the time and place of the hearing; (v) an opportunity for the family to present oral or documentary evidence and arguments supporting its position; (vi) an opportunity for the family to question or refute any testimony or other evidence and to confront and cross-examine any adverse witnesses; (vii) that the hearing shall be conducted and the determination made by a hearing official who did not participate in making the initial decision; (viii) the determination of the hearing official shall be based on the oral and documentary evidence presented at the hearing and made a part of that hearing record; (ix) that the family and any designated representatives shall be notified in writing of the decision of the hearing official; (x) that a written record shall be prepared with respect to each hearing, which shall include the decision under appeal, any documentary evidence and a summary of any oral testimony presented at the hearing, the decision of the hearing official, including the reasons therefor, and a copy of the notification to the family of the decision of the hearing official; and (xi) that such written record of each hearing shall be

preserved for a period of three years and shall be available for examination by the family or its representatives at any reasonable time and place during such period.

(5) An assurance that there will be no overt identification of free and reduced-price meal recipients and no discrimination against any child on the basis of race, color, handicap, or national origin.

(d) The hearing procedure prescribed under paragraph (c)(4) of this section shall be followed when an institution challenges for cause the continued eligibility for any child for free or reduced-price meals. While the challenge is pending, the child shall continue to receive the free or reduced-price meals to which he is entitled under the eligibility standards announced by the institution based upon the information supplied in the application made by the family.

(e) Each institution shall annually provide the information media serving the area from which the institution draws its attendance a public release announcing the availability of free and reduced-price meals to children meeting the approved eligibility criteria. The public announcement shall also state that meals are available to all enrolled children without regard to race, color, handicap, or national origin.

(f) Free and reduced-price meal eligibility reports by institutions to State agencies shall be based on family-size and income information established not more than 12 months prior to reporting.

(g) Sponsoring organizations for family day care homes shall ensure that no separate charge for food service is imposed on families of children enrolled in participating family day care homes.

Subpart F—Food Service Equipment Provisions

§ 226.24 Food service equipment assistance.

(a) *Apportionment of food service equipment assistance funds to States.* For each fiscal year, the Secretary shall make food service equipment assistance payments to each State from any Federal funds made available for the purchase and rental of equipment to be used in the Program. Such payments shall be apportioned among the States on the basis of the ratio of the number of children below age 6 who are members of families that satisfy the income standards for free and reduced-price meals to the number of such children in all States. If any State cannot utilize all the funds allocated to it under this section, the Department shall make

reallocations to the remaining States in the manner set forth in this paragraph for allocation of funds.

(b) *Payment of food service equipment assistance funds to States.* Food service equipment funds to be paid to any State shall be made available by means of Letters of Credit issued by FNS in favor of the State agency. The State agency shall use these funds in accordance with § 226.4(i).

(c) *Notification of available funds.* Within 30 days of notification by FNS to the State agency of the amount of funds available for food service equipment assistance, the State agency shall notify each institution of the availability of food service equipment assistance, of the criteria for determining which institutions are especially needy, of procedures for application for assistance, and of the application deadline date.

(d) *Matching of food service equipment assistance funds.* Payment to any State of funds allocated under this paragraph for any fiscal year shall be made upon condition that at least one-fourth of the cost of equipment financed under this section shall be financed from sources within the State, except that this condition shall not apply to equipment obtained for institutions that are especially needy, as defined in the approved State Plan of Child Care Food Program Operations. Payment made by FNS to State agencies and by State agencies to institutions may be matched either by the recipient institution or from other State or local sources and payments. Funds from sources within the State may include any source of State or local funds.

(e) *Use of food service equipment assistance funds.* Food service equipment assistance funds shall be used by State agencies to reimburse institutions for the cost of purchasing or renting equipment, other than land or buildings, to establish, maintain, and expand food service operations under the Program.

(f) *Application approval procedures and priorities.* Any institution which has applied for or is participating in the Program may apply to the State agency for food service equipment assistance. Each State agency shall establish an application deadline date to ensure that applications from eligible institutions have an equal opportunity for consideration on the basis of these criteria: (1) The need of the institution for Federal financial assistance to acquire food service equipment, (2) the necessity for the equipment for which application is made to operate an adequate food service, (3) the number

and need of the children enrolled in the Program, (4) the extent to which the equipment for which application is made will be used in the Program, and (5) the amount of funds available to the State agency. Each institution which submits an application shall be notified within 30 calendar days as to whether the application is complete and correct. All applications received by the application deadline date shall be approved or disapproved within 60 calendar days, of this date. Each State agency shall ensure that applications from institutions with no equipment or grossly inadequate equipment are acted upon before applications from other institutions. Applications received after the deadline date may be approved, but shall be accorded a lower priority than those applications received by such date.

(g) *Direct disbursement.* The State agency may disburse food service equipment assistance funds directly to a supplier of food service equipment if the funds are used to purchase equipment for an institution that (1) meets all the requirements for participation except for the licensing requirements, and (2) satisfies all the requirements for licensing, except for a requirement for food service equipment. The State agency shall retain legal title to the equipment until the State agency and the institution sign an agreement authorizing the institution to participate in the Program.

(h) *Agreements.* Institutions approved for food service equipment assistance shall enter into a written agreement with the State agency. The institution shall agree to: (1) participate in the food service aspect of the Program, (2) maintain full and accurate records to account for the cost of the equipment and receipt and use of all equipment assistance funds, and retain such records for a period of three years after final disposition, (3) bear the portion of the purchase price as is agreed upon, (4) use purchased or rented equipment acquired in whole or in part with Federal funds, principally in connection with the institution's nonprofit food service, and (5) comply with the provisions of § 226.22 and § 226.25 of this part where personal property is acquired with food service equipment assistance funds. State agencies shall ensure that agreements with institutions, at a minimum, are in accordance with this section.

(i) *Equipment assistance reimbursement payments.* Equipment assistance payments may be made to reimburse institutions for the purchase or rental cost, including delivery and installation charges, of the equipment

described on the application approved by the State agency. Total payments made to institutions may not exceed the total cost of the equipment acquired, including transportation and installation charges; however, on a Statewide basis, total payments made to institutions other than especially needy institutions shall not exceed three-fourths of the total costs.

(j) *Food service equipment assistance reimbursement procedure.* Each State agency shall require each approved institution to submit a reimbursement voucher for equipment acquired. Each reimbursement voucher shall be accompanied by a copy of the bill, invoice, or other evidence of purchase or rental and shall be made part of the institution's case file maintained by the State agency for a period of three years after final disposition. In submitting a reimbursement voucher for equipment, each institution shall certify that the voucher is true and correct, that the equipment has been installed and is operating in the capacity for which it was acquired, that records are available to support the voucher, and that payment has not been received.

§ 226.25 Property management requirements.

(a) This section prescribes policies and procedures governing title, use, and disposition of personal property obtained by an institution by purchase, whose cost was borne in whole or in part with food service equipment assistance funds. Institutions shall follow the property management policies and procedures prescribed by the State agency.

(b) The following requirements shall be observed in acquiring, using and disposing of nonexpendable personal property:

(1) When nonexpendable personal property is acquired by an institution in whole or in part with equipment assistance funds, title shall be vested in the institution.

(2) The institution shall retain such property in the Program as long as the State agency decides that there is a need for such property to accomplish the purposes of the Program whether or not the institution's food service continues to be supported by Federal funds.

(3) When there is no longer a need for such property to accomplish the purpose of the Program, the institution shall use the property in connection with other Federal programs it administers. Priority shall be given to Federal programs administered by the Department over the programs administered by other Federal agencies. Approval from the

Department or State agency, as applicable, must be obtained by the institution prior to using equipment acquired with food service equipment assistance funds for programs of other Federal agencies. When the institution no longer has need for such property in any of its federally assisted programs, the property may be used for the institution's own official activities. In such situations, the institution may use the property without reimbursement to the State agency, or sell the property and retain the proceeds if the property had an acquisition cost of less than \$1,000 per unit. In the case of other property, the institution may retain the property for its own use, provided that a fair compensation is made to FNS for the Federal share of the property. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the property to the current fair market value of the property. If the institution has no need for the property, disposition shall be made as follows:

(i) If the property had an acquisition cost of over \$1,000 per unit, the institution shall request disposition instructions from the State agency. If the State agency has no need for the property, the availability of the property shall be reported to the General Services Administration (GSA) by the Department to determine whether a requirement for the property exists in other Federal programs. FNS shall issue instructions to the State agency within 120 days following the receipt of the request. If the institution is instructed to ship the property elsewhere, the institution shall be reimbursed by the State agency where applicable, with an amount which is computed by applying the percentage of the institution's participation in the cost of the property to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred. If the institution is instructed to otherwise dispose of the property, the institution shall be reimbursed by the State agency for the costs incurred in the disposition. If disposition instructions are not issued within 120 days after reporting, the institution shall sell the property and reimburse the Department in an amount which is computed by applying the percentage of Federal participation in the cost of the property to the sales proceeds. Further, the institution may be permitted to deduct and retain from the Federal share \$100 or 10 percent of the proceeds, whichever is greater, for the institution's selling and handling expenses.

(ii) When the State agency determines that nonexpendable personal property with an acquisition cost of \$1,000 or more financed with food service equipment assistance funds is unique or difficult or costly to replace, the State agency may reserve the rights to require the institution to transfer title to the property to the State agency or to a third party subject to the following provisions:

(A) The right to require the transfer of title may be reserved only by means of an express special condition in the agreement or, if approval for the acquisition of the property is given after the agreement is executed, by means of a written stipulation at the time the approval is given.

(B) The property shall be appropriately identified in the award document or otherwise made known to the institution.

(C) FNS or the State agency shall not exercise this right until the institution no longer needs the property in the Program. That need will be deemed to end on the date of termination of the agreement, unless the institution continues to conduct a food service after that date and demonstrates to the State agency a continued need for the property in its food service.

(D) The State agency shall issue disposition instructions within 120 days after the completion of the need for the property under the Program. If instructions are not issued within such 120-day period, the State agency's right shall lapse, and the institution shall apply the applicable standards contained in paragraphs (b) (2) and (3) of this section.

(4) The institution's property management standards for nonexpendable personal property shall also include the following procedural requirements:

(i) Property records shall be maintained accurately and provide for: (A) a description of the property; (B) manufacturer's serial number or other identification number; (C) acquisition date and cost; (D) source of the property; (E) percentage of food service equipment assistance funds used in the purchase of the property; (F) location, use, and condition of the property; and (G) ultimate disposition data including sales price or the method used to determine current fair market value if the institution reimburses the Department for its share.

(ii) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years to verify the existence,

current utilization, and continued need for the property.

(iii) A control system shall be in effect to ensure adequate safeguards to prevent loss, damage, or the theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented. The institution shall be responsible for replacing or repairing (with funds of the institution) property which is lost, damaged, or destroyed due to negligence by the institution.

(iv) Adequate maintenance procedures, including those recommended by the manufacturer shall be implemented to keep the property in good condition.

(v) Proper sales procedures shall be established for unneeded property which would provide for competition to the extent practicable and result in the highest possible return.

(c) The institution may, at its option, either retain or sell items of expendable personal property when no longer needed for any federally sponsored activity (including activities sponsored by other Federal agencies). Compensation to the Department is required if the aggregate fair market value of all of those items of expendable personal property acquired with equipment assistance funds exceeds \$1,000 when no longer needed for any federally sponsored activity. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original property to the current fair market value of items retained and to the sales of items sold.

(d) Compensation for the Federal share of property made by institutions to the State agency shall be returned to FNS, except that food service equipment assistance monies returned in the same fiscal year that the monies were paid may be used by the State agency under § 226.24.

Subpart G—Other Provisions

§ 226.26 Other provisions.

(a) *Grant closeout procedures.* Grant closeout procedures for the Program shall be in accordance with Attachments K and L of the Office of Management and Budget Circular A-110 (41 FR 32016, July 30, 1976), or Attachment L of the Office of Management and Budget Circular A-102 (42 FR 45828, September 12, 1977), whichever is applicable.

(1) *Termination for cause.* FNS may terminate a State agency's participation in the Program in whole, or in part, whenever it is determined that the State agency has failed to comply with the conditions of the Program. FNS shall promptly notify the State agency in

writing of the termination, the reasons for the termination and the effective date. A State agency shall terminate an institution's participation in the Program by written notice whenever it is determined by FNS or the State agency that the institution has failed to comply with the conditions of the Program.

(2) *Termination for convenience.* FNS or the State agency may terminate the State agency's participation in the Program when both parties agree that the continuation of the Program would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated. The State agency shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. FNS shall allow full credit to the State agency for the Federal share of noncancellable obligations, properly incurred by the State agency, or FNSRO where applicable, and may terminate an institution's participation in accordance with these provisions.

(b) *State requirements.* Nothing contained in this part shall prevent a State agency from imposing additional requirements for participation in the Program which are not inconsistent with the provisions of this part; however, any additional requirements shall be approved by FNSRO and may not deny the Program to an eligible institution.

(c) *Value of assistance.* The value of assistance to children under the Program shall not be considered to be income or resources for any purposes under any Federal or State laws, including, but not limited to laws relating to taxation, welfare, and public assistance programs.

(d) *Maintenance of effort.* Expenditure of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under the Act.

(e) *Fraud penalty.* Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this part, whether received directly or indirectly from the Department or whoever receives, conceals, or retains such funds, assets, or property to his use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets, or property are of the value of \$100 or more, be fined not more than \$10,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of a value

of less than \$100, shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

§ 226.27 Program information.

Persons desiring information concerning the Program may write to the appropriate State agency or Regional Office of FNS as indicated below:

(a) In the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont: New England Regional Office, FNS, U.S. Department of Agriculture, 3 North Avenue, Burlington, MA 01803.

(b) In the States of Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, and West Virginia: Mid-Atlantic Regional Office, FNS, U.S. Department of Agriculture, One Vahlsing Center, Robbinsville, NJ 08691.

(c) In the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee: Southeast Regional Office, FNS, U.S. Department of Agriculture, 1100 Spring Street NW., Atlanta, GA 30309.

(d) In the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin: Midwest Regional Office, FNS, U.S. Department of Agriculture, 530 South Clark Street, Chicago, IL 60605.

(e) In the States of Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming: Mountain Plains Regional Office, FNS, U.S. Department of Agriculture, 2420 West 26th Avenue, room 430D, Denver, CO 80211.

(f) In the States of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas: Southwest Regional Office, FNS, U.S. Department of Agriculture, 1100 Commerce Street, room 5-C-30, Dallas, TX 75242.

(g) In the States of Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, the Northern Mariana Islands, and Washington: Western Regional Office, FNS, U.S. Department of Agriculture, 550 Kearny Street, room 400, San Francisco, CA 94108.

(Catalog of Federal Domestic Assistance Programs No. 10.558)

Note.—A draft impact analysis statement has been prepared and can be obtained by contacting Jordan Benerly, Director, Child Care and Summer Programs Division, FNS, U.S. Department of Agriculture, Washington, D.C., 20250, 202-447-8211.

Dated: June 27, 1979.

Carol Tucker Foreman,

Assistant Secretary for Consumer Services.

[FR Doc. 79-20396 Filed 7-2-79; 8:45 am]

BILLING CODE 3410-30-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 541, 542, 543, 544, 545, 546, 547, 548, 549, 551, 552, 555, and 556

[No. 79-316]

**Federal Savings and Loan System,
Reduction and Simplification of
Regulations**

Dated: May 31, 1979.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rules.

SUMMARY: These amendments shorten and simplify the Rules and Regulations for the Federal Savings and Loan System. Except as described below, the amendments are not intended to change the meaning or effect of the revised sections, but only to clarify them and remove unnecessary words.

EFFECTIVE DATE: August 3, 1979.

FOR FURTHER INFORMATION CONTACT: John R. Hall, Attorney, Federal Home Loan Bank Board, 1700 G Street, NW, Washington, D.C. 20552 (202-377-6445).

SUPPLEMENTARY INFORMATION: The Federal Home Loan Bank Board, by Resolution No. 78-390, dated July 6, 1978, proposed to revise 12 CFR Parts 541-549, 551, 552, 555, and 556 to reduce and clarify the language of those regulations. The proposed revision was published in the Federal Register on July 17, 1978, (43 FR 30730-30767) with public comments to be received by September 13, 1978. Based on its consideration of comments received and other information available to it, the Bank Board has decided to adopt the proposed amendments with changes discussed below.

The language of the following sections has been further amended, without substantive change: §§ 541.6, 541.9, 541.21, 541.22, 543.4, 543.6, 543.8, 543.9, 545.1-1, 545.1-2, 545.1-3, 545.1-4, 545.3, 545.5, 545.6-2, 545.6-4, 545.6-6, 545.6-10, 545.7, 545.7-1, 545.7-2, 545.7-6, 545.8, 545.8-7, 545.9, 545.9-1, 545.10, 545.24, 545.24-2, 545.28, 545.29, 547.2, 547.5, 552.8, 555.7, 555.8, 555.13, and 555.15.

The definitions in Part 541 have been arranged in alphabetical order.

The following sections of the proposed regulations are revised or deleted for the reasons stated:

Sections 541.3 and 541.4—The proposed definitions of "capital" and "savings accounts" have been deleted as superfluous.

Section 541.12(a)—The definition of "other improved real estate" is amended in § 541.17 to clarify that the term does not include two-family dwellings.

Section 545.4(a)(1)—The final amendments do not include the proposed requirement that withdrawal from any savings account whose owner has died or which qualifies as a retirement account and the owner is disabled or has attained the age of 59½ be exempted from early withdrawal penalties, because the proposed change would be substantive and beyond the scope of these amendments.

Section 545.6-8—The final amendments clarify that the initial occupancy of housing designed primarily for persons over 55 years of age need not be limited entirely to such persons.

Section 545.6-10(b)(1)—The exception regarding the maximum loan term for loans made under this section and secured by other dwelling units or combination of dwelling units, including homes, and business property involving only minor or incidental business use has been deleted as unnecessary. The final amendments provide such exception only for loans secured by other improved real estate.

Section 545.10—The amendments clarify that the limitation on maximum investment under this section includes investments made through service corporations under § 545.9-1(b)(4)(xii).

Section 549.6(a)—The present requirement that the receiver maintain a record of creditor and share liabilities has been included in the final amendments, but the term "savings account" replaces the term "share".

Section 552.6—The optional bylaws setting mandatory retirement ages for directors and officers of Charter S associations are revised to permit a mandatory retirement age no less than 70. This change conforms to 1978 amendments to the Age Discrimination in Employment Act of 1967 and present regulations for Federal mutual associations.

Section 555.8—Proposed paragraph (c), regarding payment of earnings on the last business day of an earnings period, has been deleted from the final regulations because it is superfluous.

Throughout the regulations references to the Office of Examinations and Supervision have been revised to reflect current organization of the Bank Board.

Public Comments

Of the 14 public comments received, 3 approved adoption of the amendments as proposed, and 7 approved the proposal but suggested changes. Three respondents only offered comments, and one, finding the revision more confusing than the present regulations, opposed its adoption. Suggestions for further simplification and for greater clarity and accuracy have been incorporated in the final amendments as described above. Additional general comments were received as follows:

(1) The final amendments should include some indication of the relationship between the revised and original provisions of the regulations.

Included as an appendix to this document is a cross-reference table describing the sources of the revised regulations.

(2) Rearrangement of sections may cause complications because prescribed forms and other documents may refer to section designations which have been changed.

The Bank Board recognizes that redesignation of some sections may cause complications, but it believes that a more orderly arrangement will provide substantial benefits. Present section designations have been retained where possible, consistent with the purposes of the revision.

(3) While Federal associations are subject to all rules and regulations for insurance of accounts, in instances where the Federal regulations might appear to be the only regulation covering a particular subject, a cross reference to any applicable insurance regulation would be helpful.

The cross-references to which the comment referred (in §§ 545.5 and 545.8) are included in the final amendments.

(4) The term "earnings" should be used rather than "dividends" when referring to payments to savings account holders.

"Earnings" is used in the final amendments.

(5) References to mutual associations should be deleted because associations may be in mutual or stock form.

The term "mutual association" is used when the regulation applies specifically to such associations.

(6) The regulations should be expanded to include all of the additional information presently provided in interpretative opinions, rulings, and technical memoranda relative to specific regulations.

While the Bank Board recognizes that additional details regarding specific situations or technical aspects of implementing a regulation might be helpful in some instances, it believes that regulations incorporating all such information would be cumbersome and possibly confusing.

The following recommendations regarding specific sections were not adopted because they would make substantive changes beyond the scope of this revision.

Section 545.1-1(b)(4)—The regulation should be amended to permit a penalty for early withdrawal from a bonus account to be deducted from the remaining account balance rather than from the amount withdrawn, to adjust for any previous distribution of earnings.

Section 545.1-2(d)—The provision for issuance of share accounts by deposit associations should be deleted.

Section 545.2(b)—Greater flexibility should be permitted regarding evidence of account.

Section 545.6-3(d)(3)(v)—The retention requirement for rehabilitation loans should be applicable only to loans over 90 percent of value rather than over 80 percent of value as in the present regulation.

Additional comments were received as follows:

Section 543.2—Various comments.

This section, which was recently revised in connection with implementation of the Community Reinvestment Act of 1977, is not further revised by these amendments, and comments regarding this section are not applicable to these amendments.

Section 544.1—Various comments.

The revision has retained without change the present forms of charter for Federal associations in order to maintain uniformity among associations. Therefore comments regarding charter provisions are beyond the scope of these amendments.

Section 545.1-1(e)—The provision for withdrawal without notice from a notice account has been substantively changed.

The provision merely clarifies the Bank Board's present interpretation of the regulation, that exceptions to the required notice period apply only to funds which have remained in the account for at least 90 days.

Section 545.1-1(h)—The notice required under this section to be given when new savings accounts are offered is presently required only for offerings of new bonus accounts.

The section includes, along with the notice requirement for bonus-account offerings, to which the commenter refers, the notice requirement presently required under § 545.3-1(g) for other savings accounts.

Section 545.1-5(i)(2)—The regulations should state specifically that marketable certificates of deposit are insured.

The Bank Board believes such a statement is superfluous.

Section 545.2(b)—The regulation appears to require issuance of a passbook to evidence a "statement" account.

The revision does not change present requirements for evidence of accounts which permit such evidence to be in an account book or a separate certificate.

Section 545.3—The time and manner of distribution of earnings should be the same for certificate accounts as for all other savings accounts.

No substantive change has been made regarding distribution dates.

Section 545.6-2—Incorporation into the lending regulation of the definition of "other improved real estate" which was formerly contained in § 541.12 alters the authority of Federal associations to make variable rate loans on security other than owner-occupied homes or combination homes and business property.

The requirement, contained in § 541.14 and applicable to owner-occupied homes, that no required payment after the first regular periodic payment be more than the preceding payment, is restated in revised § 545.6-2(a)(5). No new limitation is placed on loans on any other security.

Section 545.6-3(a)(1)—Does the revised language continue to permit payments on flexible payment loans at one rate during an initial period and another during the amortization period?

No substantive change of the regulation is intended.

Section 545.6-3(d)(3)—May construction loans be combined under this section only with permanent loans made on a monthly installment basis?

For the purpose of combination with a construction loan a permanent loan must be made on a monthly installment basis only if it is secured by other improved real estate.

Section 545.6-12(b)—Although this section is located at the end of the real estate loan provisions, loans made under this section technically are not real estate loans.

Even though loans authorized under this section need not be secured by real estate, the location of the section appears reasonable in view of the nature of the authorized loans.

Section 545.12(c)—Inclusion of the words "for construction purposes" in the heading of this paragraph imposes an additional limitation on loans made under it.

The Bank Board believes the proposed heading appropriately indicates the type of loans permitted under this paragraph.

Section 545.8(a)—The proposal would authorize a Federal association to participate in any type of loan secured by real estate which the "approved lender" is authorized to make.

The regulation not only limits an association's participations to loans which it could make under applicable percentage-of-assets limitations, but also to loans of a type which it could make.

Section 545.8-3(c)—The regulation should more clearly state that "interest is not required on escrow accounts, unless it is allowed by State chartered savings and loan laws."

The Bank Board believes the regulation as written clearly states the three criteria which must be met before payment of earnings on escrow accounts is required.

Section 545.8-7(a)(1)(iii)—This subparagraph should be amended to provide greater authority for purchasing insured loans.

Authority to purchase insured loans is provided under § 545.8-7(a)(3) and has not been changed by these amendments.

Section 545.9-1(j)—Does the elimination of the section specifically approving continuation of service corporation activities approved by the Bank Board before 1970 require termination of such activities?

Deletion of the provision is not intended to revoke approval of any such activity.

Section 547.7—The regulation should continue to specify that the officer or

employee in charge of the home office of an association for which a conservator or receiver has been appointed shall be notified of the appointment at the time possession is demanded. The proposal requires that such notice be given at the time possession is taken and there is a legal distinction between demanding possession and taking possession.

The Bank Board believes it is unnecessary to specify the steps involved in taking possession, if the required notice is given.

Accordingly, the Bank Board hereby amends Parts 541-549, 551, 552, 555, and 556, as follows:

1. Revise Part 541 to read as follows:

PART 541—DEFINITIONS

Sec.

- 541.1 General.
- 541.2 Act.
- 541.3 Combination of dwelling units, including homes, and business property involving only minor or incidental business use.
- 541.4 Combination of home and business property.
- 541.5 Cooperative housing project.
- 541.6 Director.
- 541.7 Dwelling unit.
- 541.8 Federal association.
- 541.9 General reserve.
- 541.10 Guaranteed loan.
- 541.11 Home.
- 541.12 Improved real estate.
- 541.13 Insured loan.
- 541.14 Loans secured by first liens.
- 541.15 Net worth.
- 541.16 Other dwelling unit.
- 541.17 Other improved real estate.
- 541.18 Principal Supervisory Agent.
- 541.19 Short-term savings account.
- 541.20 Single-family dwelling.
- 541.21 Supervisory Agent.
- 541.22 Surplus.
- 541.23 Two-family dwelling.
- 541.24 Withdrawal value of a savings account.

Authority: Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464, Reorg. Plan No. 3 of 1947; 3 CFR 1943-1948 Comp.

§ 541.1 General.¹

Unless another definition is provided in this subchapter, definitions in Part 521 of this chapter apply.

§ 541.2 Act.

The Home Owners' Loan Act of 1933, as amended.

§ 541.3 Combination of dwelling units, including homes, and business property involving only minor or incidental business use.

Real estate which comprises other dwelling units (and may comprise homes) and business property, if no more than 20 percent of the total value of the real estate is attributable to business use.

§ 541.4 Combination of home and business property.

A home used in part for business.

§ 541.5 Cooperative housing project.

Real estate primarily comprising more than four dwelling units, owned by a non-profit organization whose members certify that they in good faith intend to occupy the project as their principal dwelling.

§ 541.6 Director.

The Director or Deputy Director-Examinations, FSLIC.

§ 541.7 Dwelling unit.

The unified combination of rooms designed for residential use by one family, other than a single-family dwelling.

§ 541.8 Federal association.

A savings and loan association chartered by the Board under section 5 of the Act and, except as the Board may otherwise provide, any building and loan, savings and loan, building, or homestead association, organized or incorporated under the laws of the District of Columbia.

§ 541.9 General reserves.

Aggregate reserves established solely to meet losses.

§ 541.10 Guaranteed loan.

A loan guaranteed or as to which a commitment to guarantee has been made under the Servicemen's Readjustment Act of 1944, or chapter 37 of title 38, United States Code, as amended.

§ 541.11 Home.

Real estate comprising a single family dwelling(s) or a dwelling unit(s) for 4 or less families in the aggregate.

§ 541.12 Improved real estate.

Real estate which is, or from proceeds of a loan will become, any of the real estate defined in §§ 541.3, 541.4, 541.11, 541.16, 541.17, or 541.23.

§ 541.13 Insured loan.

A loan as to which the mortgagee is insured, or as to which a commitment for such insurance has been made under

the National Housing Act or the Servicemen's Readjustment Act of 1944, or chapter 37 of title 38, United States Code, as amended.

§ 541.14 Loans secured by first liens.

(a) Loans secured by an interest in real estate in fee or in a leasehold or subleasehold extending or renewable automatically or at the option of the holder or the Federal association for 10 years after maturity of the loan, if, in the event of default, the real estate could be used to satisfy the obligation with the same priority as a first mortgage or a first deed of trust in the jurisdiction where the real estate is located; and

(b) Loans secured by assignment of such loans.

§ 541.15 Net worth.

The sum of general reserves, surplus, capital stock, and any other account designated as part of net worth under this subchapter.

§ 541.16 Other dwelling unit.

Real estate which comprises:

(a) A structure(s) primarily comprising single family dwellings or dwelling units for more than four families in the aggregate; or

(b) A structure(s), or parts thereof, designed or used (1) as fraternity or sorority houses which include sleeping accommodations for students of a college or university or (2) principally for living accommodations for students, employees, or staff of a college, university, or hospital.

§ 541.17 Other improved real estate.

(a) Real estate other than that defined in § 541.3, § 541.4, § 541.5, § 541.7, § 541.11, § 541.16, § 541.20, and § 541.23 with (1) a permanent structure(s) constituting at least 25 percent of its value; or (2) improvements which make it usable by a business or industrial enterprise;

(b) Building lots or sites with installations and improvements, completed according to governmental requirements and general practice in the community, sufficient to make each lot or site ready for construction thereon of a structure designed for residential use by one family; or

(c) Real estate used, or to be used within a reasonable time, for commercial farming, excluding hobby and vacation property.

§ 541.18 Principal supervisory agent.

The President of the Bank of the district in which a Federal association, or insured institution (as defined in § 561.20 of this chapter), is, or will be, located or any other person designated

¹ Except as described in the preambles to the proposed and final revision of the Rules and Regulation for the Federal Savings and Loan System (43 FR 30730-30731 and 44 FR—), the revision, which became effective August 3, 1979, was not intended to change the meaning or effect of the revised regulations.

in writing as Principal Supervisory Agent by the Board to serve as such for such term as under such conditions as may be specified.

§ 541.19 Short-term savings account.

A savings account which will be withdrawn in less than twenty-four months or was established to accumulate funds to pay taxes or insurance premiums on real estate securing a loan.

§ 541.20 Single-family dwelling.

A structure designed for residential use by one family, or a unit so designed, whose owner owns an undivided interest in the underlying real estate, including property owned in common with others which contributes to the use and enjoyment of the structure or unit.

§ 541.21 Supervisory agent.

The Principal Supervisory Agent or any other officer or employee of the Bank designated under § 501.10 or § 501.11 of this chapter.

§ 541.22 Surplus.

Undistributed earnings held as unallocated reserves for general corporate use.

§ 541.23 Two-family dwelling.

A structure designed for two dwelling units.

§ 541.24 Withdrawal value of a savings account.

The amount invested in a savings account plus earnings credited thereto, less lawful deductions therefrom.

PART 542—AMENDMENT OF RULES AND REGULATIONS

2. Delete Part 542, effective August 3, 1979.

PART 543—INCORPORATION, ORGANIZATION, AND CONVERSION

3. Amend § 543.1 to read as follows:

§ 543.1 Corporate title.

(a) A Federal association's title shall include the words "Federal Savings and Loan Association" preceded by suitable descriptive words, and may be followed by words indicating location, including a State or regional name immediately preceded by the name of the locality of the association's home office. State or regional names may be used elsewhere in the title if the applicant clearly demonstrates, and the Board finds, that such use is justified. A Federal association shall not adopt or change to a title which will result in unfair competition or public confusion, or be

deceptive, scandalous, or otherwise unsuitable.

(b) Title change.—

(1) Filing, notice, and protest.

Applications containing a factual statement justifying the proposed change shall be filed with the Supervisory Agent, with a copy to the Director of the Board's Office of Industry Development. The Supervisory Agent shall determine whether there are similarly named institutions in the same or any contiguous State, and promptly notify them of the application. Processing, notice, and protest procedures shall accord with the Board's branch-office application procedures, except that the closing date for any protest shall be determined by using the date of the notice relied upon by a protestant. The Principal Supervisory Agent may exclude from consideration protests which are not timely or do not specify (i) harm expected to result from approval and (ii) reasons why approval should be denied.

(2) Decision.

The Principal Supervisory Agent may approve an unprotested application (or application subject only to nonspecific protest(s)) and corresponding request for charter amendment, and shall forward for Board decision applications which (i) he believes warrant disapproval, (ii) are protested, or (iii) use a State or regional name not immediately preceded by the applicant's home-office locality.

4. Amend § 543.2 by revising paragraph (a) to read as follows:

Organization

§ 543.2 Application for permission to organize.

(a) General. Questions regarding this section shall be directed to the Supervisory Agent. Recommendations by Supervisory Agents and officers and employees of the Board regarding application for permission to organize a Federal association are privileged, confidential, and subject to § 505.6 of this chapter.

5. Revise §§ 543.3-543.12 to read as follows:

§ 543.3 Subscription to capital.

When the Board approves an application for permission to organize a Federal association, the applicants shall constitute the organization committee and elect a chairperson, vice-chairperson, and secretary, who shall act as the temporary officers of the association until their successors are duly elected and qualified. The temporary officers may effect

compliance with any conditions prescribed by the Board, including securing subscriptions to the association's capital in the following form (referred to in this Part as "subscription to capital"):

_____ (City), _____ (State).
 _____ (Date).

Federal Home Loan Bank Board,
 Washington, D.C.

Having been given permission to organize a Federal association, the undersigned hereby subscribe for the amount of capital indicated below, and contract to pay into a savings account, upon issuance of a charter, the amount of cash stated opposite their respective names. We agree to cooperate in developing such an association for promotion of local savings and home-financing.

(Name) _____
 (Address) _____

(Amount of capital to be paid in cash upon issuance of charter)

§ 543.4 Petition for charter.

(a) Form. When the required number of persons have subscribed for the required amount of capital and agreed to pay such amount in cash when the Board issues a charter, and when any other conditions prescribed by the Board have been met, the temporary officers shall sign a petition to the Board requesting it to issue a charter under a name chosen by the petitioners or the Board. The petition shall state that (1) the applicants have complied in all respects with the Act and these rules and regulations regarding organization of a Federal association; (2) the applicants have incurred no expense in forming the association which is chargeable to it, and no such expense will be incurred; (3) no money will be collected on account of the association before the Board issues its charter; (4) an organization committee has been created (naming the committee and its officers); and (5) the committee will organize the association when the Board issues its charter and serve as temporary officers of the association until officers are elected by the association's board of directors under § 543.6.

(b) Filing. The petition for charter and evidence of compliance with conditions prescribed by the Board, including

subscriptions to capital, shall be submitted in duplicate to the Board through the Bank of the district in which the association is to be located.

§ 543.5 Issuance of charter.

Thereafter, the Board will issue or deny a charter, and its action shall be final. Issuance will be in accordance with § 544.1 of this subchapter.

§ 543.6 Completion of organization.

(a) *Organization meeting.* Promptly upon receipt of a charter, the temporary officers shall call a meeting of the association's capital subscribers; notice of such meeting shall be mailed to each subscriber at least 5 days before the meeting day. Subscribers who have subscribed for a majority of the association's capital, present in person or by proxy, shall constitute a quorum. At such meeting directors of the association shall be elected according to the association's charter and bylaws, and any other action permitted by such charter and bylaws may be taken; any such action shall be considered an acceptance by the association of such charter and of such bylaws which shall be in the form provided in § 544.5 of this subchapter.

(b) *First meeting of directors.* Upon election, the association's board of directors shall hold a meeting to elect officers of the association as provided by its charter and bylaws and to take any other action necessary to permit operation of the association in accordance with law, the association's charter and bylaws, and these rules and regulations. When such officers have been bonded under § 563.19 of this chapter, they shall immediately collect the sums due on subscriptions to the association's capital.

(c) *Membership in Federal Home Loan Bank and Insurance of Accounts.* When a Federal Association's charter is issued it must promptly qualify as a member and meet all requirements necessary to obtain insurance of its accounts by the Federal Savings and Loan Insurance Corporation.

(d) *Failure to complete.* Organization of a Federal association is completed when the organization meeting and the first meeting of its directors have been held, permanent officers have been bonded, the association holds the cash required to be paid on subscriptions to its capital, and any additional requirement imposed by the Board has been met. If organization is not so completed within six months after issuance of a charter, or within such additional period as the Board may for good cause grant, the charter shall

become void and all cash collected on subscriptions shall thereupon be returned.

§ 543.7 Limitations on transaction of business.

No person may organize a Federal association, collect money from others for such purpose, or represent himself as authorized to do so, and no Federal association shall transact any business prior to completion of its organization, except as provided in this Part.

§ 543.7-1 Federal association proposed by Federal Savings and Loan Insurance Corporation.

The preceding sections of this Part do not apply to a Federal association which is proposed by the Federal Savings and Loan Insurance Corporation under section 406 of the National Housing Act, as amended. Incorporation and organization of such associations are complete when the Board so determines.

Conversion

§ 543.8 Eligibility.

Any member may, on such conditions as the Board may prescribe, convert itself into a Federal association, if it complies with all laws of its jurisdiction expressly providing for such conversions and with these rules and regulations.

§ 543.9 Preliminary application.

(a) *Filing.* Any member desiring to convert itself into a Federal association shall, after approval by its board of directors, file an application in duplicate through its Bank on forms obtained from the Bank or the Board. A non-member institution eligible to apply for membership may likewise file such an application, simultaneously with its application for membership, through the Bank of which it proposes to become a member. The applicant shall submit any financial statements or other information the Board may require and pay all costs, determined by the Board, of the Board's consideration of the application. The applicant shall also submit with its application a plan of conversion, specifying the location of the home office and any branch offices to be maintained by the Federal association and providing for (1) appropriate reserves and surplus for the Federal association, (2) satisfaction in full or assumption by the Federal association of all creditor obligations of the applicant, and (3) issuance by the Federal association of its savings accounts to holders of withdrawable accounts and, if applicable, nonwithdrawable capital stock of the

applicant in an amount equalling the value of their accounts, including the present value of any preferences to which such holders are entitled, or of their nonwithdrawable capital stock.

(b) *Board action.* The Board will consider such preliminary application and any information submitted therewith and approve, conditionally approve, or disapprove the application.

§ 543.10 Approval by members.

After the Board approves a preliminary application for conversion to a Federal association, the applicant shall promptly proceed to (a) comply with all conditions prescribed in the approval, (b) obtain the vote of its members which section 5(i) of the Act requires and any such vote which may be required by laws of the applicant's jurisdiction, and (c) comply with all other legal requirements. The Board may cancel its approval of such a preliminary application if the applicant does not promptly obtain such approval of its members.

§ 543.11 Formal application.

(a) *Filing.* On approval by its members of the plan of conversion, as provided in § 543.10, the applicant may obtain from the Board or any Bank conversion application-forms which it shall file in duplicate with the Board through the Bank of which the applicant is or proposes to become a member. With the application shall be submitted evidence satisfactory to the Board showing compliance by the applicant with all conditions imposed by the Board when it approved the applicant's preliminary application and, unless the applicant is an insured institution, formal application for insurance of accounts.

(b) *Issuance of charter.* A formal application for conversion will be approved only if the applicant has been approved for Bank membership. When the Board approves such an application it will issue a charter, as provided in § 544.1 of this subchapter. When the charter is issued and all relevant requirements of any laws providing for such conversions are met, conversion is completed.

§ 543.12 Organization after conversion.

After a Federal charter is issued under § 543.11, the association's members shall, after due notice, or upon a valid adjournment of a previous legal meeting, hold a meeting to elect directors and take all other action necessary fully to effect the conversion and operate the association in accordance with law and these rules and regulations. Immediately thereafter the board of directors shall

meet, elect officers, and transact any other appropriate business.

PART 544—CHARTER AND BYLAWS

6. Amend § 544.1 by revising the introductory text of paragraph (a) and paragraph (b) as follows:

Charter

§ 544.1 Issuance of charter.

(a) *Charter N.* Except as provided in paragraph (b) of this section, when the Board approves a petition for a charter for a Federal association under section 5(a) or section 5(i) of the Act, it shall issue a charter in the following form, known as Charter N:

Charter N

1. Corporate title. * * *

(b) *Charter K (rev.)*. If expressly requested in the Petition for Charter, or in the Application for Conversion to a Federal association, the Board will issue, in lieu of Charter N, a Charter K (rev.). The form of Charter K (rev.) is the same as the form of Charter N, except that the heading states "CHARTER K (REV.)" instead of "CHARTER N" and, in lieu of the provision in Charter N designated "6. *Withdrawals*", the following provision is substituted:

6. *Withdrawals.* The association shall have the right to pay the withdrawal value of its savings accounts at any time upon application therefor and to pay the holders thereof the withdrawal value thereof. Upon receipt of a written request from any holder of a savings account of the association for the withdrawal from such account of all or any part of the withdrawal value thereof, the association shall within 30 days pay the amount requested: *Provided*, That if the association is unable to pay all withdrawals requested at the end of 30 days from the date of such requests, it shall then proceed in the following manner while any withdrawal request remains unpaid for more than 30 days:

Withdrawal requests shall be paid in the order received and if any holder of a savings account or accounts has requested the withdrawal of more than \$1,000, he shall be paid \$1,000 in order when reached and his withdrawal request shall be charged with such amount as paid and shall be renumbered and placed at the end of the list of withdrawal requests, and thereafter, upon again being reached, shall be paid a like amount, but not exceeding the withdrawal value of his savings account, and until such withdrawal request shall have been paid in full, shall continue to be so paid, renumbered, and replaced at the end of the withdrawal requests on file: *Provided*, That when any such request is reached for payment, the association shall so advise the holder of such savings account by registered mail to his last address as recorded on the books of the

association and, unless such holder shall apply in person or in writing for the payment of such withdrawal request within 30 days from the date of the mailing of such notice, no payment on account of such withdrawal request shall be made and such request shall be cancelled: *And provided further*, That the board of directors shall have absolute right to pay on an equitable basis an amount not exceeding \$200 to any holder of a savings account or accounts in any calendar month and without regard to any other provision of this section.

When the association is unable to pay all withdrawal requests within a period not exceeding 30 days from the date of receipt of written request therefor it shall allot to the payment of such requests the remainder of the association's receipts from all sources after deducting from total receipts appropriate amounts for expenses, required payments on indebtedness, earnings distributable in cash to holders of savings accounts, and a fund for general corporate purposes equivalent to not more than 20 percent of the association's receipts from holders of its savings accounts and from its borrowers. Holders of savings accounts for which application for withdrawal has been made shall remain holders of savings accounts until paid and shall not become creditors.

6a. Revise §§ 544.2 through 544.4 to read as follows:

§ 544.2 Amendment of charter.

This section constitutes approval by the Board of any of the following amendments to the charter of a Federal mutual association:

(a) *Withdrawals.* Add the following as the first sentence of section 6, following the section title "*Withdrawals*": "Each withdrawal from a savings account shall be governed by this section except to the extent that a member's account book or other written evidence of the member's savings account contains additional requirements in accordance with regulations made by the Federal Home Loan Bank Board."

(b) *Reserves.* (1) Delete from section 10 the following: "If and whenever the general reserves of the association are not equal to at least 10 percent of its capital, it shall, as of June 30 and December 31 of each year, credit to such reserves an amount equivalent to at least 5 percent of its net earnings for the 6 months period, or such amount as may be required by the Federal Savings and Loan Insurance Corporation, whichever is greater, until such reserves are equal to at least 10 percent of the association's capital."

(2) Such sentence shall be deleted from any charter hereafter issued to a Federal mutual association.

(c) *Member's eligibility to vote.* Revise the eighth, ninth, and tenth

sentences of section 4 to read as follows:

The members who shall be entitled to vote at any meeting of the members shall be those owning savings accounts and borrowing members of record on the books of the association at a date set by the board of directors not less than 20 days and not more than 50 days prior to the date of such meeting. The number of votes which each member shall be entitled to cast at any meeting of the members shall be determined from the books of the association as of such record date. Any member at such record date who ceases to be a member prior to such meeting shall not be entitled to vote thereat.

(d) *Borrowing powers.* (1) Revise section 9 to read as follows:

9. *Power to borrow.* The association may borrow money in an aggregate amount not exceeding one-half of its capital; the amount which may be borrowed from sources other than a Federal Home Loan Bank or a State-chartered central reserve institution under § 545.24a of the Rules and Regulations for the Federal Savings and Loan System shall not exceed one-tenth of such capital and an additional amount not exceeding one-twentieth of such capital through issuance of mortgage-backed bonds pursuant to § 563.8-2 of the Rules and Regulations for Insurance of Accounts of the Federal Savings and Loan Insurance Corporation. Notwithstanding the foregoing limitation, the association may, with prior approval by the Board, borrow from a Federal Home Loan Bank or from any Federal agency or instrumentality without limitation, upon such terms and conditions as may be required by such Bank or agency. The association may pledge and otherwise encumber any of its assets to secure its debts.

(e) *Members' maximum number of votes.* Revise the fourth sentence of section 4 to read as follows: "No member, however, shall cast more than 400 votes."

(f) *Acceptance of savings deposits.* Add at the end of section 3:

Notwithstanding and without regard to any other provisions of this charter, the association may raise capital in the form of such savings deposits or other accounts as are authorized by regulations may by the Board, and the holders of such deposits or accounts, shall, to such extent as may be provided by such regulations, be members of the association and shall have such voting rights and such other rights as are thereby provided, and it may, to such extent as said Board may authorize by regulation or by other action authorized by or under Federal statute, exercise any authority to borrow money, to give security, or to issue notes, bonds, debentures, or other obligations, or other securities, provided by or under any provision of Federal statute as from time to time in effect.

The Board may, in its discretion, include the provision in any Charter N or Charter K (rev.) hereafter issued.

§ 544.3 Adoption of charter K (rev.) by a charter N Federal association.

If the board of directors of a Charter N association proposes to amend its charter to read in the form of Charter K (rev.), the charter may be so amended by a majority vote of members present at any duly called regular or special meeting of members. After such vote, the association shall submit the following petition to the Board which will issue a Charter K (rev.) in the same name and showing the same location of home office shown in the association's present charter, unless the Board when petitioned approves a change in such name or location:

Federal Home Loan Bank Board, *Washington, D.C.*

The undersigned, under § 544.3 of the rules and regulations for the Federal Savings and Loan System, petitions the Board to issue to it an amended charter in the form of Charter K (rev.), fixing the name and home office of the undersigned which its present charter prescribes.

The undersigned, by its secretary, hereby certifies that the members, at a meeting duly called and held, adopted the following resolution:

Be it resolved, That the present charter of this association be amended to read in the form of Charter K (rev.) as prescribed in § 544.1 of the rules and regulations for the Federal Savings and Loan System, prescribing the present name and home office fixed by the present charter of this association.

In witness whereof, the Secretary of the undersigned has hereunto affixed his hand and the seal of the undersigned this _____ day of _____, 19____.

Federal Savings and Loan Association
By _____
[Corporate Seal]

§ 544.4 Issuance of charter.

Issuance of a charter to a Federal association constitutes its incorporation by the Board.

6b. Revise the introductory text of § 544.5 to read as follows:

Bylaws

§ 544.5 Prescribed form.

A Federal mutual association shall operate under the following bylaws, until such bylaws are amended under the procedure therein prescribed:

1. Annual meetings of members. * * *

6c. Revise the introductory text to § 544.6 to read as follows:

§ 544.6 Amendment to bylaws.

This section constitutes approval by the Board of any of the following amendments to the bylaws of a Federal mutual association, or of an amendment

repealing a provision of such bylaws providing for a bonus other than a bonus authorized under § 545.1-1 of this chapter, but the amendment in paragraph (e) is approved only if the association has no other provision in its bylaws for payment of a bonus on its savings accounts:

(a) *Nominating committee.* * * *

6d. Revise the introductory text to § 544.6-1 as follows:

§ 544.6-1 Preparedness emergency amendments to bylaws.

This section constitutes approval by the Board of any of the following amendments to the bylaws of a Federal mutual association:

(a) *Emergency operations by surviving staff.* * * *

Availability of Documents

6e. Revise the introductory text to § 544.7 as follows:

§ 544.7 In association offices.

A Federal association shall make available to its members at all times in its offices a true copy of its charter and bylaws, including any amendments, and shall deliver such a copy to any member on request.

6f. Delete § 544.8 in its entirety.

§ 544.8 (Deleted, effective August 3, 1979).

PART 545—OPERATIONS

7. Revise §§ 545.1-545.4-1 to read as follows:

Savings Accounts

§ 545.1 Savings accounts.

(a) *General.* A Federal mutual association may raise capital through payments on its savings accounts in cash or in property in which the association may invest. The value of such property, absent fraud, shall be as the association's board of directors determines.

(b) *Membership fee.* Except as expressly permitted by § 545.4 or paragraph (c) of this section, no Federal association shall directly or indirectly charge any fee for becoming, remaining, or ceasing to be a holder of an account therein.

(c) *Service charge.* A Federal association may charge one dollar (\$1.00) in any calendar year against a savings account if, when the charge is made:

(1) The association is not required to distribute earnings on the account;

(2) No payment has been made and no earnings have been distributed on the account for 36 months preceding the date of the charge; and

(3) Thirty days before making the first charge the association mailed to the holder of the account, at the accountholder's last known address, a notice that service charges will be made under this paragraph (c).

§ 545.1-1 Rates of return on savings accounts.

(a) *Regular and various accounts.* The board of directors of a Federal mutual association, having determined the rate at which earnings will be distributed on its regular savings accounts for a distribution period (the regular rate) may provide for distribution as follows:

(1) *Lower rates.* At a rate(s) lower than the regular rate on any designated class(es) of account; or

(2) *Higher rates.* At a rate higher than the regular rate, but within the maximum rate for regular accounts prescribed in Part 526 of this chapter, on accounts evidenced by an account book and maintained at \$1,000 or more for a continuous period of at least 12 months; or

(3) *Split rates.* At a rate(s) higher than the regular rate, but within the maximum prescribed rate for regular accounts, on the balance of an account which exceeds a minimum balance(s) fixed by the board of directors, if:

(i) the lowest minimum so fixed is at least \$200; and

(ii) the account is evidenced by a certificate, in an account book or printed as a separate document, which is in a form prescribed under § 545.2(b) and bears on its face the words:

Earnings are distributable on this account as determined by the board of directors of the association subject to § 545.1-1 of the rules and regulations for the Federal Savings and Loan System.

(b) *Fixed balance bonus account.* The board of directors of a Federal association which has adopted the bylaw in § 544.6(e) of this subchapter may determine that, in addition to earnings distributed on savings accounts, the association will distribute a bonus on accounts of a minimum amount (at least \$1,000) maintained for a minimum qualifying period (at least 3 months but not more than 36 months), as follows:

(1) Each such account shall be evidenced by a certificate issued in the amount originally invested in the account;

(2) Each such certificate, whether in an account book or a separate document, shall be in a form prescribed

under § 545.2(b) and state on its face: "A bonus is distributable on the amount of this certificate, as provided in, and subject to § 545.1-1(b) of the rules and regulations for the Federal Savings and Loan System, for which purpose the beginning of the qualifying period of _____ months is _____ (Date) _____";

(3) Earnings other than the bonus shall be paid to the account holder in cash or credited to the bonus account or another account on regular distribution dates, and after expiration of the qualifying period, the bonus shall be likewise distributed.

(4) For any such bonus account issued, extended, or renewed after June 30, 1979, a member shall impose the following conditions on any withdrawal before the end of the term or qualifying period:

(i) if the term or qualifying period is one year or less, the account holder shall pay a penalty on the amount withdrawn of at least 90 days (3 months) earnings on the account. If the amount withdrawn has remained on deposit for 3 months or less, all earnings shall be forfeited.

(ii) if the term or qualifying period is more than one year, the account holder shall pay a penalty on the amount withdrawn of at least 180 days (6 months) earnings on the account. If the amount withdrawn has remained on deposit for 6 months or less, all earnings shall be forfeited.

(iii) if any earnings have been distributed to the account holder prior to such withdrawal, a deduction shall be made from the amount withdrawn to adjust for the penalty applicable to such earnings.

(5) Until the qualifying period expires, a reserve for the bonus shall be maintained and appropriate credits and debits shall be made to such reserve on regular distribution dates.

(6) The bonus rate shall not exceed 0.75 percent per year, and the sum of the bonus rate and other earnings on the bonus account shall not exceed the applicable maximum rate on certificate accounts under Part 526 of this chapter. For any distribution period when such sum would exceed such maximum rate, the bonus rate shall, in accordance with paragraph (b)(8)(iii) of this section, be reduced to such maximum.

(7) The association may offer more than one bonus plan under this paragraph but, whenever its board of directors determines to offer such a plan, any member whose savings account balance on the date of such determination equals the minimum required for such plan may exchange all

or any qualified part of such account for bonus certificates dated the date of exchange. The board of directors shall by resolution determine a reasonable period, at least 3 months from the date the member is given notice of the plan, during which the exchange must be made. Such notice shall state the plan in writing and be given within 30 days after the effective date of the plan's adoption, as provided in paragraph (h) of this section.

(8) The association's board of directors may by resolution:

(i) Fix a uniform maximum dollar amount which any accountholder may hold under this paragraph (b);

(ii) Discontinue issuing certificates under this paragraph (b) except for exchanges under paragraph (b)(7);

(iii) Reduce the rate or discontinue distribution of any bonus on outstanding certificates issued under this paragraph (b) by giving at least 30 days' written notice, mailed to all holders of such certificates, but such reduction or discontinuation shall not be effective for any certificate until after a bonus is next distributable on the certificate; and

(iv) Determine that existing bonus accounts adopted under this section shall receive the return provided by a higher-rate bonus plan adopted under this paragraph (b), from the date the higher-rate plan was adopted, if the existing accounts meet the minimum amount requirement of the higher-rate plan.

(9) No bonus shall be distributed under this paragraph (b) on any savings account receiving another bonus or earning a rate higher than the regular rate.

(c) *48-to-96 month bonus account.* A Federal association's board of directors may, and if the association's bylaws were amended under § 544.6(f) of this chapter shall, resolve to pay a bonus on regular accounts, as follows:

(1) When the account is opened, the accountholder shall sign a statement of intention to make regular monthly payments of a specified amount on the account and shall make the first monthly payment;

(2) No monthly payment shall be more than 90 days late;

(3) No withdrawals shall be made from the account;

(4) The bonus rate shall not exceed 1 percent per year;

(5) A reduction of the bonus rate may not apply to accounts opened before the effective date of reduction;

(6) An increased bonus rate shall apply from the effective date of increase to all accounts qualifying under this paragraph (c);

(7) A change in the bonus rate shall become effective at the beginning of a future distribution date;

(8) A bonus rate shall not be fixed which would cause total earnings on the account to exceed then current maximum prescribed rates;

(9) If necessary, the bonus shall be reduced so that total earnings do not exceed the prescribed maximum rate;

(10) The bonus shall be earned at one-half the bonus rate for distribution periods beginning during the 48-month period following opening of the account, and the bonus shall be credited to the account at the end of each distribution period during such period except the distribution periods beginning during the first 12 months of such period;

(11) The bonus shall only be earned and distributed at the bonus rate for distribution periods beginning at least 48 months but not over 96 months from the date the account was opened;

(12) The bonus may not be earned on an account earning another bonus;

(13) No payment on the account shall be accepted more than 90 days early;

(14) The board of directors may, by resolution:

(i) Determine not to accept new accounts under the bonus plan, if the association's bylaws have not been amended under § 544.6(f), and

(ii) Fix a minimum or maximum amount for regular monthly payments;

(15) Each accountholder shall be given a certificate, in an account book or printed as a separate document, stating:

This certifies that _____ (name of member) holds a 48-to-96 Month Bonus Account subject to the provisions of § 545.1-1(c) of the rules and regulations for the Federal Savings and Loan System.

(d) *Existing bonus rights.* A Federal association which, before January 15, 1968, had outstanding bonus agreements, shall honor those agreements, but all new bonus plans must be adopted under paragraph (b) or paragraph (c) of this section.

(e) *Notice accounts.* If a Federal association's charter has been amended under paragraph (a) or paragraph (f) of § 544.2 of this subchapter, its board of directors may, by resolution, authorize issuance of accounts receiving a rate of return more than the regular rate but not exceeding the maximum rate prescribed for notice accounts in Part 526 of this chapter. Each such account shall be evidenced by a notice account book containing a requirement that the accountholder give the association written notice at least 90 days before any withdrawal from the account except as the association otherwise permits

under this paragraph (e). The association may permit an accountholder whose funds have remained in the account at least 90 days to withdraw such funds without prior notice on a regular distribution date or 10 days thereafter; if funds which have remained in the account at least 90 days are withdrawn at any other time before expiration of the notice period, the accountholder shall not receive earnings on the amount withdrawn for the period since the last regular distribution date.

(f) *Certificate accounts.* A Federal association's board of directors may authorize a certificate account to receive a rate of return higher than the regular rate but not exceeding the applicable maximum rate of return prescribed for certificate accounts in Part 526 of this chapter. Such account shall be maintained at not less than the applicable minimum amount required by that Part for a continuous period, determined by the association, of at least (1) 90 days or (2) 30 days for a public unit account as defined in § 526.1(m) or an account of \$100,000 (\$50,000 if the association's home office is in Puerto Rico) or more, but not more than 10 years, commencing on the date of the certificate. The certificate shall be in a form determined by the association's board of directors, set forth in the board's minutes, together with the date after which, and the class of savings for which, the form will be used. Unless the Federal Savings and Loan Insurance Corporation has already approved the form, the association shall (i) obtain, and retain while using the form, a written opinion by its counsel that the form complies with requirements of applicable law and regulations and the association's charter and (ii) submit a copy of the form and the opinion to the Corporation. The certificate shall provide for disclosure as required in § 545.2(c) and penalties for early withdrawal prescribed in § 545.4(a). Any part of a savings account meeting the amount requirement prescribed by the association under this paragraph may, at the holder's request, be exchanged for one or more certificates, and the association may, at the time of such exchange or on the next regular distribution date, distribute any undistributed earnings and any applicable bonus on the savings account, or part thereof, so exchanged.

(g) *Exclusion.* Paragraphs (a), (e), and (f) of this section shall not apply to accounts earning a bonus.

(h) *Notice.* A Federal association which determines to distribute earnings under paragraphs (a), (b), (e), or (f) of this section shall, within 30 days after

such determination, give notice by at least one of the following means:

(1) Mailing postage prepaid to each member having, at the time of the determination, a savings account with the required balance at the member's last address appearing on the association's books;

(2) Posting in a conspicuous place in each of the association's offices, as long as the plan is offered; or

(3) Publishing in a newspaper printed in the English language and of general circulation in the city or county in which each of the association's offices is located.

§ 545.1-2 Savings deposits.

(a) *General.* A Federal association which has amended its charter under § 544.2(f) of this subchapter (a deposit association) shall raise capital in the form of savings deposits authorized by this section, except that savings accounts existing in such association when it becomes a deposit association shall continue until exchanged for such savings deposits. Such exchanges shall be made as the Board may prescribe.

(b) *Characteristics of savings deposits and status of holders.* Such savings deposits shall have the same characteristics as savings accounts accepted under the association's charter other than § 544.2(f), and holders of such savings deposits shall be members of the association with voting rights as if they were holders of such savings accounts.

(c) *Priority of savings deposits.* Savings deposits shall, to the extent of their withdrawal value, be debts of the association with the same priority as debts of general creditors who have no priority, other than from consensual subordination, over other general creditors. Savings deposits shall have the same right to share in the remaining assets of the association that savings accounts would have. Any savings account in the association which is not a savings deposit shall have the same priority as a savings deposit.

(d) *Acceptance of share accounts by deposit associations.* If authorized by a resolution of its board of directors approved by the Board, a deposit association may raise capital in the form of share accounts which it could have offered if it had not become a deposit association, but only if it does not accept savings deposits while the resolution is in effect.

(e) *Reference in charter, bylaws, or regulations.* The words "savings accounts representing share interests in the association" in § 545.24, and all references in this subchapter and in the

association's charter and bylaws to savings accounts, and to owners, holders, or holders of record of savings accounts shall likewise apply to savings deposits, except that (1) such references in this section or § 549.5-1 and (2) section 3(6) of the charter and the words "shall not become creditors" in section 6 of the charter shall not so apply. References in § 548.4 to share accounts and to repurchase shall also apply respectively to savings deposits and to withdrawal from savings deposits.

(f) *Application of certain matters to savings deposits.* Any action taken by the association or its board of directors which, if the association had not become a deposit association, would have applied to savings accounts opened after the date the association became a deposit association, shall likewise apply to savings deposits.

(g) *Forms of certificate.* A deposit association may use for savings deposits forms of certificates authorized for corresponding savings accounts, and shall use forms for savings deposits required for corresponding savings accounts, of non-deposit associations. However, forms used for savings deposits shall be modified to (1) refer to the savings deposit as a savings deposit and (2) eliminate any language characterizing such account as representing share interests.

(h) *Reporting requirements.* In reports required by the Board, deposit associations may include savings deposits in any category in which savings accounts are included.

§ 545.1-3 Fixed-term savings deposits.

(a) *General.* In addition to savings deposits authorized by § 545.1-2, a deposit association may accept savings deposits for fixed periods of time and fixed rates of interest. Such savings deposits shall have the same priority, and depositors therein shall have the status and rights, as if the savings deposits were accepted under § 545.1-2.

(b) *Payment of interest.* Interest on savings deposits authorized by this section shall be paid at the rate fixed by the association before the deposit was accepted and in accordance with § 545.3 of this subchapter, subject to Part 526 of this chapter. The term of such savings deposits shall be at least (i) 90 days or (ii) 30 days for a public unit account defined in § 526.1(m) or an account of \$100,000 (\$50,000 if the association's home office is in Puerto Rico) or more, but not more than 10 years. Such savings deposits may provide for renewal, at the association's option, for successive periods not exceeding 10 years from each renewal.

(c) *Limitations.* In accepting savings deposits under this section, the association shall not:

(1) Provide for any forfeiture, other than loss of interest, for breach of condition by a depositor;

(2) Issue any negotiable form of certificate evidencing a savings deposit; or

(3) Issue any form evidencing a fixed-term savings deposit unless the association has (i) obtained, and retains while using the form, a written opinion by its legal counsel that the form complies with the requirements of applicable law and regulations and the association's charter and (ii) submitted a copy of the form and legal opinion to the Federal Savings and Loan Insurance Corporation. However, no legal opinion is required if the Corporation has already approved the form for use by Federal associations.

(d) *Form of certificate.* Fixed-term savings deposit certificates may be in an account book or separate documents and shall be in a form determined by the association's board of directors, but they shall provide for disclosure as required in § 545.2(c) and penalties for early withdrawal prescribed in § 545.4(a).

§ 545.1-4 Marketable certificates of deposit.

(a) *General.* A Federal deposit association may accept savings deposits for fixed terms and fixed returns evidenced by certificates of deposit in conformity with this section. The association may authorize a commercial bank insured by the Federal Deposit Insurance Corporation to prepare, sign, and deliver the certificates and collect and transmit funds obtained in connection therewith, but banks so authorized are not "agents" or "agencies" for purposes of §§ 545.15, 556.6, and 563.25 of this chapter. The association may provide for issuance of duplicate certificates, bond, security, and other protection in connection with such issuance. Savings deposits authorized by this section are included in the term "such savings deposits" in § 545.1-2(b) of this subchapter. Provisions of the association's charter, other than that adopted under § 544.2(f), shall not be applicable to such savings deposits or such certificates.

(b) *Return.* The return shall be in the form of interest and/or discount, and fixed when the certificate is issued. The return shall conform to Part 526 of this chapter.

(c) *Terms.* (1) The certificate shall have a single fixed term not less than 30 days or more than ten years, beginning the day after the certificate is issued and

ending on the day it is payable. No savings deposit shall be accepted, or certificate issued, under this section with any contract or agreement to extend or renew it. Whenever used in this section, except in the first sentence of this paragraph (1), the term "issue" and its variations include reissue, unless the context otherwise requires.

(2) Certificates may be, but need not be, in one or more series. Interest may be, but need not be, evidenced in whole or in part by coupons.

(d) *Limitations.* (1) The certificate shall not have a face amount (inclusive of discount, whether or not arrived at partly or wholly by add-on calculation) of less than \$100,000 (\$50,000 if the association's home office is in Puerto Rico), and it shall not, by its terms or otherwise, (i) be subject to redemption, repurchase, or acceleration by the association; (ii) permit the certificate amount to be increased by payment on or transfer to the certificate; (iii) permit principal to be withdrawn or transferred from the certificate or the deposit it evidences, before the certificate expires; or (iv) permit extension or renewal of the certificate.

(2) Compounding of interest or other return on the certificate does not violate paragraph (1)(ii) and (iii), and certificate silent as to extension and renewal does not violate paragraph (1)(iv).

(e) *Required provisions.* The certificate shall include in its provisions the following:

(1) The certificate's face amount and date;

(2) The date payable, either expressed as a date or as payable a specified period after a specified date;

(3) To the extent that interest is not represented by discount or evidence by a coupon(s), the rate of interest and the date(s), or the frequency, of payment of interest;

(4) A statement that no interest shall accrue on or be credited to the certificate for any time after the fixed term expires; and

(5) If the holder of the certificate has membership and voting rights, a provision in accordance with paragraph (h) of this section.

(f) *Forms.* (1) The certificate shall be written in a form that (i) would be a negotiable instrument (other than a draft or check) under Article 3 of the 1972 Official Text of the Uniform Commercial Code ("the Uniform Commercial Code") or (ii) would be so except that it is not "payable to order or to bearer" as specified in section 3-104 of Article 3 but is issued in "registered form" (a form which is registered form under section 8-102 of the Uniform Commercial Code

or would be such except that any part of interest thereon is not in such registered form). The certificate shall not be incorporated in a passbook, if it is offered or described as a negotiable instrument, it must be such under the law of the State or other jurisdiction in which the home office of the Federal association is located.

(2) Notwithstanding any other requirement of paragraph (f)(1) or any other provision of this section, the certificate may be interchangeable as between denominations or any of the forms permitted by paragraph (f)(1); it may refer to such interchangeability and include anything that this Part or other applicable regulation or statute expressly permits or requires to be included.

(3) Subject to other provisions of this section, the board of directors shall determine the form of the certificate.

(g) *Transfer or withdrawal.* A savings deposit accepted under this section shall not be subject to check or to withdrawal or transfer on negotiable or transferable order or authorization to the association, but indorsement on the certificate itself (including an allonge) is permitted so far as it relates to the certificate or part thereof.

(h) *Voting and membership.* Holders of such savings deposits and certificates are voting members of the association, only as follows: if the certificate is originally issued in "registered form" (as the term is used in paragraph (f)(1)) and cannot be changed into non-registered form, and if the certificate provides that the association's charter provisions regarding membership and voting apply to the certificate, the term "savings accounts" as used in charter provision number 4 shall include such certificate.

(i) *Filing.* Before issuing a certificate under this section, an association shall file with the Federal Savings and Loan Insurance Corporation a copy of the certificate form, with an opinion of its counsel that the form complies with applicable law and regulations and the association's charter and, if the certificate is offered or described as a negotiable instrument, that it is a negotiable instrument under the laws of the State or other jurisdiction in which the association's home office is located. Filing shall be made by delivering a copy of the form and opinion to a Supervisory Agent and a copy to the Director, Office of Industry Development, 1700 G Street, NW., Washington, D.C. 20552. The Director or, in the Director's absence, the Deputy Director, shall with the concurrence of the General Counsel, or in the General Counsel's absence the Deputy General

Counsel, approve or disapprove the form, or refer it to the Board for action. The association shall not issue certificates in such form until 30 days after filing or until it receives written notice that the Federal Savings and Loan Insurance Corporation has no objection to the form. However, the association may issue a certificate previously approved by the Corporation for use by Federal associations after it has submitted a copy of it, with the prescribed opinion of legal counsel, to a Supervisory Agent and to the Director, Office of Industry Development. The association shall not issue, or continue to issue, under this section, any form of certificate which it knows or should know has been disapproved by the Corporation.

(j) *Relationship to other provisions.*

(1) Paragraphs (a), (b), (d), and (e) of § 545.2, paragraph (c) of § 545.4, § 545.4-1, and § 545.4-2 do not apply to savings deposits accepted under this section.

(2) Section 545.1(c) applies to savings deposits accepted under this section, except that the period described in paragraph (c)(2) begins on the date the term of the deposit expires.

(3) Section 545.7 applies to savings deposits accepted under this section, and the "withdrawal amount" of such deposits includes any discount accumulated on the deposit, plus any accrued and unpaid interest on the deposit. The term "redemption, repurchase, or acceleration by the association" as used in paragraph (d)(1)(i) of this section shall not include setoff, counterclaim, or recoupment, or realization by foreclosure of otherwise upon a lien or pledge held by the association or payment by the association of surplus remaining upon such realization.

(4) A Federal association may accept concurrently savings deposits under §§ 545.1-2, 545.1-3, and this section.

(5) A Federal association may not require advance notice for withdrawal from a savings deposit accepted under this section.

§ 545.2 Evidence of account.

(a) *Signature card.* When a Federal association issues a savings account, it shall obtain and preserve in its records a card containing the signature of the owner, or an authorized representative of the owner.

(b) *Forms of certificates and account books.* A Federal association shall issue to each holder of its savings accounts an account book, or a separate certificate, evidencing ownership of the account and the interest of the holder thereof in the association. Except for certificates

evidencing fixed-term savings deposits, and certificates evidencing savings accounts accepted under § 545.1-1(f), each such certificate shall be in a form prescribed by the Board. Prescribed forms may be obtained from the Board or a Bank.

(c) *Disclosure.* Each certificate evidencing a fixed-term savings deposit authorized under § 545.1-3 or a certificate account authorized under § 545.1-1(f), whether incorporated in an account book or printed as a separate certificate, shall display in easily read type:

(1) The anticipated or stated rate of return to be paid and the dates or frequency at which such return is distributable;

(2) The amount of the certificate and the date on which it is issued;

(3) The minimum term (or, for a savings deposit, the term) and minimum balance;

(4) The penalty or penalties imposed under § 545.4 for withdrawal prior to expiration of the term;

(5) Any provisions relating to renewal when the term expires;

(6) Any provision relating to earnings after expiration of the term or any renewal period; and

(7) For fixed-term savings deposits, a provision converting the deposit at the expiration of the term or renewal, or whenever the minimum balance may cease to be met, to a regular savings deposit.

(d) *Ownership of record.* A Federal association may treat the holder of record of a savings account as the owner, regardless of any notice to the contrary, unless the association has acknowledged in writing notice that the account is pledged. The savings account holder's receipt is sufficient to discharge the association for any payment to such person on the account. Savings accounts of a Federal association shall be transferable only on the association's books and on proper application by the transferee and acceptance of the transferee as a member on terms approved by the board of directors.

(e) *Duplicate account books and certificates.* When the holder of record of a savings account in a Federal association, or the legal representative of the holder, files an affidavit with the association that the certificate or account book evidencing the account was lost or destroyed, and that no part of the certificate or account book has been pledged or assigned, the association shall issue a new certificate or account book in the name of the holder of record. However, the

association's board of directors may require a bond sufficient to indemnify the association against any loss which might result from issuance of the new certificate or account book.

§ 545.3 Time and manner of distribution.

(a) *Monthly, quarterly, semiannually.* A Federal association may distribute earnings on savings accounts or savings deposits, or designated classes thereof, as provided in its charter or, by resolution of its board of directors and while the resolution is in force, either monthly, quarterly, or semiannually on the last day or last business day of the month. Except for interest on savings deposits, no distribution of earnings may be made under this paragraph until provision has been made for payment of expenses and for the pro rata portion of credits to reserves required by the association's charter and by Part 503 of this chapter.

(b) *Fixed-term savings deposits and certificate accounts.* A Federal association shall, as determined by its board of directors, pay interest on fixed-term savings deposits, or designated classes thereof, or in accordance with the terms of certificate accounts accepted under § 545.1-1(f) distribute earnings on the accounts, either annually, semiannually, quarterly, at the end of the term, or as provided by the association's board of directors under paragraph (a) of this section.

(c) *Distribution when eligibility requirement is satisfied.* When a time eligibility requirement applicable to a savings account is satisfied, any accrued and unpaid earnings on the account may be credited or paid to the owner thereof.

(d) *Higher rate accounts evidenced by account books.* A savings account evidenced by an account book and receiving a rate higher than the regular rate shall continue to receive such rate at each regular distribution date for that class of savings accounts, as long as the account is eligible to receive that rate and until the board of directors determines to discontinue the higher rate.

(e) *Earnings after expiration of certificate term.* After expiration of the term of a savings account issued under § 545.1-1(f) of this subchapter, the account shall, on regular distribution dates for that class of account, receive earnings as long as it remains outstanding, as follows:

(1) if the account is non-renewable and evidenced by a certificate issued after September 30, 1966, at the regular rate; or

(2) if the account is evidenced by a certificate issued before October 1, 1966,

and if it remains eligible to receive, and the association continues to distribute, earnings at a rate higher than the regular rate, at a rate determined from time to time by the board of directors.

(f) *Reserve for undistributed earnings.* While any certificate issued under § 545.1-1(f) remains outstanding, a reserve for undistributed earnings on the account shall be maintained and appropriate credits and debits made to the reserve on each regular distribution date for that class of savings account.

(g) *Small accounts.* A Federal association may, by resolution of its board of directors, determine not to distribute earnings on any savings account of less than a specified minimum amount, which shall be less than \$50. It may also so specify a lower minimum for accounts established under a plan offered by the association to children to encourage thrift.

(h) *Amounts withdrawn between distribution dates.* A Federal association may, by resolution of its board of directors and while the resolution is in force, provide for distribution of earnings on amounts withdrawn from savings accounts, or designated classes thereof, between regular distribution dates, but earnings so distributed shall not be for any portion of the dividend period during which the amount was not in the association or at a rate greater than the rate at which earnings, exclusive of any bonus, are distributed on savings accounts for the distribution period in which the withdrawal occurs.

(i) *Determination date.* By resolution of its board of directors, a Federal association may prescribe a determination date, not later than the 20th of the month, and while the resolution is in force, payments on savings accounts received on or before that date will receive earnings as if received on the first of the month, and payments received after that date will receive earnings from the first of the next month. However, if the resolution so provides and the determination date is not later than the 10th of the month, payments received after that date shall receive earnings from the date of receipt. This paragraph (i) does not apply to savings accounts authorized by § 526.3(a)(8) of this chapter.

(j) *Compounding of earnings.* A Federal association may, by resolution of its board of directors and while the resolution is in force, compute earnings for distribution on its savings accounts, or designated classes thereof, as though earnings had been credited to the account with a uniform frequency prescribed in the resolution since the previous distribution date.

(k) *Short-term savings accounts.* A Federal association may, by resolution of its board of directors and while the resolution is in force, distribute earnings on any designated class(es) of short-term savings account as of the date(s) prescribed in the resolution.

(l) *Change of rate of return.* During a distribution period, a Federal association may, by resolution of its board of directors, increase the rate of return on regular accounts announced for that period. The increased rate may be paid for any part of the period, but shall not exceed the applicable maximum rate prescribed in Part 526 of this chapter. A deposit association may reduce such rate during a distribution period only to conform with the prescribed maximum.

§ 545.4 Withdrawals.

(a) *Withdrawal prior to expiration of term.* (1) If any part of a savings account authorized under § 545.1-1(f), or any part of a fixed-term savings deposit, is withdrawn before expiration of the term, the penalty prescribed in § 526.7(a) of this chapter shall apply, and if any earnings were distributed on the account before the withdrawal, deduction shall be made from the amount withdrawn to adjust for the penalty applicable thereto. However, in the circumstances prescribed in §§ 526.7(b) (i) and (ii), such penalty need not be applied.

(2) If only part of a savings account is withdrawn but the applicable minimum balance requirement ceases to be met, the certificate evidencing the account shall be cancelled. If such requirement continues to be met, (i) the amount and date of the withdrawal and the remaining balance may be noted on the certificate, or (ii) the certificate may be cancelled and a new certificate issued for the remaining balance, with the same term, rate, and dates as the cancelled certificate.

(3) An association may provide that an accountholder cannot withdraw any part of a fixed-term savings deposit or certificate account before its term expires except under emergency circumstances that may be set forth in the certificate evidencing the account.

(b) *Travelers' convenience withdrawals.* A Federal association may permit an accountholder to make a withdrawal from a regular account through a disbursing institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation, if the office through which the disbursement is made is more than 50 miles from the accountholder's principal dwelling. The withdrawal may

be made only after the Federal association receives a specific telephonic withdrawal request (oral or electronic) from the accountholder, and the amount paid shall be immediately withdrawn from the account. The Federal association may (1) charge a fee to the accountholder, (2) limit the amount of such withdrawals, and (3) pay a fee to the disbursing institution. A Federal association may act as the disbursing institution in such a withdrawal from a regular account in an institution whose accounts are insured by the Federal Savings and Loan Insurance Corporation, and may collect a fee for that service.

(c) *Payment of withdrawal requests by Charter N associations.* When a Federal association with Charter N cannot pay withdrawal requests within 30 days of the date of receipt of written requests therefor, it shall number and file all requests in the order received and proceed in the following manner while any request remains unpaid for more than 30 days:

(1) Requests shall be paid in numerical order, and as each number is reached the accountholder shall be paid the lesser of \$1,000 or the amount of the withdrawal request. If the amount of the request is not paid in full the request shall be renumbered, placed at the end of the list of requests, and acted upon in the same way when its new number is reached, until the request is paid in full. However, when a request is reached for payment, the association shall so notify the accountholder by registered mail to his last address as recorded on the association's books and, unless the holder, within 30 days from the mailing of the notice, applies in person or in writing for payment, the request shall be cancelled and not paid. Regardless of any other provision in this section, the board of directors may pay on an equitable basis an amount not exceeding \$200 to any accountholder in any calendar month; and

(2) The association shall allot to the payment of withdrawal requests the remainder of the association's receipts from all sources after deducting therefrom amounts for expenses, required payments on indebtedness, earnings distributable in cash to holders of savings accounts, and a fund for general corporate purposes of not more than 20 percent of the association's receipts from its accountholders and its borrowers.

(d) *Grace period with respect to withdrawals.* A Federal association may, while a resolution by its board of directors so providing remains in effect, compute earnings on amounts

withdrawn from its savings accounts during the last 3 business days of any period for which earnings are distributable thereon as if withdrawal had been made immediately after the close of that period. This subsection (d) does not apply to savings accounts authorized by § 526.3(a)(8) of this chapter.

§ 545.4-1 Payment to third parties by withdrawals or transfer of savings accounts; checks and money orders.

(a) *Withdrawals and transfers.* (1) *General.* Savings accounts in a Federal association shall not be subject to check or to withdrawal or transfer on negotiable or transferable order or authorization to the association. However, by non-transferable order or authorization, accountholders may authorize the association, periodically or otherwise, to pay third parties from the account. The association may honor such orders and authorizations only if received from the accountholder or, if processed through an automated clearing house, from or through the third party. The association may, at the request of the third party, treat such an order or authorization as a transfer to a savings account of the third party. The association may charge a fee for making any payment or transfer under this section.

(2) *Exceptions for transaction accounts.* Notwithstanding any other provision of this subchapter, a Federal association having its home office in New Hampshire, Massachusetts, Connecticut, Rhode Island, Maine, New York, or Vermont may allow the owner of a savings account on which earnings are paid to make withdrawals by negotiable or transferable instrument for the purpose of making transfers to third parties.

(b) *Sale of checks and money orders.* A Federal association may sell checks, including travelers checks, and money orders on which the drawee is a Bank, commercial bank, or other organization engaged in the business of handling such instruments.

8. Revise §§ 545.5-545.6-3 to read as follows:

§ 545.5 Give-aways.

(a) *Definitions used in this section.* (1) "Give-away" means any thing of value, or service performed in any part outside an association's premises, given without adequate payment, but not including (i) providing safety deposit facilities at reduced rental to members of the association, or (ii) repaying to members any part of amounts paid by them for

safe deposit facilities located outside the association's facilities.

(2) "Doing business" has the meaning it has in the statute described in paragraph (c), and "domestic association" means any savings and loan, building and loan, homestead association, or cooperative bank which is a domestic association under that statutory provision.

(b) *Prohibition.* No Federal association doing business in a State which has in effect a statutory provision as described in paragraph (c) of this section and regulatory restrictions adopted under that statute, shall (1) condition the distribution of a give-away on the recipient's possessing, opening, or adding to a savings account, or maintaining a minimum balance therein; (2) except under paragraph (d), refer in any of its advertising to any give-away, other than printed material of an educational or informational nature or a coin bank, with a cost not exceeding \$2.50; or (3) enter any agreement with, or accept funds for investment in a savings account from, any person engaging in such activities. (See also § 563.24 of this chapter.)

(c) *Reciprocal statutory provision.* The statutory provision referred to in paragraph (b) must authorize a specified State official to impose by regulation restrictions on domestic associations of the State equivalent to those imposed on Federal associations by paragraphs (b) (1) and (2) if while the restriction is in force, Federal associations doing business in the State are likewise restricted.

(d) *Exception.* Notwithstanding paragraph (b), a Federal association may advertise give-aways during a single period of 30 days ending not more than one year after it opens its first office.

(e) *Effect on other provisions.* This section does not affect the applicability to any Federal association of § 563.24 of this chapter.

Real Estate Loans

§ 545.6 Real estate loans.

(a) *General.* A Federal association may make loans secured by first liens on improved real estate, as provided in §§ 545.6-1 through 545.6-11.

(b) *Documentation.* If the security for any loan includes one or more dwelling units, the loan record shall contain documents showing the number of dwelling units covered by the loan, the number of bedrooms in each dwelling unit, and whether the structure has an elevator.

§ 545.6-1 Insured and guaranteed loans.

(a) *Insured loans.* Loans may be made in amounts and with terms and conditions of repayment acceptable to the insuring agency.

(b) *Guaranteed loan.* Loans which are at least 20 percent guaranteed may be made, with terms and conditions of repayment acceptable to the guaranteeing agency.

§ 545.6-2 Monthly installment loans.

Loans repayable in regular periodic payments sufficient to liquidate the debt, principal and interest, within the loan term may be made as follows:

(a) *On the security of homes or combinations of homes and business property.* (1) *80 percent of value.* Subject to § 545.8-7, such loans not exceeding 80 percent of value of the security property may be made and shall be repayable monthly within 30 years.

(2) *80 percent to 90 percent of value.* The 80 percent limitation in paragraph (a)(1) of this section shall be 90 percent, if:

(i) The loan is secured by a first lien on a single-family or two-family dwelling;

(ii) The amount by which the loan exceeds 80 percent is not disbursed until construction is completed (as defined in § 555.3(b) of this subchapter) and, if the dwelling is being constructed for sale, until the property is sold and title conveyed to a purchaser who has executed an agreement with the association to pay the loan;

(iii) The amount of the loan does not exceed: (A) for single-family dwellings \$75,000 (\$112,500 for security property in Alaska, Guam, or Hawaii) and, for two-family dwellings, the amount allowable in or under section 207(c)(3) of the National Housing Act or (B) 90 percent of the purchase price of the security property, whichever is less (see also § 555.4 of this subchapter);

(iv) The loan contract requires that, in addition to principal and interest payments on the loan, one-twelfth of estimated annual taxes and assessments on the security property be paid monthly in advance to the association;

(v) The borrower, including a purchaser who assumes the loan, has executed a certificate stating that (A) no lien or charge on the property, other than the association's lien or any lien or charge which will be discharged from the proceeds of the loan, has been given or executed by the one executing the certificate, or has been agreed to be so given or executed, and (B) the borrower occupies, or in good faith intends to occupy, the property as the borrower's principal dwelling;

(vi) In the case of a loan sought or assumed to finance acquisition of the security property, the vendor(s) has executed the certificate required by paragraph (a)(2)(v)(A), and the purchaser and vendor(s) have jointly executed a certificate stating the purchase price of the security property and the items comprising such price;

(vii) The aggregate principal amount of the association's investment in loans under paragraphs (a)(2) and (3) of this section with unpaid principal balances exceeding 80 percent of the value or purchase price of the security property whichever is less, determined at the time the loans were made, does not exceed 50 percent of the association's assets.

(viii) In the case of a loan purchased by a Federal association from other than a Federal association, each certificate required by paragraphs (a)(2) (v) and (vi) of this section shall contain a statement that the certificate is made for the purpose of inducing a Federal association to purchase the loan.

(3) *90 percent to 95 percent of value.* The 80 percent limitation in paragraph (a)(1) of this section shall be 95 percent, if:

(i) The requirements in paragraphs (a)(2) (i), (ii), (iv), (v), (vi), and (vii) are met;

(ii) The amount of the loan does not exceed the lesser of (A) for single-family dwellings, \$60,000 (\$90,000 for security property in Alaska, Guam, or Hawaii), and, for two-family dwellings, the amount allowable in or under section 207(c)(3) of the National Housing Act or (B) 95 percent of the value or purchase price of the security property whichever is less;

(iii) The total of (A) the principal amount of the loan and (B) the association's investment in the principal amount of all other loans made under this paragraph (3) which have unpaid principal balances exceeding 90 percent of the value or purchase price of the security property, determined at the time the loans were made, does not exceed 25 percent of the association's assets;

(iv) Except as to a loan or contract to facilitate the sale of real estate owned, either—

(A) as long as the unpaid balance of the loan exceeds 90 percent of the value or purchase price of the security property, determined at the time the loan was made, the part of such balance exceeding 80 percent of such value or purchase price is guaranteed or insured by a mortgage insurance company which the Federal Home Loan Mortgage

Corporation has determined to be a "qualified private insurer"; or

(B) the association establishes and maintains a specific reserve with respect to the loan equal to one percent of the unpaid principal balance until the loan has been reduced to not more than 90 percent of the value or purchase price.

(4) *Loans to 100 percent of value.* The 80 percent limitation in paragraph (a)(1) of this section shall be 100 percent for any loan secured by a home located within the association's regular lending area, if at least the portion of the loan which exceeds 80 percent of the value of the security property is insured or guaranteed by an agency or instrumentality of a State whose full faith and credit is pledged to support the insurance or guarantee.

(5) *Loans with pledged savings accounts as additional security.* Loans may be made under paragraphs (a) (2) and (3) in excess of maximum dollar, percentage-of-value, or percentage-of-purchase-price limitations thereof, with such excess secured by savings accounts, subject to the following restrictions:

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

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

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

(iv) The loan shall comply with § 545.6-4 as it relates to graduated payment mortgages.

(6) *Limitation.* After the first payment on a loan secured by property occupied or to be occupied by the borrower, no subsequent payment shall be more than any preceding payment.

(b) *On the security of other dwelling units, combinations of dwelling units, including homes, and business property involving only minor or incidental business use, and cooperative housing projects.* Subject to § 545.8-7, loans repayable monthly within 30 years may be made for amounts not in excess of:

(1) 80 percent of the value of the security property; or

(2) the amounts authorized in paragraphs (a)(2) and (3) of this section, if the requirements of those paragraphs are met and if the security property is a cooperative housing project in which dwelling units equalling 90 percent of the value or purchase price of the

project, whichever is greater, are presold to bona fide purchasers. The housing project shall maintain reserves at least equalling those required for comparable cooperative housing projects insured by the Federal Housing Administration. For purposes of compliance with this paragraph (b)(2), the terms "single-family or two-family dwelling" in paragraph (a)(2)(i) of this section shall read "cooperative housing project"; the words "the borrower occupies" in paragraph (a)(2)(iv)(B) of this section shall read "members of the cooperative housing project occupy"; and the loan limits of \$75,000 (\$112,500 for security property in Alaska, Guam, and Hawaii) in paragraph (a)(2)(ii)(A) and \$60,000 (\$90,000 in Alaska, Guam, and Hawaii) in paragraph (a)(3)(ii) shall read "\$75,000 (\$112,500 for security property in Alaska, Guam or Hawaii), multiplied by the number of dwelling units", and \$60,000 (\$90,000 for security property in Alaska, Guam, or Hawaii), multiplied by the number of dwelling units," respectively, but the amount of the loan applied to any one dwelling unit may not exceed the applicable limitation per dwelling unit.

(c) *Other improved real estate, as defined in paragraphs (a) and (c) of § 541.17.* Subject to § 545.8-7, loans may be made for not over 75 percent of the value of the security property and repayable monthly within 25 years. Loans made under §§ 545.6-8 and 545.6-10 may be made as provided therein.

§ 545.6-3 *Loans repayable other than by monthly installments.*

Loans that may be made on a monthly installment basis under § 545.6-2 may also be made as follows:

(a) *Flexible payment loans.* Loans authorized under paragraph (a) of § 545.6-2, except loans made under paragraph (a)(4) thereof, which are secured by a single-family dwelling which the borrower has certified is or will be the borrower's principal dwelling, may be repayable in monthly installments, as follows:

(1) During an initial period not exceeding five years, installments shall equal at least one-twelfth the annual interest rate times the unpaid balance of the loan, which rate may be increased only by subsequent agreement;

(2) The amount of the first payment after such period shall be fixed at the beginning of the loan term and subsequent required payments may be less but not more;

(3) Required payments shall be sufficient to liquidate the debt, principal and interest, within the loan term; and

(4) The loan agreement shall describe the payment schedule. However, the aggregate of the principal amount of the association's investment in such loans with unpaid principal balances exceeding 80 percent of the value or purchase price of the security property, determined when the loans were made, shall not exceed 5 percent of the association's assets, which 5 percent shall be included in the 50 percent limitation in paragraph (a)(2)(vii) and the 25 percent limitation in paragraph (a)(3)(iii) of this section.

(b) *Other installment loans.* Loans authorized under paragraphs (a) and (b) of § 545.6-2 may be made with interest payable at least semiannually and principal payable at least annually in installments sufficient to pay the loan, principal and interest, within 15 years, except that loans on commercial farming enterprises, farm residences, or combinations of such residences and commercial farming enterprises may be made with principal and interest payable at least annually in an amount sufficient to retire the debt, principal and interest, within 25 years. Such loans on commercial farming enterprises may be made in amounts not exceeding 80 percent of value of the security property.

(c) *Partially amortized loans.* Loans which may be made under paragraphs (b) and (c) of § 545.6-2, and which are made in an amount not in excess of 80 percent of the value of the security property, may be repayable subject to the term limitations in those paragraphs, in a lump sum at the end of the loan term if, beginning less than 61 days after disbursement of the loan proceeds, monthly payments on principal and interest are required in an amount at least sufficient to amortize a loan of the same amount, principal and interest, within 30 years.

(d) *Loans without amortization.* (1) *Loans authorized under paragraphs (a) and (b) of § 545.6-2.* Loans may be made for the following terms, with interest payable at least semiannually:

(i) 50 percent of the value of the security property—5 years;

(ii) 60 percent of the value of the security property—3 years.

(2) *Loans authorized under § 545.6-2(c).* Loans may be made for 60 percent of the value of the security property repayable within 5 years, with interest payable at least semiannually.

(3) *Construction or substantial alteration, repair, or improvement loans.* Loans may be made within the maximum loan-to-value ratio permitted for monthly installment loans, for the following terms:

(i) Loans on the security of homes or combinations of homes and business property—18 months;

(ii) Loans on the security of other dwelling units; combinations of dwelling units, including homes, and business property involving only minor or incidental business use—36 months.

(iii) Loans on the security of other improved real estate as defined in paragraphs (a) and (c) of § 541.17—36 months (only loans for construction are authorized under this paragraph (iii)).

(iv) Loans authorized under this paragraph (3) may be combined with permanent loans on the same security authorized under §§ 545.6-1 to 545.6-3, except loans authorized under paragraph (iii) may be combined only with monthly installment loans. The term of the permanent loan shall begin at the end of the term allowed for construction, or substantial alteration, repair, or improvement.

(v) No disbursement of any amount of such a loan in excess of 80 percent of the value of the security property shall be made until completion of construction or substantial alteration, repair, or improvement and compliance with applicable provisions of paragraphs (a) (2), (3), and (4) of § 545.6-2.

(4) *Loans made to facilitate the trade-in or exchange of a home or combination of home and business property.* Loans may be made for 80 percent of the value of the security property for a term not exceeding 18 months, with interest payable at least semiannually, but the aggregate amount of such loans in which an association may invest may not at any time exceed 5 percent of the association's assets, and the term "first liens" includes assignment of the entire beneficial interest in a trust having a corporate trustee whereunder real estate held in the trust can be subjected to satisfaction of the secured obligation(s) with the same priority as a first mortgage (or deed of trust) in the jurisdiction where the real estate is located.

9. Delete present § 545.6-4 and renumber § 545.6-2 as new § 545.6-4, also amend the first sentence of paragraph (a) thereof to read as follows:

§ 545.6-4 *Alternative mortgage instruments.*

(a) *General.* Associations making loans under § 545.6-2(a) may use the alternative mortgage instruments described in this section, which allow certain payment and other provisions different from those required elsewhere in this subchapter. * * *

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§ 545.6-3 [Redesignated as § 545.6-5]

§ 545.6-5 [Removed]

10. Delete present § 545.6-5 and renumber § 545.6-3 as new § 545.6-5.

11. Revise §§ 545.6-8—545.6-12 to read as follows:

§ 545.6-6 *Loans to finance acquisition and development of land.*

(a) *Definition.* In this section, "development" means installations and improvements necessary to produce from land building sites ready, in accordance with applicable governmental requirements and general community practice, for construction of buildings thereon.

(b) *General.* A Federal association may invest in loans to finance (1) acquisition and development of land for primarily residential use and (2) construction of homes or single-family dwellings inclusive of such acquisition and development. An association shall invest in such a loan only if it appears to the association that the loan will be used to undertake prompt development of land previously acquired or land to be acquired when the loan is made. The loan term shall be fixed, within the maximum term permitted by this section, based on the association's determination of the time reasonably necessary for the borrower to complete development and dispose of the completed lots and improvements to be constructed thereon.

(c) *Basic limitations.* An association may make loans under this section only when (1) the aggregate of its general reserves, surplus, and undivided profits equals more than 5 percent of its savings accounts, (2) the resulting aggregate amount of its investments in loans under this section, exclusive of the portion of the loans under paragraph (e) of this section which are for the purpose of financing construction of homes or single-family dwellings, would not exceed 5 percent of the amount of its savings accounts, (3) the loans are secured by first liens, and (4) the real estate security for each loan is located within the association's regular lending area.

(d) *Loans to finance acquisition and development.* No loan under this paragraph shall be made in an amount exceeding 75 percent of the value of the security property as of completion of its development. Each loan shall be repayable within not more than 5 years and interest thereon shall be payable at least semiannually. No proceeds of such a loan shall be disbursed if such disbursement, together with the aggregate amount of proceeds

previously disbursed and not repaid, would exceed 75 percent of the value of the security property at that time.

(e) *Loans to finance construction of homes inclusive of acquisition and development of land primarily for residential use.* No loan under this section shall be made in an amount exceeding 80 percent of the value of the security property as of completion of construction of homes thereon. Each such loan shall be repayable in full within 6 years after the date of the loan instrument, with or without periodic amortization but with interest payable at least semiannually, except that (1) beginning not more than 18 months after the first disbursement of loan proceeds made for the purpose of financing construction of any home, whether or not such construction has been completed, principal shall be amortized monthly at a rate of at least 1 percent of the portion of the loan balance applicable to such home, including the building site, and (2) beginning not more than four years after the first disbursement of any loan proceeds, principal shall be amortized monthly at a rate of at least 1 percent of that portion of the loan balance not applicable to construction of any home and its building site. No disbursement of a loan under this paragraph shall be made at any time if the aggregate amount of such disbursements and previous disbursements not repaid would exceed the sum of (1) 80 percent of the value at that time of homes under construction or completed and not sold; and (2) 75 percent of the value at that time of the remaining security property, but any principal amortization required by this paragraph shall be deducted from such sum. An association shall, by a construction loan agreement or other instrument applicable to each construction loan made under this paragraph, reserve to its board of directors full and exclusive right, without regard to any other provision of any loan instrument or any agreement applicable to the loan, to limit from time to time the number of homes and single-family dwellings under construction at any one time from the loan proceeds.

(f) *Releases; loan extensions.* When any part of the security property is released from the lien, the principal balance of a loan made under this section (other than that portion of a loan under paragraph (e) attributable to construction of homes or single-family dwellings) shall be reduced by an amount at least equal to 110 percent of the portion of the outstanding principal balance attributable to the value of the property released. When a home or

single-family dwelling is released from the lien, the principal balance of the loan shall be reduced by an amount at least equal to the portion of the outstanding principal loan balance attributable to the value of the property released. "Value" as used in the preceding sentence is the value at the time the loan was made or the loan amount was determined. The association's board of directors may approve extension of any such loan for one year or less beyond the loan term and may approve a second extension for an additional year or less. Such approval may be given only if (1) interest on the loan is current, (2) the unpaid principal balance does not exceed 75 percent of the value of the security property (80 percent of the value of homes or single-family dwellings, less any amortization required by paragraph (e)), and (3) the board of directors has before it (i) an audited current financial statement of the borrower, (ii) a current written credit report on the borrower, (iii) a current independent appraisal of the security property, and (iv) a current written report on the feasibility of repayment of the loan at expiration of the extension.

(g) If an association makes a loan under this section to a borrower who acquires the land before completing plans for development thereof, it may later determine the total amount of the loan based on appraisal after completion of such plans. However, an association shall not make such a loan unless the borrower has submitted a preliminary plan which, in the association's opinion, is a feasible plan for development of the land for primarily residential use. If determination of the total amount of a loan is so deferred, the loan agreement or other suitable instrument shall provide for acceleration of the loan's maturity to a fixed date (not more than 2 years after the first disbursement of proceeds under the loan), if by such date the borrower has not furnished to the association complete plans, satisfactory to the association, for development of the land and, if it is a loan under paragraph (e), for construction thereon.

(h) *Limitations on loans on a single project to one borrower.* No association shall invest more than 2 percent of its savings accounts in loans on any one land development project or in any such loan(s) to one borrower, including the balance of all outstanding loans made under this section to any partnership, corporation, or syndicate of which any partner, stockholder, owner, participant, or officer is the borrower or is a partner,

stockholder, owner, participant, or officer of the borrower.

§ 545.6-7 *Insured loans to finance land development.*

Without regard to any other provisions of this Part, except § 545.8(a), a Federal association may invest in insured loans, and interests in insured loans, on the security of real estate located within its regular lending area, to finance land development under the provisions of Title X of the National Housing Act.

§ 545.6-8 *Housing facilities for the aging.*

(a) A Federal association may invest in installment loans, or participation interests therein, secured by improved real estate designed to provide accommodations for persons over fifty-five years of age, or rest homes or nursing homes constructed or altered to be suitable primarily for occupancy by persons over fifty-five years of age and limited principally to such occupancy. Loan plans, practices, and procedures consistent with this section and other applicable provisions in this Part may be used in making such loans.

(b) *Basic limitations.* Investment or participation under this section is authorized only when (1) the security property is located within the association's regular lending area; (2) the loan is repayable monthly within 30 years; (3) the principal obligation of the loan is specified in the security instrument and does not exceed 90 percent of the value of the security property and; (4) the aggregate amount of investments made under this section does not at any time exceed 5 percent of the association's assets.

(c) *Additional limitations.* (1) Before making a loan under this section an association shall obtain a statement signed by the borrower or, if the borrower is a trust, partnership, corporation, or syndicate, signed by its authorized agent, certifying that the security property has been, or as a result of the loan will be, constructed or altered to provide housing described in paragraph (a) and the initial occupancy of the property will be limited principally to persons over fifty-five years of age.

(2) Before making a loan under this section an association shall determine that the security property is or will be suitable for use as prescribed in paragraph (a) of this section, as follows:

(i) If the security property exists, the association shall obtain evidence from appropriate state or local authorities that they have approved the property for such use or, in a jurisdiction where such

facilities are not subject to regulation under state or local laws or ordinances, a statement signed by an architect or, in the absence of an architect, such other qualified person as the association's board of directors may designate, that the security property is designed primarily for such use.

(if) If the security property is to be constructed or altered as a result of the loan, the association shall obtain evidence from appropriate state or local authorities that the plans and specifications for the construction or alteration comply with all applicable state and local laws and ordinances and that they will approve the security property for such use if it is completed according to such plans and specifications or, in a jurisdiction where such facilities are not subject to regulation under local laws or ordinances, a statement signed by an architect or, in the absence of an architect, such other qualified person as the association's board of directors may designate, that the person has inspected the plans and specifications and that if the security property is constructed in accordance therewith it will be suitable for such use.

(3) If the loan is an insured loan, the association may accept the determination of the insuring agency as evidence of compliance with the requirements of paragraph (2).

(d) *Relationship to other provisions of the regulation.* Except as this section otherwise expressly provides, loans authorized under it shall be subject to all other provisions of this Part.

§ 545.6-9 Loans on low-rent housing.

(a) *General.* Limitations in this Part relating to maximum loan terms and loan-to-value ratios, except limitations in § 545.6-8, shall not apply to any loan secured by a first lien on real estate which is, or which is being constructed, remodeled, or renovated to be, the subject of an annual contribution contract for low rent housing under the United States Housing Act of 1937, as amended. No such loan by a Federal association shall exceed 90 percent of the amount of the appraisal or, if the real estate is to be purchased by a local public housing authority, 90 percent of the purchase price. This section shall apply to a loan on such real estate only when it first becomes, or when it is first constructed, remodeled, or renovated to be, the subject of such a contribution contract.

(b) *Appraisals.* The appraisal of any such real estate required by § 545.8-8 shall be (1) if the real estate has, or will have, newly constructed improvements

thereon, the value of the land plus appraisal of the cost of the improvements, or (2) if the real estate has existing improvements, the value of the land with existing improvements, plus appraisal of the cost of remodeling or renovation.

§ 545.6-10 Urban renewal loans and investments.

(a) *General.* A Federal association may invest in real property, or interests in real property, located within any urban renewal area as defined in section 110(a) of the Housing Act of 1949, as amended, and in loans and other obligations secured by first liens on real property so located.

(b) *Investments in loans.* Loans under this section shall conform to all applicable limitations in this Part 545, with the following exceptions:

(1) A monthly installment loan on other improved real estate may be repayable within 30 years and may be for an amount not exceeding 80 percent of the value thereof.

(2) A loan on a home, combination of home and business property, other dwelling units, or combination of dwelling units, including homes, and business property involving only minor or incidental business use, shall not be subject to any lending limitations of this Part 545 with respect to amount per dwelling unit.

(3) Participations in loans may be made in accordance with paragraph (e) of this section.

(4) A construction loan on (i) other dwelling units, (ii) a combination of dwelling units, including homes, and business property involving only minor or incidental business use, or (iii) other improved real estate, or any combination thereof, which otherwise meets the requirements of §§ 545.6-3 (d)(3)(ii) and (iii), may be made for a term up to 60 months.

(c) *Investments in other obligations secured by first lien.* An association may invest under this section in other obligations secured by first lien on one or more of the following: other improved real estate, other dwelling units, and combinations of dwelling units, including homes, and business property involving only minor or incidental business use. Such investment shall be subject to the following requirements:

(1) The total amount of obligations secured by any such first lien shall not exceed 80 percent of the value of the security property, and the obligation shall mature within 30 years;

(2) No obligation shall be purchased under this paragraph (c) unless the instruments representing the obligation

provide for substantially equal payments, at least annually, which would retire the total indebtedness, including interest, within the maximum period of maturity prescribed in this paragraph, the periodic payments of principal to be made in direct reduction of the outstanding obligations;

(3) The value of the security property shall be determined by an appraisal (i) made by a qualified person designated by the association's board of directors or (ii) offered by the issuer of the obligations and made by a person whom the association's board of directors determines to be qualified; and

(4) The security property shall be located within the association's regular lending area.

(d) *Investments in real property.* An association may make an investment under this section in real property, or in an interest in real property, located within its regular lending area in an amount not in excess of the amount of an appraisal made by a qualified person designated by the association's board of directors, plus usual settlement costs.

(e) *Participations.* An investment which an association may make under this section it may also make in participation with other financial institutions, private corporations, or individuals, except that the association shall comply with the provisions of Subchapter D regarding participations in loans on the security of real estate located more than 50 miles from the association's home office. Section 545.8(a) does not apply to participation interests in loans under this section, but any sale of a participating interest in any loan shall be without recourse.

(f) *Percent-of-assets limitation on investments.* (1) An association shall make no investment under this section in real property, or interests in real property, if the amount of the investment plus the amount outstanding in such investments under this section would total more than 2 percent of the association's assets. No investment under this section in a loan or other obligation secured by first lien on real property shall be made if the amount of the investment, plus the amount outstanding in all investments under this section, would total more than 5 percent of the association's assets. An investment in a loan on the security of a first lien on real property located in an urban renewal area, as defined in section 110(a) of the Housing Act of 1949, as amended, shall not be subject to the 5-percent-of-assets limitation in this paragraph if the investment is authorized by, and is within limitations

of, provisions of this Part 545 other than this section.

(2) In determining the total amount of investments subject to the 2-percent-of-assets limitation in paragraph (f)(1), the following rules shall apply:

(i) A reasonable allowance for depreciation computed under the straight-line method may be deducted from the cost of improved real property or investments in improved real property owned by the association;

(ii) If a leasehold interest in land is acquired, the amount of the investment as to rental obligations under the lease shall be determined on the basis of the "present value of an annuity due," and for the purpose of such determination, the worth of money shall be deemed to be 6 percent; and

(iii) The investment in improvements to land in which the association has a leasehold interest shall be the cost to the association of the improvement, less reasonable allowances for amortization computed under the straight-line method.

§ 545.6-11 Loans guaranteed under the Foreign Assistance Act of 1961.

(a) *General.* Without regard to any other section of this Part, a Federal association may invest in any of the following loans, or any interest therein:

(1) Housing project loans with any guaranty under section 221 of the Foreign Assistance Act of 1961, as in effect before December 30, 1969;

(2) Loans with any guaranty under section 224 of that Act, as in effect before December 30, 1969; or

(3) Loans with any guaranty under section 221 or 222 of that Act, as in effect after December 29, 1969.

(b) *Requirements.* No association may invest in any loans, or interests therein, under this section, unless—

(1) The loan agreement (i) specifies what constitutes an event of default, and (ii) provides that upon default in payment of principal or interest under such agreement, the entire amount of the outstanding indebtedness thereunder shall become immediately due and payable, at the lender's option; and

(2) The contract of guaranty (i) covers 100 percent of any loss of investment thereunder, except for any portion of the loan arising out of fraud or misrepresentation for which the party seeking payment is responsible, and (ii) provides that the guarantor shall pay for any such loss in U.S. dollars within a specified reasonable time after the date of application for payment.

(c) *Percentage-of-assets limitation.* No Federal association shall invest in any loan, or interest therein, under this

section if, as a result, the aggregate outstanding principal amount of such investments of the association and investments made under § 545.9(h) of this Part would exceed 1 percent of its assets.

§ 545.6-12 Nonconforming secured loans and loans without requirement of security.

(a) *Definitions.* As used in this section—

(1) The terms "scheduled items" and "specified assets" have the meanings prescribed in §§ 561.15 and 561.17 of this chapter.

(2) The term "residential real property" means real estate (i) improved by a structure(s) designed for residential use, and (ii) deriving at least 80 percent of its total value from the land and improvements attributable to such residential use, but shall not include mobile homes or the real estate on which they are situated.

(b) *Loans without requirement of security—general.* Without regard to any other provision of this Part, but subject to the percentage-of-assets limitation in paragraph (f), a Federal association may, after its board of directors adopts such a loan plan, invest in loans of the following type:

(1) Any loans, with or without security, for property alteration, repair, or improvement, or for equipping residential real property, if the following requirements are met:

(i) With respect to the same property alteration, repair, or improvement, the net proceeds of any such loan investment made under this paragraph (1) do not exceed \$15,000;

(ii) With respect to any such loan investment for equipping residential real property, the net proceeds of the loan investment plus the aggregate of the unpaid net proceeds of all other of the association's outstanding equipping loan investments relating to the same property, made under this paragraph (1) do not exceed \$15,000;

(iii) The property is located in the association's regular lending area;

(iv) The loan is evidenced by one or more written evidences of debt;

(v) The loan is repayable in equal weekly, bi-weekly, monthly, bi-monthly, or quarterly installments with the first installment due no later than 120 days from the date the loan is made and the final installment due no later than 15 years and 32 days from such date; except that if the principal and accrued interest of a loan are at least 80 percent guaranteed by the Farmers Home Administration under 7 CFR 1980.301, *et seq.* the loan is repayable on terms acceptable to the guaranteeing agency.

However, the loan contract may provide for a first and/or final installment in an amount other than that of the regular installment, but such installment shall not be less than one-half of, nor more than one and one-half times, the amount of the regular installment; and

(vi) Investment in a loan for equipping residential real property meets the additional percentage-of-assets limitation in paragraph (f)(2).

(2) Any loan insured under title I of the National Housing Act and any home improvement loan insured under title II of that Act, if the property to which such loan relates is located within the association's regular lending area.

(3) Any unsecured loan insured or guaranteed under the Servicemen's Readjustment Act of 1944 or under chapter 37 of title 38, United States Code.

(c) *Loans without requirement of security—for construction purposes.* (1) In addition to loans in which it may invest under paragraph (b), after its board of directors adopts such a loan plan, an association meeting the scheduled items requirements and net worth requirements of paragraph (e) may, subject to the percentage-of-assets limitation in paragraph (f), invest in loans directly for constructing, adding to, improving, altering, repairing, equipping, or furnishing what is or is to become residential real property, where the association relies substantially for repayment on (i) the borrower's general credit standing and forecast of income, with or without other security or (ii) other assurances of repayment (including a third-party guaranty or similar obligations).

(2) No loan shall be made under this paragraph (c) with respect to residential real property located outside the association's regular lending area.

(3) Such loans shall be fully documented to establish:

(i) The purpose of the loan;

(ii) The source and reliability of repayment;

(iii) The reputation and proven capacity of the borrower; and

(iv) The quality of the security interest in any security for the loan other than real estate.

(4) Additional documentation shall include:

(i) If the loan is for a business purpose, full financial statements (audited except in the most exceptional cases) of the borrower or the borrower's predecessor for 3 years before the loan;

(ii) If the loan is for a business purpose, income forecasts, projections, cash flow statements, and budgets;

(iii) Anything else necessary to establish the soundness of the loan; and
 (iv) Controls to ensure that actions on which the association relies are proceeding as scheduled.

(5) Loans may be made under this section for financing purchase of modular units to be installed by the borrower, including financing shipping, insurance, and similar costs related to cash purchase.

(d) *Non-conforming secured loans.* (1) A Federal association meeting the scheduled items requirements and net worth requirements of paragraph (e) may, subject to the percentage-of-assets limitations in paragraph (f), invest in loans, advances of credit, and interests therein, secured by residential real property and real property used or to be used for commercial farming enterprises, which are not otherwise authorized under this Part because of the following reasons:

(i) The security interest is not a first lien;

(ii) The loan-to-value ratio, stated maturity, or loan amount exceeds maximum prescribed limits;

(iii) Lack of any required borrower certification or required private mortgage insurance;

(iv) Unavailability of the percentage-of-assets category under § 545.6-7; or

(v) A combination of such factors.

(2) An investment made under this section shall be fully documented to show that it was made on a prudent basis.

(3) Investments deemed not to have been made under this subsection include investments:

(i) Authorized under other regulatory authority;

(ii) Made under authority of this section but later authorized to be made under other authority;

(iii) Made under other authority that was subsequently revoked.

(4) For purposes of this section, a loan will be deemed unsecured to the extent that it exceeds the value or purchase price of the security therefor, whichever is less, at the time the investment is made.

(e) *Requirements for investment under paragraphs (c) and (d).* An association may invest under paragraphs (c) and (d) only if:

(1) Except as provided in paragraph (g), it has scheduled items (other than assets acquired in a merger instituted for supervisory reasons) not exceeding 2.5 percent of specified assets; and

(2) Its net worth conforms to the requirements of § 563.13(b) of this chapter (associations insured for less than 2 years must meet net-worth

requirements for those insured for 2 years).

(f) *Percentage of assets limitations.* An association shall not invest under this section if such investment would cause the association's aggregate investments thereunder to exceed any of the following maximum percentages of the association's assets:

(1) Investments under paragraph (b)—20 percent;

(2) Investments in equipping loans under paragraph (b)—5 percent;

(3) Investments under paragraph (c)—2 percent, plus any additional investment authorized under paragraph (5);

(4) Investments under paragraph (d)—2 percent, plus any additional investment authorized under paragraph (5).

(5) An association may make further investments in loans under paragraphs (c) and (d) equal to one percent (or fraction thereof) of assets for each percentage point (or fraction thereof) of net worth in excess of the greater of (i) 5 percent of withdrawable accounts or (ii) net worth as required under § 563.13(b), but such further investment shall not cause a total investment in excess of 5 percent of assets in such loans.

(g) *Exception from scheduled-items limitation in paragraph (e).* An association with net worth of at least the greater of (i) 5 percent of withdrawable accounts or (ii) as required under § 563.13(b) may apply to the board for an exception from the scheduled items limitation in paragraphs (c) and (d). The application shall be supported by appropriate information evidencing the association's sound investment, lending, appraisal, and underwriting policies and favorable operating results; it shall be filed with the Principal Supervisory Agent, with a copy to the Director, Office of District Banks. The application will be deemed approved if, after 30 calendar days from the date the Principal Supervisory Agent receives it, the Principal Supervisory agent has not notified the applicant that approval is withheld. If such approval is withheld, the Principal Supervisory Agent shall promptly cause the application to be submitted to the Board for its decision. After receiving the application, the Principal Supervisory Agent may request additional information but need not consider any such information received less than 5 calendar days before the end of the 30 day period.

§ 545.6-13 [Redesignated from § 545.6-27]

§ 545.6-27 [Redesignated as § 545.6-13]

11b. Redesignate § 545.6-27 as

§ 545.6-13.

11c. Revise §§ 545.7-545.7-3 to read as follows:

Other Loans

§ 545.7 Loans on savings accounts.

A Federal association may make loans on the security of its savings accounts, whether or not the borrower is the owner of the account, if the association obtains a lien on, or a pledge of, such accounts as security therefor. Such a loan shall not exceed the withdrawal amount of the savings account and shall not be made when the association has any unpaid application for withdrawal on file more than 30 days.

§ 545.7-1 Loans on securities.

A Federal association may invest in loans secured by obligations of, or fully guaranteed as to principal and interest by, the United States or any agency or instrumentality of the United States named in § 523.10(g)(3) of this chapter if:

(a) The borrower is a financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or is a broker or dealer registered with the Securities and Exchange Commission; and

(b) The market value of the securities for each loan at least equals the amount of the loan at the time it is made.

§ 545.7-2 Loans and investments relating to development of new communities.

(a) *General.* Notwithstanding any other provision of this Part, including any percentage-of-assets limitation, a Federal association may invest in loans or obligations, or interests therein, guaranteed in whole or in part or as to which a commitment or agreement for any such guaranty has been made under the New Communities Act of 1968 or under Part B of the Urban Growth and New Community Development Act of 1970, as amended.

§ 545.7-3 Loans to and investments in business development credit corporations and State housing corporations.

Notwithstanding any other provision of this Part, a Federal association whose general reserves, surplus, and undivided profits aggregate more than 5 percent of its withdrawable accounts may invest in, lend to, or commit itself to lend to the following entities incorporated in the State in which the association's home office is located, in the same manner

and to the same extent as the statutes of that State authorize a savings and loan association organized under the laws of that State to so invest, lend, or commit itself to lend:

(a) *Business-development credit corporation*—the aggregate amount of investments, loans, and commitments to such a corporation outstanding at any time shall not exceed the lesser of one-half of one percent of the total outstanding loans of the association or \$250,000 and;

(b) *State housing corporation*—the aggregate outstanding direct investment in equity securities made by the association under this paragraph (b) shall not exceed one-fourth of one percent of the association's assets as of the time of the investment, and the aggregate outstanding investment in loans and loan commitments made by the association under this paragraph (b) shall not exceed 5 percent of its net worth as of the time of the investment. The Board may approve, on a case-by-case basis, written requests for waiver of the 5 percent limitation.

Loans and other investments made under this section shall not be included in percentage-of-assets limitations under § 545.8-7.

11d. Sections 545.7-4 through 545.7-9 are added as follows:

§ 545.7-4 Educational loans.

(a) Definitions used in this section—

(1) "College or university education"—education at an institution which provides an educational program for which it awards a bachelor's or higher degree, or provides at least a 2-year program which is acceptable for full credit toward such a degree.

(2) "Vocational education"—a course of study or training designed to increase the ability of a person to obtain or advance in employment of any kind.

(b) A Federal association may invest in loans, obligations, and advances of credit (all referred to herein as "loans") made for the payment of expenses of college or university education or of vocational education, if the principal amount of the investment and of all other investments in loans under this section, exclusive of any investment which is, or which at the time of its making was, otherwise authorized, would not exceed 5 percent of the association's assets. The borrower shall certify to the association that the loan proceeds are to be used solely by a student for payment of such expenses. The loan may be secured, partly secured, or unsecured, and the association may require a co-maker(s), insurance, guaranty under a

governmental student loan guarantee plan, or other protection.

§ 545.7-5 Insured loans for title purchase.

Without regard to any other provision of this Part, a Federal association may invest in loans, or interests therein, made for financing the purchase by homeowners of fee simple title to property on which their homes are located and as to which the association has benefit of insurance under section 240 of the National Housing Act, as amended, or of a commitment or agreement for such insurance.

§ 545.7-6 Mobile home financing.

(a) Definitions used in this Part—

(1) "Mobile home"—a movable dwelling constructed in one or more units to be occupied on land, having a minimum width of 10 feet, a minimum area of 400 square feet, and living facilities for year round occupancy by one family including permanent provision for eating, sleeping, cooking, and sanitation.

(2) "Mobile home chattel paper"—written evidence of a monetary obligation secured by a first lien on one or more mobile homes and any equipment installed or to be installed therein.

(b) *General*. A Federal association may, after its board of directors adopts a mobile home financing plan, invest in mobile home chattel paper (make or purchase whole loans or installment sale contracts on mobile homes).

(c) *Percent-of-assets limitation*. Investment may be made under this section only if the amount of the investment and all other such investments then outstanding does not exceed 10 percent of the association's assets at the time of the investment.

(d) *Inventory financing*. Such investment may finance acquisition of inventory by a mobile home dealer only if:

(1) The inventory is to be held for sale in the ordinary course of business by the dealer within the association's regular lending area; and

(2) The monetary obligation evidenced by the chattel paper is the dealer's obligation and the amount thereof does not, except as otherwise provided in paragraph (f), exceed:

(i) For new mobile homes, the total of (A) 100 percent of the manufacturer's invoice price of each mobile home (including any installed equipment), excluding freight, and (B) 100 percent of the manufacturer's invoice price of any new equipment to be installed in the mobile home by the dealer, excluding freight; or

(ii) for used mobile homes, 90 percent of the wholesale value of each such used mobile home (including any installed equipment) as established in the dealer's market.

(e) *Retail financing*. An association may invest in any retail mobile home chattel paper if the association's investment is insured or guaranteed, or the association has a commitment for such insurance or guarantee, under the National Housing Act or Chapter 37 of Title 38, United States Code, as amended, and if arrangements have been made for satisfactory local servicing of such chattel paper. The association may invest in other retail mobile home chattel paper only if:

(1) The mobile home is to be maintained as a residence of the owner (or beneficial owner), or a relative of such owner;

(2) The mobile home is located when the association invests in the chattel paper, or is to be located within 90 days thereafter, at a mobile home park or other semi-permanent site within the association's regular lending area;

(3) The amount of the monetary obligation evidenced by the chattel paper (exclusive of any time price differential or any interest, whether on an add-on, discount, or other gross charge basis) does not, except as paragraph (f) otherwise provides, exceed the total of:

(i) the cost of appropriate insurance for protection of the association and the owner (or beneficial owner) of the mobile home;

(ii) any sales or similar tax applicable to the retail purchase of the mobile home; and

(iii) for a new mobile home, (A) 100 percent of the manufacturer's invoice price of the mobile home (including any installed equipment), excluding freight, (B) 100 percent of the invoice price of the manufacturer of any new equipment installed or to be installed by the dealer, excluding freight, and (C) an amount not exceeding 10 percent of those amounts; or

(iv) For a used mobile home, 100 percent of its wholesale value (including any installed equipment) as established in the dealer's market by use of a valuation guide or appraisal; and

(4) The monetary obligation evidenced by such chattel paper is to be paid in substantially equal monthly installments within the following time limits:

(i) If the mobile home is new, up to 12 years (15 years for a mobile home having a minimum area of 900 square feet) from the date of the association's investment in the chattel paper; or

(ii) if the mobile home is used, up to the later of (A) 1 year from the date of the association's investment in the chattel paper or (B) 12 years from the model year of the mobile home.

(f) *Geographic exception.* If a new mobile home or new equipment to be installed by a mobile home dealer in a mobile home is shipped to a mobile home dealer in Alaska, Guam, Hawaii, Puerto Rico, or the Virgin Islands from outside those areas, the monetary obligation referred to in paragraphs (d)(2) and (e)(3) of this section may include, in addition to the amount specified therein, an amount not exceeding 80 percent of freight on such shipment.

(g) *Sound investment practices.* Investments under this section shall be made in conformity with sound practices for such investment. The chattel paper shall include provisions for protection of the association specifically with respect to insurance, taxes, other governmental levies, maintenance and repairs, and for other protection that is lawful or appropriate. The association may pay taxes or other governmental levies, insurance premiums, or other similar charges to protect its security interest, and may, when lawful, add such payments to the monetary obligation evidenced by the chattel paper. The association shall seasonably perfect its security interest under applicable law.

§ 545.7-7 Purchase of participation interests in mobile home chattel paper.

(a) *General.* A Federal association may purchase, within the 10-percent-of-assets limitation in § 545.7-6(c), a participation interest in retail mobile home chattel paper which meets all requirements of § 545.7-6(e) except the lending area requirement in paragraph (2) thereof, if:

(1) The seller of the participation interest is an institution whose accounts or deposits are insured by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation which remains responsible for servicing the chattel paper;

(2) The seller maintains at least a 50 percent interest in the chattel paper; and

(3) The chattel paper is secured by a mobile home located, or to be located within 90 days thereafter, at a mobile home park or other semipermanent site within 100 miles of the home office or a branch office of the seller.

(b) *Failure to meet requirements.* If any requirement of paragraphs (a)(1) and (2) of this section ceases to be met, the association shall dispose of its

participation interest within 90 days after learning that fact, unless it has, before the 90-day period expires, obtained written approval of the Board to maintain the investment for a longer period.

§ 545.7-8 Sale of mobile home chattel paper.

All mobile home chattel paper and participation interests therein sold by a Federal association shall be sold without recourse (as defined with reference to a loan in § 561.8 of this chapter).

§ 545.7-9 Collateral loans.

An association may make collateral loans, secured by assignment of real estate loans, only if:

(a) The association could, under applicable law and regulations, make or purchase at par each assigned loan, based on a current association appraisal;

(b) The amount of the collateral loan does not exceed at any time 90 percent of the aggregate unpaid balance of the assigned loans;

(c) The assignment to the association provides that:

(1) All payments of principal and interest on the assigned loans shall be made directly to the association and applied to the outstanding unpaid balance of the collateral loan; and

(2) A default on any assigned loan shall constitute a default on the collateral loan and permit acceleration of the collateral loan's maturity; and

(d) The assignment is properly recorded and prior to any other lien of record on the assignor's interest in the assigned loans.

11e. A new center heading is added just before § 545.8. Section 545.8-545.8-3 are revised.

General Provisions Respecting Loans

§ 545.8 Participations.

(a) *General.* Subject to § 545.8-7, a Federal association may participate with an approved lender (as defined in § 563.9(g) of this chapter) in making a loan secured by real estate or may purchase a participation interest in such a loan from such a lender, if the association could make the loan (counting only the association's interest in the loan toward percentage-of-assets or other percentage limitations). The association may sell a participation interest in a loan secured by real estate. (See also Part 563 of this chapter regarding participations.)

(b) *Exception.* Investments in urban renewal loans under § 545.6-10(b) may be made in participation with other than

approved lenders, as § 545.6-10(e) permits.

(c) *Board approval.* A Federal association may engage in a participation transaction not permitted by paragraph (a) only after receiving written approval from the Board. A loan in which the association, with such approval, participates or purchases a participation interest may be repayable in accordance with the approval, notwithstanding any other provision of this Part.

§ 545.8-1 Purchase of loans.

(a) *General.* A Federal association may purchase any loan it may make, unless expressly prohibited by other provisions of this Part, and may purchase any insured loan regardless of the location of the security property at an investment of no more than the sum of (1) \$60,000 (\$90,000 for dwellings in Alaska, Guam, or Hawaii) for each single-family dwelling, (2) an amount per dwelling unit within limits prescribed in or under section 207(c)(3) of the National Housing Act, as amended, and (3) the percentage of value acceptable to the insuring agency of any part of the security property not attributable to dwelling use.

(b) *Purchase from Federal Savings and Loan Insurance Corporation.* In addition to loans purchased under paragraph (a), an association may, without regard to any other provision of this Part except § 545.8-7, purchase from the Federal Savings and Loan Insurance Corporation any loan on the security of a first lien on improved real estate if a portion of the loan is guaranteed by such Corporation under a guaranty contract made by such Corporation with the purchasing association.

§ 545.8-2 Initial loan charge.

Except as provided in § 563.35(d) of this chapter, a Federal association may require a borrower to pay necessary initial charges connected with making a loan, including the actual costs of title examination, appraisal, credit report, survey, drawing of papers, loan closing, and other necessary incidental services and costs, in such reasonable amounts as the board of directors may fix. The association may collect the charges from the borrower and pay the persons rendering services.

§ 545.8-3 Loan contract.

(a) *Required and authorized provisions.* Each loan shall be evidenced by note, bond, or other instrument and be secured by a security instrument which is consistent with sound lending practices. Loan instruments shall

comply with applicable provisions of law, governmental rules and regulations, and the association's charter and bylaws, and provide for full protection to the Federal association. They shall be recorded and, among other protections, shall provide specifically for full protection with respect to insurance, taxes, assessments, other governmental levies, maintenance, and repairs. They may provide for an assignment of rents. The association may pay taxes, assessments, insurance premiums, and other similar charges for protection of its interest in the security property. If such payments are consistent with this Part, they may be added to the unpaid balance of the loan. The association may require life insurance to be assigned to it by the borrower as additional collateral for a loan on the security of real estate. It may advance premiums on such life insurance and, if consistent with this Part, add the premiums so advanced to the unpaid balance of the loan. A Federal association shall keep a record of the status of taxes, assessments, insurance premiums, and other charges on all real estate on which it has loans or which it owns.

(b) *Escrow accounts.* An association may require that all or any part of the estimated annual taxes, assessments, insurance premiums, and other charges on any loan be paid in advance to the association in addition to interest and principal payments on the loan, to enable the association to pay such charges as they become due. With regard to any loan on the security of a home, made in whole or in part by the association, the association shall not require that the borrower:

(1) Deposit in any escrow account established to assure payment of taxes, assessments, insurance premiums, and other charges, before or on the date of settlement, an aggregate sum in excess of—

(i) In any jurisdiction where such charges are postpaid, the total amount of such charges which will actually be due and payable on the date of settlement and the pro rata portion thereof which has accrued, plus one-twelfth of the estimated total amount of such charges which will become due and payable during the twelve-month period beginning on the date of settlement; or

(ii) In any jurisdiction where such charges are prepaid, a pro rata portion of the estimated charges corresponding to the number of months from the last date of payment to the date of settlement plus one-twelfth of the estimated total amount of such charges

which will become due and payable during the twelve-month period beginning on the date of settlement; or

(2) Deposit in any such escrow account in any month beginning after the date of settlement a sum (for the purpose of assuring payment of such charges) in excess of one-twelfth of the total amount of estimated charges which will become due and payable during the twelve-month period beginning on the first day of such month, except that, if the association determines there will be a deficiency on the due date, it may require additional monthly deposits of pro rata portions of the deficiency corresponding to the number of months from the date of the association's determination of such deficiency to the date upon which such charges become due and payable.

(c) *Payment of interest on escrow accounts.* (1) An association shall pay interest on an escrow account maintained in connection with a loan, if:

(i) The loan is on the security of a single-family dwelling occupied or to be occupied by the borrower;

(ii) The loan was made after June 15, 1975, and no bona fide loan commitment was made before that date; and

(iii) A specific statutory provision(s) of the State in which the security property is located generally requires State-chartered savings and loan associations, mutual savings banks, and similar institutions to pay such interest.

(2) The interest rate shall at least equal the rate required for such State-chartered institutions but shall not exceed the rate the Federal association pays on regular accounts.

(3) Unless obligated by contract, a Federal association shall have no obligation, other than under this paragraph (c), to pay interest on escrow accounts.

(d) *Late charges.* An association's loan instruments may, as a matter of contract between it and the borrower, provide for assessment, imposition, and collection of a late charge respecting payment of any delinquent periodic installment payment. The charge may be in the form of an increased rate of interest on the unpaid balance of the loan (or a part thereof) for the period of delinquency, a percentage of the delinquent periodic installment payment (or a part thereof), a fixed dollar amount, or such other form as may be necessary and appropriate to fully protect the association. No form of such late charge shall be considered as interest to the association. The association shall not deduct late charges from regular periodic installment payments on the loan, but shall collect

them as such from the borrower. Except as provided in paragraph (e) of this section regarding loans made after July 31, 1976, on the security of a home occupied or to be occupied by the borrower, assessment, imposition, and collection of such late charges shall be exclusively governed by the terms of the loan contract. Collection of a late charge shall not impair, alter, or abrogate any other right of the association granted by contract or law respecting delinquent installment payments.

(e) *Limitations on late charges.* (1) With respect to any loan made after July 31, 1976, on the security of a home occupied or to be occupied by the borrower, no late charge, regardless of form, shall be assessed or collected by a Federal association:

(i) As to any periodic installment payment received by it within 15 days after the due date of such payment (if such period ends on a weekend or holiday it shall be extended to the next business day);

(ii) In a dollar amount exceeding 5 percent of the aggregate amount of principal and interest included in the delinquent periodic installment payment and in no case exceeding the amount prescribed in the loan contract;

(iii) Unless any monthly billing, coupon, or notice the association may provide regarding installment payments due on the loan discloses the date after which the charge may be assessed; or

(iv) More than one time for late payment of the same installment.

(2) Any installment payment made by the borrower shall be applied to the longest outstanding installment due.

(3) A Federal association, in an appropriate case, may elect to waive all or any portion of an authorized late charge.

(f) *Due-on-sale clauses.* An association's loan instruments may, as a matter of contract between it and the borrower, provide for the association, at its option, to declare immediately due and payable sums secured by such instrument if all or part of the real property securing the loan is sold or transferred by the borrower without the association's prior written consent. Except as provided in paragraph (g) of this section with respect to loans made after July 31, 1976, on the security of a home occupied or to be occupied by the borrower, exercise by the association of such option (hereafter called a due-on-sale clause) shall be exclusively governed by the terms of the loan contract, and all rights and remedies of the association and borrower shall be fixed and governed by that contract.

(g) *Limitations on the exercise of due-on-sale clauses.* With respect to any loan made after July 31, 1976, on the security of a home occupied or to be occupied by the borrower, a Federal association (1) shall not exercise a due-on-sale clause because of (i) creation of a lien or other encumbrance subordinate to the association's security instrument, (ii) creation of a purchase money security interest for household appliances; (iii) transfer by device, descent, or operation of law on the death of a joint tenant; or (iv) granting of a leasehold interest of three years or less not containing an option to purchase; (2) shall not impose a prepayment charge or equivalent fee for acceleration of the loan by exercise of a due-on-sale clause; and (3) waives its option to exercise a due-on-sale clause as to a specific transfer if, before the transfer, the association and the person to whom the property is to be sold or transferred (the existing borrower's successor in interest) agree in writing that the person's credit is satisfactory to the association and that interest on sums secured by the association's security interest will be payable at a rate the association shall request. Upon such agreement and resultant waiver the association shall release the existing borrower from all obligations under the loan instruments, and the association is deemed to have made a new loan to the existing borrower's successor in interest.

i. New §§ 545.8-4 through 545.8-11 are added to read as follows:

§ 545.8-4 Servicing of loans.

A Federal association may, except as otherwise limited by regulation, service any loan which it owns or in which it has a participation interest. It may also service for others any loan in which—

(a) It has owned any interest at any time;

(b) Any of its members owns any interest;

(c) A service corporation of the association owns any interest;

(d) The Federal Savings and Loan Insurance Corporation, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, or the Government National Mortgage Association has owned any interest at any time;

(e) The Federal Savings and Loan Insurance Corporation holds any interest as conservator, receiver, or other legal custodian of an institution it insures (whether or not the institution is in default);

(f) An institution insured by such Corporation owns any interest acquired

under § 563.9 or § 563.9-1 of this chapter; or

(g) Total proceeds were disbursed, and sole ownership is retained, by a public housing corporation, or a not-for-profit private organization, established or chartered by any State or political subdivision thereof (including the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States) if: (1) the principal office or a branch office of such association is located in such State or political subdivision; (2) the sole purpose of such corporation or organization is to provide directly or indirectly for housing and incidental services, including financing, particularly for families of low or moderate income; and (3) undertaking to service such loan will not cause the total outstanding balance of all such loans serviced by such association to exceed 25 percent of its mortgage portfolio.

§ 545.8-5 Loan payments.

(a) *Initial payments on monthly installment basis and flexible payment loans.* Payments on loans made under §§ 545.6-2 and 545.6-3(a) shall begin not later than 60 days after the loan is disbursed. If such loans include construction, substantial alteration, repair, or improvement loans, payments may begin not later than 36 months (18 months for loans secured by real estate consisting solely of one or more homes or combination of home and business property) after the date of the first disbursement, and interest shall be payable at least semiannually until regular periodic payments become due.

(b) *Loan payments and prepayments.* Payments on the principal indebtedness of all loans on real estate shall be applied directly to reduction of such indebtedness, but prepayments made on an installment loan may be reapplied from time to time wholly or partly to offset payments which subsequently accrue under the loan contract. A borrower on a loan secured by a home or combination of home and business property may prepay the loan without penalty unless the loan contract expressly provides for a prepayment penalty. The prepayment penalty for a loan secured by a home occupied or to be occupied in whole or in part by a borrower shall not be more than 6 months' advance interest on that part of the aggregate amount of all prepayments made on such loan in any 12 month period which exceeds 20 percent of the original principal amount of the loan.

§ 545.8-6 Lending area.

A Federal association's regular lending area consists of the area: (a) within the State in which the association's home office is located; (b) outside that State but within 100 miles of the association's home office; and (c) in the case of a Federal association converted from a State-chartered institution, outside the areas specified in (a) and (b) but within which the association made loans before its conversion. An association desiring to make loans in areas (counties, parishes, or other political subdivisions of the State) prescribed in (c) shall provide the Board a map showing those areas.

§ 545.8-7 Percentage limitation on real estate loan investments.

(a) *Loan investments not subject to percentage limitation.* The following investments by a Federal association in loans on the security of real estate shall not be subject to any percentage-of-assets or percentage-of-savings-accounts limitation:

(1) A loan secured by a single family dwelling, or a home or combination of home and business property, except a loan:

(i) Secured by property located beyond the association's regular lending area;

(ii) in excess of \$60,000 for any single family dwelling (\$90,000 for single-family dwellings in Alaska, Guam, or Hawaii), to the extent of such excess;

(iii) in excess of the amount prescribed in or under section 207(c)(3) of the National Housing Act for any dwelling unit in a home or combination of home and business property which is not a single-family dwelling, to the extent of such excess;

(iv) to facilitate a trade-in or exchange under § 545.6-3(d)(4);

(v) on a single-family dwelling made under §§ 545.6-2(a) (2) or (3), as long as the loan is in excess of 80 percent of the value or purchase price of the security property, determined at the time the loan was made, whichever is less;

(2) A guaranteed loan (without regard to the location of the security property) in any amount if at least 20 percent of the loan is guaranteed;

(3) An insured loan which is purchased (without regard to the location of the security property) and which does not exceed (1) \$60,000 for a single-family dwelling or (ii) the amount prescribed in or under section 207(c)(3) of the National Housing Act for any dwelling unit in any home or combination of home and business property which is not a single-family dwelling;

(4) An insured loan to finance land development under § 545.6-7;

(5) A loan guaranteed under the New Communities Act of 1968 made under § 545.7-2;

(6) A participation interest in any insured or guaranteed loan (without regard to the location or type of the security property), and a participation interest in any loan specified in paragraphs (1) through (5) of this paragraph (a) to the extent such loan is not subject to any percentage limitation; and

(7) A loan, or participation interest in a loan, on the security of other dwelling units, including homes, and business property involving only minor or incidental business use—

(i) if the security property is located within the association's regular lending area; and

(ii) to the extent that the amount of such loan does not exceed, for any dwelling unit therein, the amount prescribed in or under section 207(c)(3) of the National Housing Act.

(b) *Percentage limitations for specific types of loans.* (1) Loan investments made under sections containing specific percentage limitations shall be subject to those limitations. Those sections are: § 545.6-2(a)(2) and (3) (loans on single-family or two family dwellings), § 545.6-3(d)(4) (loans to facilitate trade-in or exchange), § 545.6-5 (developed building lot loans), § 545.6-6 (land acquisition and development loans), § 545.6-8 (loans for housing for the aging), § 545.6-10 (urban renewal loans), § 545.6-11 (loans guaranteed under the Foreign Assistance Act of 1961) and § 545.6-12(d) (non-conforming secured loans), § 545.6-13 (Farmers Home Administration Rural Housing Program guaranteed loans). However, whenever the terms of a loan investment under §§ 545.6-8, 545.6-10, 545.6-12(d) or 545.6-13 meet the requirements for a loan under §§ 545.6-2 or 545.6-3, the loan may be allocated to the applicable percentage-limitation category in paragraph (c) of this section, and if the loan meets the requirements of paragraph (a) of this section, it shall not be allocated to any percentage-limitation category. A loan investment under § 545.6-2(a)(2) or (3) (a loan on a single-family or two-family dwelling in excess of 80 percent of value) within the association's regular lending area may be released from its percentage-limitation category when the loan balance has been reduced to not more than the percent of value permitted under the applicable provision.

(2) A loan investment under § 545.6-2(b)(2) on a cooperative housing project may be released from the percentage-

limitation categories of § 545.6-2(a)(2) and (3) when the loan balance has been reduced to not more than the value permitted under the applicable provision, but (1) the amount by which such loan exceeds, for any dwelling unit therein, an amount prescribed in or under section 207(c)(3) of the National Housing Act, shall be included in an appropriate percentage-limitation category of paragraph (c) of this section, and (2) such loan shall be entirely included within the percentage-limitation category specified in paragraph (c)(1) of this section if it is located outside the association's regular lending area.

(c) *Percentage limitations for other loans.* Except as specified in paragraphs (a) and (b) of this section, no Federal association may make any investment in a real estate loan unless the amount of such investment can be allocated within one of the percentage-limitation categories specified in this paragraph. In the case of a loan investment specified as allocable to more than one of the categories, all or part of any allocation to one of such categories may be allocated at any time to the other applicable category.

(1) *General 20-percent-of-assets category.* The following investments, not to exceed at any one time an amount equal to 20 percent of the association's assets, are allocable to this category:

(i) Any loan on the security of other improved real estate, without regard to the location of the security property;

(ii) Any loan on the security of a single-family dwelling—

(A) to the extent such loan exceeds the amount stated in paragraph (a)(1)(ii) of this section, or

(B) if the security property is located beyond the association's regular lending area;

(iii) Any loan secured by a home or combination of home and business property, or other dwelling units or a combination of other dwelling units, including homes, and business property involving only minor or incidental business use—

(A) to the extent the amount of such loan exceeds, for any dwelling unit in any such security property which is not a single-family dwelling, the amount prescribed in or under section 207(c)(3) of the National Housing Act; or

(B) if the security property is located beyond the association's regular lending area;

(iv) Any participation interest in any loan specified in this paragraph (1).

(2) *Participation 20-percent-of-assets category.* This category includes participation interests in loans

described in paragraphs (c)(1) (ii) and (iii) of this section.

(d) *Inclusion of REO in percentage limitations.* Any real estate security for an investment allocated to a percentage-limitation category under paragraph (b) or (c) of this section, or participation interest in such security, which the Federal association acquires by foreclosure or otherwise, shall be allocated to that percentage-limitation category until disposed of for cash. Any investment in an extension of credit in connection with disposition of such real estate shall also be allocated to such percentage-limitation category unless and until the extension of credit constitutes a loan investment specified in paragraph (a) of this section as free from allocation to percentage-limitation categories.

(e) *Records.* Each Federal association shall earmark all investments specified in paragraphs (b), (c), and (d) of this section, so that it can determine total investments allocable to any percentage-limitation category.

(f) *Compliance with Rules and Regulations for Insurance of Accounts.* Federal associations shall comply with provisions in subchapter D of this chapter regarding loans on the security of real estate.

§ 545.8-8 Appraisals.

A Federal association may make a loan secured by real estate only after a qualified person designated by its board has submitted a signed appraisal of the security property, except that an insured or guaranteed loan may be made on the basis of a valuation of the security property furnished to the association by the insuring or guaranteeing agency.

§ 545.8-9 Equalization of interest rates.

Any loan contract made under §§ 545.7-4, 545.7-6, or 545.6-12 (b) or (c) may provide for charging any time price differential or any interest (whether on an add-on, discount, gross charge, or other similar basis) permitted to be charged on the same type of loan by a building and loan, savings and loan, homestead association, cooperative bank, or mutual savings bank organized under the laws of the State, District, Commonwealth, territory, or possession in which the home office of the lending Federal association is located.

§ 545.8-10 Mortgage transactions with the Federal Home Loan Mortgage Corporation.

Without regard to any other provisions of this Part, a Federal association may enter into and perform any mortgage transaction with Federal Home Loan Mortgage Corporation specified in

section 305(a) of the Federal Home Loan Mortgage Corporation Act. For purposes of this section, the term "mortgage" shall have the meaning prescribed in section 302(d) of such Act.

§ 545.8-11 Gold transactions.

No Federal association shall engage in any transaction or activity involving gold (including gold coins) or gold-related instruments or securities.

Other Investments

11g. Sections 545.9 through 545.10 are revised to read as follows.

§ 545.9 Securities and other investments.

A Federal association may invest in:

(a) Assets which qualify as liquid assets, as defined in § 523.10(g) of this chapter, and assets, other than time deposits and bankers' acceptances, which would so qualify except for the maturity limitations in that paragraph;

(b) Obligations fully guaranteed as to principal and interest by the United States;

(c) Securities guaranteed by the Government National Mortgage Association under section 306(g) of the National Housing Act, as amended;

(d) Obligations of, or participations or other instruments fully guaranteed as to principal and interest by, the Federal Home Loan Mortgage Corporation;

(e) General obligations (without regard to investment-service rating) of any political subdivision of a State (including the District of Columbia, Puerto Rico, and the possessions of the United States) if the association's home office or a branch office is located in such political subdivision, and the association's aggregate investment in such obligations does not exceed 1 percent of its assets;

(f) The stock of a Federal Home Loan Bank and the Federal National Mortgage Association;

(g) Obligations or other instruments or securities of the Student Loan Marketing Association; and

* * * * *

§ 545.9-1 Service corporations.

(a) *Definitions.* As used in this section—

(1) "Aggregate outstanding investment" means the sum of amounts paid to acquire capital stock or securities and amounts invested in obligations of service corporations less amounts received from the sale of capital stock or securities of service corporations and amounts paid to the association to retire obligations of service corporations.

(2) "Conforming loans" means a loan or portion thereof which a Federal association may make under any provision of this Part other than this section, except loans made under §§ 545.6-12 (c) and (d). A guarantee or take-out commitment of a loan which could have been made by a Federal association as a conforming loan may be deemed a conforming loan for purposes of this section if the Federal association complies with all requirements of this chapter, including appraisal and recordkeeping requirements, as though it were itself making the loan subject to its guarantee or take-out commitment.

(3) "Consumer loan" means a loan to one or more individuals, unsecured or secured by goods used or bought primarily for personal, family, or household purposes.

(4) "Insured institution" has the meaning prescribed in § 561.1 of this chapter.

(5) "Joint venture" means any joint undertaking by a service corporation or a wholly-owned subsidiary thereof with one or more persons or legal entities in any form, including a joint tenancy, tenancy in common, or partnership and including investment in a corporation other than a wholly-owned subsidiary.

(6) "Scheduled items" and "specified assets" have the meanings prescribed in §§ 561.15 and 561.17 of this chapter.

(7) "Subsidiary" includes a wholly-owned subsidiary and any joint venture in which a service corporation or wholly-owned subsidiary thereof (i) owns, controls, or holds with power to vote more than 25 percent of the capital stock, (ii) is a general partner, or (iii) is a limited partner and has contributed more than 25 percent of the limited partnership's capital.

(8) "Unsecured debt" and "unsecured loan" exclude accounts payable incurred in the ordinary course of business and paid within 60 days.

(b) *General service corporations.* A Federal association may invest in the capital stock, obligations, or other securities of a service corporation organized under the laws of the State (including District, Commonwealth, territory, or possession) in which the association's home office is located if:

(1) The service corporation's entire capital stock is available for purchase, by and only by, any and all savings and loan associations with a home office in such State, and the capital stock is owned by more than one savings and loan association;

(2) No savings and loan association owns, or may own, more than 10 percent of the service corporation's outstanding capital stock, except that in any State in

which the home office of less than 15 savings and loan associations are located, no association owns, or may own, more than one-third of such stock.

(3) Every eligible association may own an equal amount of such stock or may, on such uniform basis as the corporation may determine, own an amount of such stock equally a stated percentage of its assets or savings capital at the time it purchases any such stock, but capital stock outstanding on December 31, 1964, may be disregarded in determining compliance with this requirement.

(4) Substantially all of the service corporation's activities, performed directly or through one or more wholly-owned subsidiaries or joint ventures, consist of one or more of the following:

(i) Originating, purchasing, selling, and servicing, any of the following:

(A) Loans, and participations in loans, on a prudent basis and secured by real estate or first liens on mobile homes, including brokerage and warehousing of such loans;

(B) Loans, with or without security, for altering, repairing, improving, equipping, or furnishing residential real estate;

(C) Educational loans; and

(D) Consumer loans;

(ii) Making any of the following kinds of investments:

(A) Investments specified in §§ 545.9 and 545.9-3; or

(B) Investments in savings accounts in an insured institution which is a stockholder in the service corporation, if the service corporation receives no consideration, other than interest at the current market rate, for opening or maintaining any such account;

(iii) Performing the following services, primarily for savings and loan associations:

(A) Clerical services, accounting, data processing, and internal auditing;

(B) Credit information, appraising, construction loan inspection, and abstracting;

(C) Developing and administration of personnel benefit programs, including life insurance, health insurance, and pension or retirement plans;

(D) Research, studies, and surveys;

(E) Purchasing office supplies, furniture, and equipment;

(F) Developing and operating storage facilities for microfilm or other duplicate records;

(G) Advertising and other services to procure and retain both savings accounts and loans;

(iv) Acquiring unimproved real estate for prompt development and subdivision, principally for construction of housing or for resale to others for such construction, or for use as mobile

home sites. However, if the total cost to the service corporation to purchase, develop, subdivide, and construct improvements on such real estate exceeds 20 percent of its assets, it shall notify the District Director—
Examinations in whose district its parent association is located within 30 days after such acquisition. Notification shall include the number of lots or acres involved and the project's name, location, estimated completion date, and total projected cost including dollar involvement of the service corporation.

(v) Developing, subdividing, and constructing improvements (including improvements to be used for commercial purposes, when incidental to a housing project) for sale or for rental on real estate referred to in paragraph (iv). However, such development, subdivision, and construction of improvements must be completed within three years after commencement of development of such real estate and within five years after acquisition of the real estate, unless such period is subsequently extended by the Board upon written application by the service corporation. Acquisition of an option to purchase is not an acquisition for the purpose of determining such period.

(vi) Acquiring improved residential real estate and mobile homes to be held for rental;

(vii) Acquiring improved residential real estate for remodeling, renovating, or demolishing and rebuilding for sale or for rental;

(viii) Maintaining and managing rental real estate referred to in paragraphs (v), (vi), and (vii) and any real estate owned by holders of its capital stock;

(ix) Serving as insurance broker or agent, primarily dealing in policies for savings and loan associations, their borrowers and accountholders, which provide protection such as homeowner's, fire, theft, automobile, life, health, accident, and title but excluding private mortgage insurance;

(x) Serving as escrow agent or as trustee under deeds of trust;

(xi) Preparing State and Federal tax returns for accountholders or borrowers from a stockholder of the service corporation (including their family members but not including an accountholder or borrower which is a corporation operated for profit);

(xii) Acquiring, maintaining, and managing real estate (improved or unimproved) to be used for offices and related facilities of a stockholder of the service corporation, or for such offices and related facilities and for rental or sale, if such acquisition, maintenance and management is performed under a

prudent program of property acquisition to meet either the stockholder's present needs or reasonable future needs for office and related facilities. However, without prior approval of the Board, no service corporation shall acquire such real estate if, as a result of the acquisition, the outstanding aggregate book value of all such real estate owned by the stockholder and its service corporations would exceed their consolidated net worth;

(xiii) Activities reasonably incident to those listed in paragraphs (i) through (xii); and

(xiv) Such other activities reasonably related to the activities of Federal associations as the Board may approve.

(c) *Other service corporations.* In addition to investment in service corporations under paragraph (b), a Federal association may invest in the capital stock, or other securities of a service corporation organized under the laws of the State in which the home office of the association is located if:

(1) The corporation's entire capital stock is held by one or more savings and loan associations with a home office in such State;

(2) The activities of such corporation, performed directly or through one or more wholly-owned subsidiaries or joint ventures, consist solely of one or more of the activities specified in paragraphs (i) through (xiii) of paragraph (b)(4) of this section, and such other activities reasonably related to the activities of a Federal association as the Board may approve;

(3) In the case of a corporation in which fewer than 5 savings and loan associations hold capital stock or one association holds more than 40 percent of such stock, the following requirements are met:

(i) The corporation, including any subsidiary, does not have outstanding at any time consolidated debt (to holders of its capital stock and to others) exceeding the following limitations:

(A) *Unsecured debt*—2 times the total of its consolidated net worth plus unsecured debt to holders of at least 25 percent of its capital stock;

(B) *Secured and unsecured debt*—10 times the total of its consolidated net worth plus unsecured debt to such stockholders; or if the corporation, including any subsidiary thereof, is engaged solely in activities specified in paragraph (b)(4)(i)(A) of this section, 20 times such total;

(C) Secured debt will be deemed unsecured for purposes of this paragraph (c)(3)(i) to the extent that it exceeds the market value of any security therefor at the time the loan is

made. The term secured debt as used in this paragraph (i) shall include the entire amount of any obligation of the service corporation resulting from sale of consumer loans with recourse.

(D) The debt of each subsidiary of the corporation shall also conform to the debt limitations in the paragraph.

(ii) Board approval is obtained before any activity of the service corporation is performed through one or more joint ventures if a director, officer, or controlling person of any stockholder of the service corporation has direct or indirect beneficial interest in the joint venture.

(iii) Board approval is obtained for any investment

(A) by a Federal association in such a service corporation or in a corporation which will become such a service corporation as a result of such investment, and

(B) by such service corporation directly or indirectly through one or more of its wholly-owned subsidiaries or joint ventures

if the purpose of such investment is to acquire a going business for an amount exceeding the fair market value of the tangible net assets of that business from a director or officer of a Federal association which owns any of the capital stock of the service corporation or from an entity in which a director or officer of the Federal association has a direct or indirect beneficial interest or is a director, officer, controlling person, partner, or trustee.

(d) *Amount of investment.* (1) Except as provided in paragraphs (d) (2) and (3), a Federal association shall not make any investment under this section if its aggregate outstanding investment in the capital stock, obligations, or other securities of service corporations would thereupon exceed 1 percent of assets. Such limitation shall include all loans, secured and unsecured, and all guarantees or takeout commitments of such loans, to service corporations, or any subsidiaries thereof, and to joint ventures of such service corporations or subsidiaries, whether or not such Federal association is a stockholder therein.

(2) In addition to amounts which it may invest under paragraph (d)(1), an association which has a net worth of at least 5 percent of withdrawable accounts and which has a ratio of scheduled items (other than assets acquired in a merger instituted for supervisory reasons) to specified assets of not more than 2.5 percent (except as provided in paragraph (d)(4)) may loan additional amounts as follows:

(i) An aggregate outstanding amount not to exceed 20 percent of the association's net worth may be invested in conforming loans made to service corporations, or subsidiaries thereof, and to joint ventures of such service corporations and subsidiaries; and

(ii) An aggregate outstanding amount, including loans included in paragraph (d)(2)(i), not to exceed 50 percent of such Federal association's net worth may be invested in conforming loans made to a service corporation of which the association owns or holds with power to vote not more than 10 percent of the capital stock or to a joint venture in which service corporations in which the association is a stockholder, including subsidiaries of such service corporations, (A) own or hold with power to vote not more than a total of 10 percent of the capital stock, or (B) are limited partners and have contributed not more than 10 percent of such joint venture's capital.

(3) The limitation in paragraph (d)(1) does not apply to conforming loans to a service corporation which qualifies under paragraph (b) of this section or to any service corporation in which the lending association does not have any investment made under authority of this section.

(4) A Federal association whose net worth equals at least 5 percent of withdrawable accounts may apply to the Board for an exception from the scheduled items limitation in paragraph (d)(2) of this section. The application shall be supported by information evidencing the association's sound investment, lending, appraisal, and underwriting policies and favorable operating results. The application shall be filed with the Principal Supervisory Agent with a copy to the Director, Office of District Banks. The application is approved if, within 30 calendar days after the date the Principal Supervisory Agent receives it, he has not notified the applicant that approval is withheld. If approval is withheld, the Principal Supervisory Agent shall promptly cause the application to be submitted to the Board for its decision. The Principal Supervisory Agent may request additional information from the applicant, but need not consider such additional information received less than 5 calendar days before the end of the 30-day period.

(e) *Examination.* A Federal association may invest in the capital stock, obligations, or other securities of a service corporation only if the service corporation has executed and filed with the Supervisory Agent a written

agreement, in form prescribed by the Board, that:

(1) If the service corporation is described in paragraph (b) of this section, it will permit and pay the cost of examination of it by the Board to determine the propriety of any investment by a Federal association under this section; and

(2) If the service corporation is described in paragraph (c) of this section, it will, if it does not meet the requirements of § 545.14-3, permit and pay the cost of such examination and/or audit by the Board as the Board deems necessary.

(f) *Disposal of investment.* Whenever a service corporation, including any subsidiary thereof, engages in an activity which is not permissible for, or exceeds limitations on, a service corporation in which a Federal association may invest, or whenever the capital stock ownership requirements of this section are not met, a Federal association having an interest in the corporation, including any subsidiary thereof, shall dispose of its investment promptly unless, within 90 days after the Board mails written notice to the association, the impermissible activity is discontinued, the limitation is complied with, or the capital stock ownership requirements are met.

(g) *Corporate name.* No Federal association may invest in, or retain any investment in, the capital stock, obligations, or other securities of any service corporation whose corporate name or the designation of whose subsidiary or office (1) includes the words "National", "Federal", or "United States" or the initials "U.S." or (2) could identify it with any insured institution which has not invested in it.

(h) *Applications.* Any application made to the Board under this section shall be in form it prescribes and filed with the Supervisory Agent. One or more Federal associations which propose investment in a service corporation which is not yet organized may make any application required by this section.

(i) *Revision of specified activities and limitations.* Activities and limitations specified in this section may be revised from time to time.

(j) *Limitation on activities.* Service corporations in which Federal associations may invest shall not be used to acquire scheduled items from an insured institution, except that such a service corporation may, for the purpose of providing housing, acquire real estate owned by an insured institution.

§ 545.9-2 Prohibition against investment in other institutions.

No Federal association shall invest in a savings account (i.e., any withdrawable monetary investment) in any savings and loan, building and loan, or homestead association, cooperative bank, or savings bank.

§ 545.9-3 Investments in corporations and partnerships authorized by title IX of the Housing and Urban Development Act of 1968.

Without regard to any other provisions of this Part, a Federal association may invest an aggregate amount not exceeding 1 percent of its assets in:

(a) Shares of stock issued by the National Corporation for Housing Partnerships or by any other corporation created under title IX of the Housing and Urban Development Act of 1968;

(b) Limited partnership interests in the National Housing Partnership or in any other limited partnership formed under section 907(a) of that Act; and

(c) Any partnership, limited partnership, or joint venture formed under section 907(c) of that Act.

§ 545.10 Real estate for office and related facilities.

(a) *General.* A Federal association may invest in real estate (improved or unimproved) to be used for office and related facilities of the association, or for such office and related facilities and for rental, or sale, if such investment is made and maintained under a prudent program of property acquisition to meet the association's present needs or its reasonable future needs for office and related facilities. The association shall obtain Board approval before making an investment which would cause the outstanding aggregate book value of all such investments (including investments under § 545.9-1(b)(4)(xii)) to exceed its net worth. The association shall also obtain Board approval before investing in real estate which the Board has not approved for the establishment or maintenance of an office facility, if the investment, together with the association's other investments in real estate lacking such approval, would exceed 25 percent of its net worth.

(b) *Requests for Board approval of exceptions.* An association shall send requests for Board approval of exceptions to limitations in this section to the Supervisory Agent, with a copy to the Director, Office of District Banks.

§§ 545.11, 545.11-1 and 545.12 [Removed]

12. Delete §§ 545.11, 545.11-1, and 545.12, as follows:

§ 545.11 [Deleted], effective August 3, 1979.

§ 545.11-1 [Deleted], effective August 3, 1979.

§ 545.12 [Deleted], effective August 3, 1979.

13. Revise § 545.13 to read as follows:

Offices

§ 545.13 Home office.

All operations of a Federal association shall be subject to direction from the home office.

14. Substitute new center heading "POWERS AND DUTIES" for the heading "FISCAL AGENCY". Revise §§ 545.17 and 545.17-1, including the captions to read as follows:

Powers and Duties

§ 545.17 Fiscal agency.

A Federal association designated fiscal agent by the Secretary of the Treasury or, with Board approval by another instrumentality of the United States, shall, as such, perform such reasonable duties and exercise only such powers and privileges as the Secretary of the Treasury or such instrumentality may prescribe.

§ 545.17-1 Trustee.

A Federal association may act (a) as trustee of any trust created or organized in the United States and forming part of a stock bonus, pension, or profit sharing plan qualifying for specific tax treatment under section 401(d) of the Internal Revenue Code of 1954, and (b) as trustee or custodian of an individual retirement account within the meaning of section 408(a) of the Code, if the funds of the trust or account are invested only in the association's savings accounts or deposits or its obligations or securities. The association may receive reasonable compensation for acting in any such capacity.

14a. Substitute the Center heading "ACCOUNTING, RECORDS AND REPORTS" for the heading "BOOK VALUE OF ASSETS". Revise § 545.18, including the caption, and § 545.19 to read as follows:

Accounting, Records, and Reports

§ 545.18 Adjustments to book value of assets.

If the Supervisory Agent determines that an asset's stated book value exceeds its value or that documentation in the association's loan file is inadequate to demonstrate that an investment made under §§ 545.6-12 (c) or (d) is sound, the Supervisory Agent may require the association to immediately charge off the asset or

establish and maintain a special reserve(s) equalling the over-valuation.

§ 545.19 Real estate owned.

A Federal association may not carry real estate on its books for a sum in excess of the total amount invested by the association on account of such real estate, including advances, costs, and improvements, but excluding accrued but uncollected interest.

15. Revise §§ 545.20-545.26 to read as follows:

§ 545.20 Accounting; records.

(a) *Accounting practices.* Each Federal association shall use such forms and follow such accounting practices as the Board may require, and shall close its books at least annually as of the end of such month(s) as the association's board of directors may designate. The date of the association's annual closing shall be not less than 15 days or more than 3 months and 15 days before its annual meeting.

(b) *Maintenance of records.* An association shall maintain a complete record of its business transactions and maintain at its home office, or at a branch or service office located within 100 miles of the home office, all general accounting records including control records, of its business transactions. The association may not transfer the general accounting or control records or the maintenance thereof from any of its offices to another, unless its board of directors has (1) by resolution authorized the transfer or maintenance and (2) sent a certified copy of the resolution to the District Director-Examinations of its district. An association which determines to maintain any of its records by means of data processing services shall so notify the District Director-Examinations, in writing, at least 90 days before such maintenance will begin. Notification shall include identification of the records and the location at which they will be maintained. Any contract, agreement, or arrangement under which data processing services are to be performed shall expressly provide that the records maintained by such services shall at all times be available for examination and audit.

§ 545.21 [Reserved]

§ 545.22 Monthly reports.

A Federal association's officers shall make a monthly report to the association's board of directors on forms prescribed by the Board and available from any Bank. The association shall send a copy of the

report to its district Bank and two copies to the Board.

§ 545.23 Statement of condition.

Within the month after the annual closing of a Federal association's books, the association shall mail to all of its members, or if it is a Charter S association to all of its depositors and borrowers, at their last address appearing on the association's books, or publish in an English-language newspaper of general circulation in the county in which the association's home office is located, a statement of the association's condition as of such closing, on forms prescribed by the Board and available from any Bank or from the Board. Within 5 days after mailing or publishing the statement, the association shall send a certification to that effect signed by one of its executive officers, and a copy of the statement, to its Bank. This section shall not apply in a year in which the association sends to its voting members an annual report as required by § 563.45(a) of this chapter.

Borrowing, Issuing Obligations, and Giving Security

§ 545.24 Borrowing, issuing obligations, and giving security.

An association may borrow as its charter permits or as the Board authorizes in writing. It may issue notes, bonds, debentures, or other obligations, or other securities (except capital stock) to the extent that (a) issuance is in compliance with § 563.8-1 or § 563.8-2 of this chapter, (b) issuance is authorized by the Board in writing, or (c) except for subordinated debt securities (as defined in § 561.24 of this chapter), that it could if section 5(b)(2) of the Act had not been enacted. To the extent authorized by its charter or by the Board, in writing, an association may give security, but it may not give security for any of its shares or share accounts or for any of its savings accounts representing share interests in the association except as provided in § 545.24-2.

§ 545.24a Borrowing from a State-chartered central reserve institution.

An association which has amended its charter under § 544.2(d) may borrow from a State-chartered central reserve institution, including a State mortgage finance agency, if:

(a) The association's general reserves, surplus, and undivided profits aggregate over 5 percent of its withdrawable accounts;

(b) The reserve institution is located in the state where the association's home office is located;

(c) The amount borrowed does not exceed the amount a State-chartered savings and loan in that State could borrow from that institution;

(d) The association does not use the loan proceeds to make loans at an interest rate exceeding by one and three-quarters percent per year the interest rate paid for the borrowed funds; and

(e) The association maintains any documentation required by the state regarding use of the loan proceeds or other matters.

§ 545.24-1 Issuance of GNMA-guaranteed mortgage backed securities.

Without regard to any other provision of this Part, a Federal association may, in accordance with regulations prescribed by the Government National Mortgage Association (GNMA) in 24 CFR Part 1665, Subpart A:

(a) Issue and sell trust certificates or other securities (1) backed by a trust or pool composed of mortgages insured under the National Housing Act or title V of the Housing Act of 1949 or insured or guaranteed under the Servicemen's Readjustment Act of 1944 or chapter 37 of title 38, United States Code, and (2) guaranteed as to principal and interest by GNMA under section 306(g) of the National Housing Act; and

(b) Do all things necessary and proper for carrying out such issuance and sale.

§ 545.24-2 Public deposits or investments.

(a) *Definitions.* As used in this section—

(1) "Moneys" includes "monies" and has the meaning it has in applicable State law;

(2) "State law" includes actions by a governmental body which has a charter adopted under the constitution of the State with provisions respecting deposits of public money of that body;

(3) "Surety" means surety under real and/or personal suretyship, and includes guarantor; and

(4) Terms in paragraph (b) of this section have the meanings they have in applicable State law.

(b) *Suretyship under State law.* (1) If Federal or State law requires, as an alternative condition or otherwise, that an association give bond or security for deposit in it of public moneys or investment in it by a governmental unit, a Federal association which is a deposit association may, regardless of the amount the State law requires, give bond or security.

(2) If State law requires as a condition of such deposit or investment that the association or its bond or security, or

any combination thereof, be surety for or with respect to other deposits or instruments, whether of that depositor or investor or of any other(s), and whether in the association or in any other institution(s) having, when the investments or deposits were made, insurance by the Federal Savings and Loan Insurance Corporation, the same shall become, or if the State law is self-executing shall be, such surety.

(3) Any bond or security may be given and any substitution or increase thereof may be made under this section at any time.

(4) This subsection applies notwithstanding the last sentence of § 545.24 and the extension of that prohibition in § 545.1-2(e).

(c) *Additional suretyship.* An association may also be surety to the extent that (1) it could have been surety if section 5(b) of the Act had not been amended by section 101(e) of Public Law 93-495, and (2) the Board otherwise authorizes in writing or by regulation.

§ 545.24-3 Tax and loan depositories.

Subject to regulation of the U.S. Treasury Department, Federal associations may serve as depositories for Federal taxes or as Treasury tax and loan depositories, and satisfy any requirement in connection therewith, including maintaining accounts described in §§ 526.1 (n) and (o) of this chapter, and pledging collateral.

Indemnification of Association Personnel

§ 545.25 Indemnification of directors, officers, and employees.

A Federal association shall indemnify its directors, officers, and employees in accordance with the requirements in § 522.72 of this chapter regarding indemnification of persons by Banks. In applying that section "Federal association" shall be read for "Bank" and "Supervisory Agent" shall be read for "Secretary". In addition the following sentence shall be added at the end of paragraph (f): "However, a Federal association which has a bylaw in effect relating to indemnification of its personnel shall be governed solely by that bylaw, except that its authority to obtain insurance shall be governed by paragraph (d) of this section."

§ 545.25-1 Employment contracts.

(a) *General.* A Federal association with bylaws amended under § 544.6(k) or a Charter S association may, upon specific approval of its board of directors, enter into employment contracts with its officers, in accordance with this section.

(b) *Limitations as to terms.* An employment contract may be made for a term exceeding one year only as provided in this paragraph (b). An employment contract may be for an initial term up to three years if it (1) is made in connection with a conversion of the association under Part 563b of this chapter; (2) is made or assumed in connection with a merger, purchase of bulk assets, or similar transaction by the resulting association (as defined in § 546.1 of this subchapter) with a person who, immediately prior to the transaction, was an officer of the association being acquired and, immediately after the transaction, will be an officer of the resulting association; or (3) is made between a Federal association and a new officer who is not a close relative of an officer or director of the association. A person who has served as a director, officer, or employee of the association or its predecessor during any part of the preceding 12 month period is not a new officer. In paragraph (b)(3) a "close relative" means a person who by blood, marriage, or adoption is a father, mother, brother, sister, son, daughter, or spouse of such an officer or director, or of his or her spouse.

(2) An employment contract may provide for renewal at the association's option when the initial term or a renewal term expires, but no renewal term shall exceed one year.

(c) *Required provisions.* Each employment contract shall provide that:

(1) The association's board of directors may terminate the officer's employment at any time, but any termination other than termination for cause, shall not prejudice the officer's right to compensation or other benefits under the contract;

(2) The officer shall have no right to receive compensation or other benefits for any period after termination for cause (i.e. Termination because of the officer's personal dishonesty, incompetence, willful misconduct, breach of fiduciary duty involving personal profit, intentional failure to perform stated duties, willful violation of any law, rule, or regulation (other than traffic violations or similar offenses) or final cease-and-desist order, or material breach of any provision of the contract).

(3) If the officer is suspended from office and/or temporarily prohibited from participating in the conduct of the association's affairs by a notice served under § 566.4 or § 566.5 of this chapter, the association's obligations under the contract shall be suspended as of the date of service, unless stayed by

appropriate proceedings. If the charges in the notice are dismissed, the association may in its discretion (i) pay the officer all or part of the compensation withheld while its contract obligations were suspended and (ii) reinstate (in whole or in part) any of its obligations which were suspended.

(4) If the officer is removed from office and/or permanently prohibited from participating in the conduct of the association's affairs by an order issued under § 566.3 or § 566.5 of this chapter, all obligations of the association under the contract shall terminate, as of the effective date of the order, but vested rights of the contracting parties shall not be affected.

(5) If the association is in default (as defined in section 401(d) of the National Housing Act), all obligations under the contract shall terminate as of the date of default, but this paragraph (c)(5) shall not affect any vested rights of the contracting parties.

(d) *Contracts with other entities or persons.* An officer shall have no employment contract or other written or oral agreement concerning employment as an officer of the association with any entity or person other than the association.

§ 545.26 Advisory boards or committee.

A Federal association's board of directors may establish one or more advisory boards of directors or advisory committees to advise the association as the board of directors may authorize. Each member of such a board or committee shall be appointed by the board of directors on a year-to-year basis. Such members may be permitted to attend meetings of the board of directors, but they shall have no vote on matters acted upon by the board of directors.

15a. Add the following center heading before § 545.27, and revise § 545.27 to read as follows:

Corporate Opportunity Involving Insurance Agencies

§ 545.27 Referral of insurance business.

(a) For purposes of this section the terms "owned" and "referral" have the meanings prescribed in §§ 555.17(a) (1) and (2) of this subchapter.

(b) No Federal association shall refer any insurance business to an agency owned by officers or directors of the association, or by persons having power to direct its management, unless:

(1) A specific State statute or regulation precludes Federal associations' service corporations (or

wholly-owned subsidiaries thereof) from engaging in the insurance business;

(2) The association, after filing any necessary applications and making a bona fide attempt to obtain any necessary approval (with or without instituting legal proceedings against State officials to compel approval) has been denied permission by the appropriate State licensing or regulatory authorities for its service corporation, or a wholly-owned subsidiary thereof, to engage in the insurance business;

(3) Such State authorities follow an established and well-known policy of refusing to accept or approve such applications (the association need not demonstrate existence of such a policy by instituting legal proceedings against such authorities to compel approval);

(4) The referral takes place within a reasonable period of time (not exceeding 18 months) after a change in such State law, regulation, or policy for the association to investigate the feasibility and desirability of acquiring or establishing its own service corporation insurance business; or

(5) An application for permission to establish or acquire a service corporation insurance business is on file with the appropriate State agencies and/or the Board.

15b. Add the following center heading before § 545.28 and revise § 545.28 to read as follows:

Annual Meetings of Members

§ 545.28 Communication between members of a Federal mutual association.

(a) *Disclosure of membership lists prohibited.* (1) As used in this section, "membership list" means any document of the association containing: (i) A list of members of the association, (ii) their addresses; (iii) their savings account or loan balances or records; or (iv) any data from which that information reasonably could be constructed.

(2) Federal mutual associations may not disclose in any manner, directly or indirectly, their membership lists to any person (other than officers of the association, or others employed by them, in the usual course of conducting the association's business) except with prior written approval of the Board.

(3) The Supervisory Agent may approve or disapprove requests made under paragraph (a)(2) of this section, and may specify terms and conditions of approval.

(b) *Right of inspection of member's own records.* A member of a Federal mutual association has the right to inspect the association's books and records pertaining solely to the

member's own savings- or borrowing account(s).

(c) *Right of communication with other members.* A member of a Federal mutual association has the right to communicate, as prescribed in paragraph (d) of this section, with other members of the association regarding any matter related to the association's affairs, except for "improper" communications, as defined in paragraph (e). The association may not defeat that right by redeeming a savings member's savings account in the association.

(d) *Member communication procedures.* If a member of a Federal mutual association desires to communicate with other members, the following procedures shall be followed:

(1) The member shall give the association a written request to communicate;

(2) If the proposed communication is in connection with a meeting of the association's members, the request shall be given at least 30 days before the annual meeting or 10 days before a special meeting;

(3) The request shall contain—

(i) The member's full name and address;

(ii) The nature and extent of the member's interest in the association at the time the information is given;

(iii) A copy of the proposed communication; and

(iv) If the communication is in connection with a meeting of the members, the date of the meeting;

(4) The association shall reply to the request within either—

(i) 14 days;

(ii) 10 days, if the communication is in connection with the annual meeting; or

(iii) 3 days, if the communication is in connection with a special meeting;

(5) The reply shall provide either—

(i) The number of the association's members and the estimated reasonable cost to the association of mailing to them the proposed communication; or

(ii) Notification that the association has determined not to mail the communication because it is "improper", as defined in paragraph (e) of this section;

(6) After receiving the amount of the estimated costs of mailing and sufficient copies of the communication, the association shall mail the communication to all members, by a class of mail specified by the requesting member, either—

(i) Within 14 days;

(ii) Within 7 days, if the communication is in connection with the annual meeting;

(iii) As soon as practicable before the meeting, if the communication is in connection with a special meeting; or

(iv) On a later date specified by the member.

(7) If the association refuses to mail the proposed communication, it shall return the requesting member's materials together with a written statement of the specific reasons for refusal, and shall simultaneously send to the Supervisory Agent 2 copies each of the requesting member's materials, the association's written statement, and any other relevant material. The materials shall be sent within (i) 14 days, (ii) 10 days, if the communication is in connection with the annual meeting, or (iii) 3 days, if the communication is in connection with a special meeting, after the association receives the request for communication.

(e) *Improper communication.* A communication is an "improper communication" if it contains material which: (1) at the time and in the light of the circumstances under which it is made (i) is false or misleading with respect to any material fact or (ii) omits a material fact necessary to make the statements therein not false or misleading, or necessary to correct a statement in an earlier communication on the same subject which has become false or misleading; (2) relates to a personal claim or a personal grievance, or is solicitous of personal gain or business advantage by or on behalf of any party; (3) relates to any matter, including a general economic, political, racial, religious, social, or similar cause, that is not significantly related to the business of the association or is not within the control of the association; or (4) directly or indirectly and without expressed factual foundation (i) impugns character, integrity, or personal reputation, (ii) makes charges concerning improper, illegal, or immoral conduct, or (iii) makes statements impugning the stability and soundness of the association.

15c. Add the following center heading before § 545.29 and revise § 545.29 to read as follows:

Mortgage Futures

§ 545.29 Mortgage-futures transactions.

(a) *Definitions.* (1) *Due bill.* An instrument redeemable for GNMA-guaranteed mortgage-backed securities which is a valid delivery instrument under a mortgage-futures contract.

(2) *Firm commitment.* A written commitment to make, purchase, issue, or deliver mortgage loans or mortgage-related securities at fixed interest rates

on or before the date specified in the commitment.

(3) *Mortgage-futures contract.* A transferable agreement to receive or deliver GNMA-guaranteed mortgage-backed securities or due bills under terms and conditions approved by the Commodity Futures Trading Commission.

(4) *Mortgage-futures transaction.* Purchase or sale of a mortgage-futures contract under terms and conditions approved by the Commodity Futures Trading Commission.

(5) *Mortgage-related securities.* Includes GNMA-guaranteed mortgage-backed securities (as referred to in § 545.24-1), Mortgage Participation Certificates of the Federal Home Loan Mortgage Corporation, and similar obligations secured by mortgages in which the association is authorized to invest;

(6) *Mortgage repayment.* Includes principal and interest, but excludes expected prepayments and penalties.

(b) *General rule.* A Federal association may only engage in mortgage-futures transactions subject to the requirements and limitations in this section.

(c) *Eligibility requirements.* An association engaging in a mortgage-futures transaction must meet the following requirements at the time of the transaction, unless the Board waives any requirement(s) upon specific written request:

(1) Its net worth meets the requirements of § 563.13(b) of this chapter (an association insured less than 2 years must meet the net-worth requirements for those insured for 2 years);

(2) Its scheduled items do not exceed 2.5 percent of its specified assets; and

(3) All its appraised losses have been offset by specific loss reserves to the extent required by the Board under § 563.17-2 of this chapter.

(d) *Investment limitations.* (1) An association may only engage in a mortgage-futures transaction if the amount of its total outstanding gross mortgage-futures position (the arithmetic sum of its short and long positions in the futures market) does not exceed its net worth or would not exceed it as a result of the transaction; and

(2) Mortgage-futures transactions must be directly matched against an association's firm commitments, or against anticipated reinvestments in mortgages and mortgage-related securities of its expected repayments over the forthcoming 12-month period. However, such matching need not include matching of maturities.

(e) *Record-keeping requirements.* An association engaging in mortgage-futures transactions shall maintain the following:

(1) A register of all its outstanding futures contracts, including brokers' confirmations as received, prepared in a manner sufficient to enable the Board to determine at any time the association's total outstanding gross mortgage-futures position;

(2) A record of specific futures contracts, the present or anticipated cash market transaction(s) against which they are matched, and in the case of an anticipated transaction a statement of facts adequately justifying the anticipated transaction;

(3) A record of all transactions by the association in due bills;

(4) A list of all association personnel authorized to engage in mortgage-futures transactions in its behalf, and the duties, responsibilities, and limits of authority of each of them.

(f) *Notification.* When an association first engages in mortgage-futures transactions it shall notify the District Director—Examinations of its Bank district and shall thereafter, on a quarterly basis, notify the Director of its total outstanding gross mortgage-futures position on the date of notification.

(g) *Due bills.* An association may originate, deliver, receive, or redeem due bills in connection with its mortgage-futures transactions.

16. Revise Parts 546-549 to read as follows:

PART 546—MERGER, DISSOLUTION, REORGANIZATION, AND CONVERSION

Sec.	
546.1	Definitions.
546.2	Procedure; effective date.
546.3	Transfer of assets upon merger.
546.4	Voluntary dissolution.
546.5	Conversion from Federal mutual to State-charter mutual.

Authority: Secs. 5, 406, 48 Stat. 132, as amended, 1259, as amended; 12 U.S.C. 1464, 1729, Reorg. Plan No. 3 of 1947; 3 CFR, 1943-1948 Comp.

§ 546.1 Definitions.

As used in §§ 546.2 and 546.3—

(a) "Association" means a Federal association, and any building and loan, savings and loan, or homestead association, or cooperative bank organized under the laws of any State which may, under those laws, merge or consolidate with a Federal association;

(b) "Merging association" means an association absorbed by merger; and

(c) "Resulting association" means the association whose corporate existence

continues after absorbing a merging association.

§ 546.2 Procedure; effective date.

(a) A Federal association and one or more or other associations insured by the Federal Savings and Loan Insurance Corporation may merge as prescribed in this Part if as to any such association which is not a Federal association the merger is in accordance with the laws of the jurisdiction in which the association was organized.

(b) Each association, by a two-thirds vote of its board of directors, shall approve a plan of merger evidenced by a merger agreement. The agreement shall state that it is effective only when approved by the Board and shall specify (1) which association will be the resulting association; (2) the name it will use; (3) the location of its home office and branch offices; (4) the bases on which its savings accounts will be issued; and (5) the number of its directors and their names, addresses, and the length of their terms.

(c) Board approval for the merger shall be requested by filing with the resulting member's Bank two copies of the merger agreement, properly executed in the name of the respective associations, and two certified copies of the portions of the minutes of the boards of directors of the respective associations relating to their consideration and approval of the plan of merger. When the Board receives the request, it will approve the merger, disapprove it, or withhold action and recommend modification of the plan. If the boards of directors of the associations accept the recommended modifications, they shall amend the agreement accordingly and submit it as the original agreement was submitted. An applicant shall also comply with section 7A of the Clayton Act (15 U.S.C. § 18A) and regulations issued thereunder (16 CFR Parts 801, 802, and 803).

(d)(1) Processing of an application under this Part shall follow the procedures set forth in §§ 543.2 (c), (d), (e), and (f) of this subchapter, except that (i) the required newspaper publication of notice of application shall be made in the communities in which the home offices of the merging and resulting institutions are located; and (ii) applicants may additionally mail such notice to the voting members of each such institution, within the time specified in § 543.2(d).

(2) This paragraph (d) does not apply to mergers authorized by the Board to be instituted for supervisory reasons.

(e) Notwithstanding any other provision of this Part, the Board may require that a plan of merger be submitted to the voting members of any of the associations at a duly called meeting(s) and that the plan, to be effective, be approved by them.

(f) A conservator or receiver for an association appointed under Part 547 of this subchapter may merge the association with another under §§ 546.2 and 546.3 without submitting the plan to the association's board of directors or members for their approval.

(g) If a plan of merger provides for the resulting association's name or location to be changed, and it is a Federal association, its charter shall be amended accordingly. If the resulting association is a Federal association, the effective date of merger shall be the date the Board approves merger, unless another date is specified in the approval; if the resulting association is not a Federal association, the effective date shall be that prescribed by the State law under which the resulting association was created. Approval of a merger automatically cancels the Federal charter of each of the merging Federal associations as of the effective date of merger and those associations shall, on that date, surrender their charters to the Board.

(h) The Principal Supervisory Agent may give Board approval (including recommending modification of a plan of merger) required by paragraph (c) of this section, if the following conditions are met:

(1) The merging association, if insured has assets less than \$10,000,000, and if uninsured has assets less than \$5,000,000;

(2) The resulting association would have assets less than \$40,000,000;

(3) In any county (or similar political subdivision) in which both associations have offices, the resulting association would (i) hold less than 15 percent of total savings accounts (including savings accounts of under \$100,000 held by commercial banks) of financial institutions and (ii) would, based on mortgage recordings data or other available evidence, account for less than 15 percent of the total residential mortgage loans made;

(4) The merging association's net worth to savings ratio is at least 5 percent;

(5) The resulting association would have an adequate net worth to savings ratio not less than 5 percent;

(6) Compensation to an officer, director, or controlling person of the merging association by the resulting association or its service corporation

affiliate would not exceed the amount paid before commencement of merger negotiations by more than 15 percent or \$5,000, whichever is greater; and

(7) Any proposed advisory director fee would not exceed the fee received as a director of the disappearing association or \$50 per monthly meeting attended, whichever is greater.

If the Principal Supervisory Agent's modifications are not accepted by the directors of all associations, and if all associations request it, the Principal Supervisory Agent shall submit the merger application to the Board.

In approving a merger under this paragraph (h), the Principal Supervisory Agent may approve maintenance of an office of the merging association as a facility of the resulting Federal association and may approve an application for insurance of accounts and Bank membership filed by an uninsured association merging into a Federal association. Only the Board may disapprove a merger application.

§ 546.3 Transfer of assets upon merger.

On the effective date of a merger in which the resulting association is a Federal association, all assets and property of the merging associations shall immediately, without any further act, become the property of the resulting association to the same extent as they were the property of the merging associations, and the resulting association shall be a continuation of the entity which absorbed the merging associations. All rights and obligations of the merging association shall remain unimpaired, and the resulting association shall, on the effective date of merger, succeed to all those rights and obligations.

§ 546.4 Voluntary dissolution.

A Federal association's board of directors may propose a plan for dissolution of the association. The plan may provide for either (a) appointment of the Federal Savings and Loan Insurance Corporation (under section 5 of the Act and section 406 of the National Housing Act, as amended) as receiver for the purpose of liquidation; (b) transfer of all the association's assets to another thrift and home-financing institution under Federal or State charter either for cash sufficient to pay all obligations of the association and retire all outstanding accounts or in exchange for that institution's payment of all the association's outstanding obligations and issuance of share accounts or other evidence of interest to the association's members on a pro rata basis; or (c) dissolution in a manner

proposed by the directors which they consider best for all concerned. The plan, and a statement of reasons for proposing dissolution and for proposing the plan, shall be submitted to the Board for approval. The Board will approve the plan if it believes dissolution is advisable and the plan best for all concerned, but if it considers the plan inadvisable, it may either make recommendations to the association concerning the plan or disapprove it. When the plan is approved by the association's board of directors and by the Board, it shall be submitted to the association's members at a duly called meeting and, when approved by a majority of votes cast at that meeting shall become effective. After dissolution in accordance with the plan, a certificate evidencing dissolution, supported by such evidence as the Board may require, shall immediately be filed with the Board. When the Board receives such evidence satisfactory to it, it will terminate the corporate existence of the dissolved association and the association's charter shall thereby be cancelled.

§ 546.5 Conversion from Federal mutual to State-charter mutual.

Approval of a conversion under the last paragraph of section 5(i) of the Act is subject to the following requirements:

(a) The association's board of directors shall submit a written plan for Board approval, and in considering it the Board may give consideration to any element of good-will value;

(b) The Board may prescribe substantive or procedural requirements it considers necessary or proper to insure that the plan is fair to the association and its members;

(c) After submitting the plan to the Board, the association shall, using forms of notice and proxy soliciting material authorized by the Board's Office of General Counsel, give formal notice of a special meeting called to vote on the plan; notice shall be mailed, postage prepaid, at least 15 and not more than 45 days before the meeting, and shall state the terms of the plan, the member's rights, and any other matters the Board may require;

(d) The plan shall be approved by a vote of at least a majority of total votes eligible to be cast by members at the meeting;

(e) All requirements of State law shall be satisfied.

PART 547—APPOINTMENT OF CONSERVATORS AND RECEIVERS

Sec.

- 547.1 Grounds for appointment of conservator or receiver.
- 547.2 Appointment of conservator or receiver.
- 547.3 Appointment on other grounds.
- 547.4 Notice of appointment.
- 547.5 Removal of conservator or receiver.
- 547.6 Federal Savings and Loan Insurance Corporation as receiver.
- 547.7 Possession by conservator or receiver.
- 547.8 Surrender of possession by conservator or receiver.

Authority.—Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464, Reorg. Plan No. 3 of 1947; 3 CFR 1943–1948 Comp.

§ 547.1 Grounds for appointment of conservator or receiver.

(a) The following are grounds for appointing a conservator or receiver for a Federal association:

(1) The association's assets are less than its obligations to others, including its members;

(2) Its assets or earnings are substantially dissipated due to violation(s) of law, rules, or regulations or to unsafe or unsound practice(s);

(3) It is in an unsafe or unsound condition to transact business;

(4) It willfully violates a "cease-and-desist order which has become final," as defined in section 5(d) of the Act; or

(5) It conceals its records or assets or refuses to submit its records or affairs for inspection to an examiner or lawful agent of the Board.

(b) Except as authorized in writing by the Board, if an association fails to make full payment of any withdrawal when due, within the meaning of the fourth sentence of section 5(b)(1) of the Act, paragraph (a)(3) of this section shall apply. No provision in an association's charter or in § 545.4 of this chapter regarding payment of withdrawals when the association does not pay all withdrawals in full shall be considered such an authorization.

§ 547.2 Appointment of conservator or receiver.

If the Board determines that any such ground exists for appointing a conservator or receiver for a Federal association, it may make the appointment without notice.

§ 547.3 Appointment on other grounds.

The Board may, without requirement of notice, hearing, or other action, appoint a conservator or receiver for a Federal association if (a) the association, by resolution of its board of directors or of its members, consents to the appointment, or (b) the association's

Bank membership or insurance by the Federal Savings and Loan Insurance Corporation is terminated.

§ 547.4 Notice of appointment.

If the Board appoints a conservator or receiver under this Part, the Secretary to the Board shall mail a certified copy of the Board's action to the association's address as it appears on the Board's records and notice of the appointment shall be filed immediately for publication in the Federal Register.

§ 547.5 Removal of conservator or receiver.

Within 30 days after appointment of a conservator or receiver under § 547.2, the association may bring an action in the U.S. District Court for the judicial district in which the association's home office is located, or in the U.S. District Court for the District of Columbia, for an order that the Board remove the conservator or receiver.

§ 547.6 Federal Savings and Loan Insurance Corporation as receiver.

The Board shall appoint only the Federal Savings and Loan Insurance Corporation as receiver for a Federal association and only for the purpose of liquidation.

§ 547.7 Possession by conservator or receiver.

A conservator or receiver for a Federal association shall take possession of the association in accordance with the terms of the appointment and shall, at that time, give notice of the Board's action to any officer or employee in the home office who appears to be in charge of that office. On taking possession, the conservator or receiver shall immediately take possession of the association's books, records, and assets. A conservator shall have all the powers of the association's members, officers, and directors; a receiver shall, without further action, succeed to the rights, titles, powers, and privileges of the association, and to the rights, powers, and privileges of its members, officers, and directors. No member(s), officer(s), or director(s) shall thereafter have or exercise any such right, power, or privilege, or act in connection with any of the association's assets or property. Any officer, director, or member may, from time to time, communicate with the Board regarding the conservatorship or receivership. The conservator or receiver shall furnish bond in form and amount and with surety acceptable to the Director. The Board may at any time (a) direct the conservator or receiver to turn over the association to its previous

management or new management; (b) provide for a meeting(s) of the members or of the directors for any purpose, which meeting(s) may be supervised or conducted by a Board representative; and (c) without requirement of notice, hearing, or other action, replace a conservator with another conservator or with a receiver.

§ 547.8 Surrender of possession by conservator or receiver.

(a) *To the association.* When the Board restores an association in the hands of a conservator or receiver to its management, that action, except as the Board otherwise provides, shall restore the rights, powers, and privileges of its members, officers and directors. Return of an association to its management from the possession of a receiver shall, by operation of law, vest in the association title to all property held by the receiver in its capacity as receiver for the association.

(b) *To a receiver.* When a receiver is appointed for an association in the hands of a conservator, the conservator shall, as the Board may require, surrender possession of the association to the receiver.

PART 548—POWERS OF CONSERVATOR AND CONDUCT OF CONSERVATORSHIPS

Sec.	
548.1	Procedure upon taking possession.
548.2	Powers and duties of conservator.
548.3	Creditors.
548.4	Share interests.
548.5	Inventory; examinations and audits, and costs thereof; accounting practices.
548.6	Final discharge and release of conservator.
548.7	Inspection of reports.
548.8	Delegation by conservator.

Authority.—Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464, Reorg Plan No. 3 of 1947; 3 CFR 1943-1948 Comp.

§ 548.1 Procedure upon taking possession.

Upon taking possession of a Federal association, the conservator shall immediately:

(a) Notify, by written notice, served personally or by registered mail or telegraph, all persons and entities that the conservator knows to be holding or in possession of assets of the association;

(b) File with the Secretary to the Board a statement that possession was taken, including the time of the taking, which statement shall be conclusive evidence thereof; and

(c) Post a notice in substantially the following form on the door of the association's home office:

_____ Federal Savings and Loan Association _____.

is in possession and charge of the undersigned as conservator appointed by the Federal Home Loan Bank Board.

Conservator _____
Date _____.

§ 548.2 Powers and duties of conservator.

The conservator, subject to the Director's supervision, shall, after taking possession, take any action necessary to conserve the association's assets. The conservator shall immediately collect all obligations and money due the association and may:

(a) Do all things he considers desirable or expedient to carry on the association's business consistent with his appointment, and to conserve and preserve the association's assets and property, but shall not declare, credit, or distribute earnings on savings accounts except with approval of the Board or the Director;

(b) Exercise all rights and powers of the association;

(c) With approval of the Board or the Director, discharge and pay off any liens, claims, or charges of any nature against the association, its assets or property, or the conservator;

(d) Pay any sum he deems necessary or advisable:

(1) To preserve, conserve, or protect the association's assets or property, or

(2) With approval of the Board or the Director, to rehabilitate or improve such property and assets;

(e) With approval of the Board or the Director:

(1) Pay any sum he deems necessary or advisable to preserve, conserve, or protect any asset or property on which the association or conservator has a lien or in which the association or conservator has an interest of value, and

(2) Pay off and discharge any liens, claims, or charges of any nature against such property;

(f) Under supervision of the Board's General Counsel, institute, prosecute, maintain, defend, intervene, and otherwise participate in any legal proceeding by and against the conservator or association or in which the conservator, the association, or its creditors or members has an interest, and in every way to represent the association, its members and creditors;

(g) With the Director's approval, hire any employees necessary for proper administration of the conservatorship; the employees shall be covered by bond, which shall be in form satisfactory to the conservator and the Director and be paid for, along with the conservator's

bond, from the association's assets; any attorney(s) designated by the Board's General Counsel shall be employed to give legal advice and assistance, on the conservatorship generally or in particular instances, and their retainers, compensation, and expenses, including litigation costs, as approved by the General Counsel, shall be paid from the association's assets;

(h) Execute, acknowledge, and delivery any instrument necessary or proper for any purpose, and any instrument so executed shall be as valid and effectual as if it had been executed by the association's officers by authority of its board of directors; bank accounts for the association shall be opened and closed as the conservator deems advisable, subject to approval of the Director, but except with Board approval, no account shall be retained or opened in a Bank or in a bank not insured by the Federal Deposit Insurance Corporation;

(i) With approval of the Board or the Director, sell for cash any mortgage, deed of trust, chose in action, bond, note, contract, judgment or decree, stock, or debt owing to the association, at not less than the actual amount owing the association or the face or par value thereof; or with Board approval or on terms and conditions it approves, sell or otherwise dispose of such assets, in whole or in part, at less than the amount or value;

(j)(1) Lease on a month to month basis, or for a term of one year or less, any property of the association; and

(2) With Board approval or on terms and conditions approved by the Board, lease such property for more than one year or otherwise dispose of it, in whole or in part;

(k) With approval of the Board or the Director, or on terms and conditions approved by the Board or the Director, release any assets or property of any nature, regardless of whether the subject of pending litigation, and repudiate any lease or contract he considers burdensome;

(l) With Board approval, or on terms and conditions it approves, settle, release, or obtain release of, for cash or other considerations, claims and demands against, or in favor of, the association or the conservator.

(m) With approval of the Board or the Director, borrow money for any purpose, in any amount, from any source, and in any manner, and execute, acknowledge, and deliver evidence of indebtedness therefor and secure repayment thereof by mortgage, pledge, assignment in trust,

or hypothecation of any property of the association;

(n) Pay out of the assets of the conservatorship all its expenses and all costs of carrying out or exercising the rights, powers, privileges, and duties as conservator, as determined by the conservator, except as otherwise provided in this section; and

(o) Do such things, and have such rights, powers, privileges, immunities, and duties as the Board authorizes, directs, confers, or imposes by order or by amendment of these rules and regulations. In this section, assets or property of the association shall include any asset or property of the conservator.

§ 548.3 Creditors.

(a) After certifying to the Board that the association's assets will be sufficient to meet all creditor obligations and that its condition justifies such action, the conservator may, with the Director's approval, pay from the association's assets:

(1) Disbursements which the association was obligated to make on loan commitments and other valid contracts; and

(2) Salaries due officers or employees of the association; and outstanding checks given in connection with valid creditor obligations.

(b) Without such certification or approval, the conservator may from such assets pay creditor obligations and make disbursements which the association was obligated to make on loan commitments, to the extent the Director deems compatible with the association's condition and the proper conduct of its affairs.

§ 548.4 Share interests.

Only in accordance with a Board order conspicuously posted in the conservator's principal office for conducting the association's affairs, may the conservator accept payments on or purchase of share accounts or make repurchases of share accounts.

§ 548.5 Inventory; examinations and audits, and costs thereof; accounting practices.

(a) *Inventory.* As soon as practicable after taking possession the conservator shall inventory the association's assets as of the date possession was taken. It shall include the value on the association's books of each asset, security therefor, a brief description of the asset and any security, and a record of the association's creditor and share liabilities. The Director must be satisfied that the method of listing assets

provides such information. Two copies of the inventory shall promptly be filed with the Secretary to the Board, one copy with the Director, and one copy retained during the conservatorship in the association's principal office.

(b) *Examinations and audits, and costs thereof.* The Board may direct the association to be examined and/or audited (with appraisals if deemed advisable) by the Department of Examinations, FSLIC. The cost, as determined by the Board, including any office analysis shall be paid from the association's assets unless the Board orders otherwise.

(c) *Accounting practices; reports.* The conservator shall follow such accounting practices as the Director may prescribe and make such reports as the Board or the Director may require.

§ 548.6 Final discharge and release of conservator.

When relieved of all duties, the conservator shall file with the Board a report satisfactory to it. The Board may direct an audit in connection with that report and shall approve or disapprove the accounts of the conservator. If the accounts are approved, the conservator shall thereupon be completely and finally released.

§ 548.7 Inspection of reports.

Unless the Board or Director otherwise directs, the conservator's inventories, statements, and reports shall be in at least four copies. Two copies shall be filed with the Secretary to the Board and one copy with the Director, and they shall constitute permanent records of the conservatorship open for inspection whenever the office of the Secretary to the Board is open for business or at such times and on such conditions as the Board may direct.

§ 548.8 Delegation by conservator.

The conservator may delegate any powers and authorities vested in him under §§ 548.2, 548.3, and 548.4.

PART 549—POWERS OF RECEIVER AND CONDUCT OF RECEIVERSHIP

Sec.

- 549.1 Definitions.
- 549.2 Procedure upon taking possession.
- 549.3 Powers and duties of receiver.
- 549.4 Creditor claims.
- 549.5 Share interest claims.
- 549.5-1 Deposit associations.
- 549.6 Inventory; examinations and audits, and costs thereof; accounting practices.
- 549.7 Final discharge and release of receiver.
- 549.8 Inspection of reports.

Authority.—Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464, Reorg. Plan No. 3 of 1947; 3 CFR 1943-1948 Comp.

§ 549.1 Definitions.

As used in this Part—

(a) "Publish" means publish in an English-language newspaper of general circulation in the city or county in which an association's home office is located; and

(b) "Corporation" means the Federal Savings and Loan Insurance Corporation.

§ 549.2 Procedure upon taking possession.

The procedure prescribed in § 548.1 of this subchapter for a conservator taking possession of a Federal association shall also apply to a receiver except that the notice required by § 548.1(c) shall state:

_____ Federal Savings and Loan Association _____,

is in the hands of the Federal Savings and Loan Insurance Corporation as receiver appointed by the Federal Home Loan Bank Board.

Federal Savings and Loan Insurance Corporation as Receiver.

By _____

Title _____

Date _____.

§ 549.3 Powers and duties of receiver.

(a) The receiver, after posting notice under § 549.1, shall collect all obligations and money due the association. The receiver may, with respect to the association, exercise the powers which a conservator of a Federal association may, with or without approval of the Board or the Director and whether or not under the direction of the General Counsel of the Board, exercise under paragraphs (a) through (f), (k), (l), (n), and (o) of § 548.2. In interpreting those paragraphs for purposes of this section the word "receiver" shall be read for "conservator", "receivership" for "conservatorship", and any requirement that the Board or the Director approve terms and conditions of a transaction shall not apply.

(b) The receiver may also:

(1) Employ any attorney(s) designated by, or acceptable to, the Board's General Counsel to give legal advice and assistance for the receivership generally or in particular instances, and pay their retainers, compensation, and expenses, including litigation costs, as approved by the General Counsel, from the association's assets;

(2) Execute, acknowledge, and deliver any instrument necessary for any purpose, and any instrument executed

under this paragraph shall be as valid and effectual as if it had been executed by the association's officers by authority of its board of directors;

(3) Deposit funds collected in any bank(s) insured by the Federal Deposit Insurance Corporation, in a Bank, or any other banks or depositories approved for that purpose by the Board. All depository bank accounts of the receiver shall be carried as follows: "Federal Savings and Loan Insurance Corporation, Receiver for _____ Association";

(4) Sell for cash or on terms, or otherwise dispose of, in whole or in part, any mortgage, deed of trust, chose in action, bond, note, contract, judgment or decree, stock, or debt owing to the association, or any assets and property of the association;

(5) With Board approval, and on terms and conditions it approves, borrow money in any amount, from any source, and in any manner, and execute, acknowledge, and deliver evidence of indebtedness therefor and secure repayment thereof by mortgage, pledge, assignment in trust, or hypothecation of any property of the association.

§ 549.4 Creditor claims.

(a) When directed to do so by the Board, the receiver shall promptly publish a notice to the association's creditors to present their claims, with proof thereof, to the receiver by a date specified in the notice (at least 90 days after first publication). The notice shall be published again approximately 1 month and 2 months respectively after first publication. Claims filed after the specified date shall be disallowed, except as the Board may approve them for whole or part payment from the association's assets remaining undistributed at the time of approval. The receiver shall mail a similar notice to any creditor shown on the association's books at the creditor's last address appearing thereon.

(b) The receiver shall allow any claim seasonably received and proved to its satisfaction. The receiver may wholly or partly disallow any creditor claim or claim of security, preference, or priority not so proved, and shall notify the claimant of the disallowance and the reason therefor. Mailing notice of the disallowance to the claimant's last address appearing on the association's books or on the proof of claim shall be sufficient notice. Unless, within 30 days after notice is mailed, the claimant files a written request for payment regardless of the disallowance, disallowance shall be final, except as the Board may otherwise determine.

(c) Upon expiration of the specified time for presenting claims, the receiver shall cause to be filed with the Board a complete list of claims presented, indicating the character of each claim and whether allowed by the receiver. At such other date(s) as the Board may order or the receiver may determine, a list of claims presented before that date shall be filed with the Board.

(d) Creditor claims which were allowed by the receiver or approved by the Board shall be paid by the receiver, from time to time, to the extent funds are available, in such manner and amounts as the Board may direct.

§ 549.5 Share interest claims.

(a) When directed to do so by the Board, the receiver shall promptly publish a notice to the association's shareholders to provide the receiver, before a date specified in the notice, their sworn proofs of claim of share ownership. The notice shall specify a date 3 years after the date of the receiver's appointment and urge that claims of ownership be presented promptly. It shall be published again approximately 1 year and 2 years respectively after the date of the first publication. Claims filed after the specified date shall be disallowed, except as the Board may thereafter approve them for whole or part payment from the association's assets remaining undistributed at the time of approval. The receiver shall mail a similar notice to any shareholder shown on the association's books at the shareholder's last address appearing thereon, unless the shareholder's account has been, or is being, surrendered or transferred to the Corporation. When the first liquidating dividend is declared, the receiver shall credit to a special reserve the proportionate shares of that dividend otherwise payable to holders of unclaimed share accounts appearing on the association's books to be outstanding and valid, and similar credits shall be made for any subsequent liquidating dividend declared before the date specified in the notice. The final liquidating dividend to shareholders whose claims of ownership have been allowed may include any sums held in such accounts, but the dividend shall not be paid before the specified date.

(b) The receiver shall allow any ownership proved to its satisfaction. The receiver may wholly or partly disallow any claim of share interest not so proved and shall notify the claimant of the disallowance and the reason therefor. Mailing notice of the disallowance to the claimant's last

address appearing on the association's books shall be sufficient notice. Unless, within 30 days after notice is mailed, the claimant files a written request for payment regardless of the disallowance, disallowance shall be final, except as the board may otherwise determine.

(c) Upon expiration of the specified time for presenting claims, the receiver shall cause to be filed with the Board a complete list of claims presented, indicating the character of each claim and whether allowed by the receiver. At such other date(s) as the Board may order or the receiver may determine, a list of claims presented before that date shall be filed with the Board.

(d) When insurance is paid to the account holder, transfer of the insured account to the Corporation, and the Corporation's subrogation with respect to the account to the extent provided by law, shall be noted on the books of the receivership.

(e) Allowed claims of share interest to which the Corporation has become subrogated, uninsured claims allowed by the receiver, and claims approved for payment by the Board, shall be paid by the receiver in liquidating dividends declared from time to time by the Board, to the extent funds are available, in such manner and amounts as the Board may direct.

§ 549.5-1 Deposit associations.

(a) If a Federal association is a deposit association, this section shall apply in lieu of §§ 549.4 and 549.5.

(b)(1) When directed to do so by the Board, the receiver shall promptly publish a notice to the association's creditors and to holders of its savings deposits and savings accounts to present their claims, with proof thereof, to the receiver by a date specified in the notice (at least 90 days after publication). The notice shall be published again approximately 1 month and 2 months respectively after the date of first publication. Claims filed after the specified date shall be disallowed, except as the Board may thereafter approve them for whole or part payment from the association's assets remaining undistributed at the time of approval. However, if the claim is with respect to a savings deposit or savings account and is filed during the 3-year period specified under paragraph (c)(1) of this section, the filing shall be seasonable under that paragraph. The receiver shall mail a similar notice to any creditor, holder of a savings deposit, or holder of a savings account shown on the association's books at the last address of the creditor or holder appearing thereon, except the notice need not be

mailed to any holder whose deposit or account has been, or is being, surrendered or transferred to the Corporation. A claim filed under this paragraph (b) asserts all rights of the claimant to the withdrawal value of the account and to share in the association's remaining assets.

(2) The receiver shall approve any seasonably filed claim proved to its satisfaction. The receiver may wholly or partly disallow any claim of security, preference, or priority not so proved and shall notify the claimant of the disallowance and the reason therefor. Mailing notice of the disallowance to the claimant's last address appearing on the association's books or the proof of claim shall be sufficient notice. Unless, within 30 days after the notice is mailed, the claimant files a written request for payment regardless of the disallowance, disallowance shall be final, except as the Board may otherwise determine.

(3) Upon expiration of the specified time for presenting claims, the receiver shall cause to be filed with the Board a complete list of the claims presented, indicating the character of each claim and whether allowed by the receiver. At such other date(s) as the Board may order or the receiver may determine, a list of claims presented before that date shall be filed with the Board.

(4) Claims which were, under this subsection, allowed by the receiver or approved by the Board shall be paid by the receiver, from time to time, to the extent funds are available, in such manner and amounts as the Board may direct.

(c)(1) When directed to do so by the Board, the receiver shall promptly, but not before the date specified in the notice under paragraph (b)(1) of this section, publish a notice to the holder of the association's savings accounts and savings deposits, except deposits and accounts with respect to which claims have previously been filed with the receiver, to present their claims, with proof thereof, to the receiver by a date specified in the notice. The notice shall specify a date 3 years after the date of the receiver's appointment and urge that claims be presented promptly. It shall be published again approximately 1 year and 2 years respectively after the date of the first publication. Claims filed after the specified date shall be disallowed, except as the Board may thereafter approve them for whole or part payment from the association's assets remaining undistributed at the time of approval. When the first liquidating dividend is declared, the receiver shall credit to a special reserve the proportionate shares of that dividend otherwise payable to

the holder of unclaimed savings accounts and savings deposits appearing on the association's books to be outstanding and valid, and similar credits shall be made for any subsequent liquidating dividends declared before the date specified in the notice. The final liquidating dividend to holders of claims allowed or approved for payment by the Board may include any amounts previously undistributed, but shall not be paid before the specified date. Distributions made or made available on savings accounts or savings deposits under paragraph (b) of this section shall be treated as if they had been made or made available as liquidating dividends under this paragraph (c)(1), but this sentence does not authorize recapture of any such dividend. Paragraph (b)(2) of this section applies also to claims filed under this paragraph (c)(1).

(2) Upon expiration of the 3-year period, the receiver shall cause to be filed with the Board a complete list of the claims presented with respect to savings deposits and savings accounts and not included in any list previously filed under paragraph (b)(3) of this section. The list shall indicate the character of each claim and whether allowed by the receiver. On such other date(s) as the Board may order or the receiver may determine, a list of claims presented before that date shall be filed with the Board.

(3) When insurance is paid to the holder of a savings deposit or savings account, transfer of the insured account or deposit to the Corporation, and the Corporation's subrogation with respect to the deposit or account to the extent provided by law, shall be noted on the books of the receivership.

(4) Allowed claims with respect to savings deposits or savings accounts to which the corporation has become subrogated, uninsured claims allowed by the receiver, and claims approved for payment by the Board shall be paid by the receiver in liquidating dividends declared from time to time by the Board, to the extent funds are available, in such manner and amounts as the Board may direct.

§ 549.6 Inventory; examinations and audits, and costs thereof; accounting practices.

(a) *Inventory.* As soon as practicable after taking possession, the receiver shall make an inventory of the association's assets as of the date possession was taken. It shall include the value on the association's books of the asset, any security therefor, and a brief description of the asset and

security, and it shall also include a record of creditor and savings account liabilities. The method of listing assets must provide such information to the satisfaction of the Board. One copy of the inventory shall be filed with the Secretary to the Board, one copy with the Corporation, and one copy retained in the principal office for liquidation of the association while the office is maintained.

(b) *Examinations and audits, and costs thereof.* Each Federal association for which a receiver has been appointed shall be examined and audited (with appraisals when deemed advisable by the Board) at least annually by the Department of Examinations, FSLIC, or as otherwise directed by the Board. The cost, as determined by the Board, including office analysis and appraisals, shall be paid from the association's assets.

(c) *Accounting practices; reports.* The receiver may, from time to time, prescribe accounting practices to be followed. It shall make a report to the Board of its affairs as of June 30 each year on forms it or the Board prescribes, and such other reports as it or the Board may require. Each recommendation for declaration and payment of a liquidating dividend shall be accompanied by a report showing available assets. One copy of reports required by this section shall be filed with the Secretary to the Board, one copy shall be retained by the Corporation, and one copy shall be retained in the principal office for liquidation of the association while the office is maintained.

§ 549.7 Final discharge and release of receiver.

When the receiver recommends final distribution of assets or is otherwise relieved of its duties, it shall file with the Board a detailed report in form satisfactory to the Board. Unless the Board otherwise directs, upon final liquidation of the receivership or when the receiver completes, or is otherwise relieved of, its duties, the receivership shall be examined and audited. The receiver's accounts shall thereupon be approved or disapproved, and if approved, the receiver shall thereby be completely and finally released.

§ 549.8 Inspection of reports.

The receiver's inventories, statements, and reports shall be in at least as many copies as these regulations require or as the Board otherwise directs. One copy shall be filed with the Board and one with the Corporation, and each shall constitute permanent records of the liquidation open for inspection at such

time and on such conditions as the Board may direct, or in the absence of such direction, whenever the office of the Secretary to the Board is open for business.

PART 550—CEASE-AND-DESIST AND SUSPENSION AND REMOVAL ORDERS

17. Delete § 550.7 as follows:

§ 550.7 [Deleted], effective August 3, 1979.

18. Revise Part 551 to read as follows:

PART 551—SERVICE OF PROCESS UPON BOARD

§ 551.1 Service of process.

Service of process may be made upon the Board by delivering a copy of the summons and complaint to the U.S. Attorney for the district in which the action is brought or to an assistant U.S. Attorney or clerical employee designated by the U.S. Attorney in a writing filed with the clerk of the court, and by sending copies of the summons and of the complaint by registered or certified mail to the Attorney General of the United States, Washington, D.C., and to the Secretary to the Board.

PART 552—STOCK ASSOCIATIONS

19. Revise § 552.6 and paragraphs (b) and (f) (1) and (2) of § 552.8, to read as follows:

§ 552.6 Optional bylaw provisions.

This section constitutes approval by the Board of any one or more of the following amendments of the bylaws of any Charter S association.

(a) Amend Article III of the bylaws prescribed in Section 552.5 by adding Section 14, as follows: "Section 14. *Age Limitation—Directors*. No person shall be eligible for election, reelection, appointment, or reappointment to the board of directors if such person is then more than (fill in any age 70 or above) years of age. No director shall serve beyond the annual meeting of the association immediately following his attainment of (fill in the same age 70 or above as used above) years of age; except that any such director serving on (fill in date of adoption of bylaw) may complete the unexpired portion of his term being served on such date. This limitation shall not apply to a person serving as an advisory director of the association."

(b) Amend Article V of the bylaws prescribed in Section 552.5 by adding Section 6, as follows: "Section 6. *Age Limitation—Officers*. No person shall be eligible for election, reelection, appointment, or reappointment as an

officer of the association if such person is then more than (fill in any age 70 or above) years of age. No officer shall serve beyond the annual meeting of the association immediately following his attainment of (fill in the same age 70 or above as used above) years of age; except that any such officer serving on (fill in date of adoption of bylaw) may complete the unexpired portion of his term being served on such date."

§ 552.8 Savings deposits.

(b) *Terms of savings deposits; membership and voting rights*. To the extent not inconsistent with this section, savings deposits authorized by this section shall be on the same bases, terms, and conditions and have the same characteristics as if they were authorized by and subject to §§ 545.1-2, 545.1-3, 545.1-4 or 545.1-1(a), (e), and (f). Holders of such savings deposits shall not be members of the association or have voting rights.

(f) *Ancillary provisions.—(1) References in regulations*. To the extent not inconsistent with the provisions of this section all references in this subchapter to savings accounts (except this section) and to owners, holders, or holders of record of savings accounts and the language "savings accounts representing share interests in the association" in § 545.24 shall with respect to savings deposits authorized by this section be applicable in the same manner and to the same extent that they would be applicable if the savings deposits were savings deposits authorized by §§ 545.1-2, 545.1-3, 545.1-4 or 545.1-1(a), (e), and (f).

(2) *Forms of certificate*. Except as the Board may otherwise provide, a Charter S association shall use for savings deposits authorized by this section a form of certificate which may be used for a corresponding savings deposit authorized under §§ 545.1-2, 545.1-3, 545.1-4 or 545.1-1(a), (e), and (f). However, the form shall be modified to eliminate any language referring to (i) dividends, (ii) membership or voting rights, and (iii) any right to share upon liquidation in assets of the association, other than in the capacity of a general creditor.

20. Revise § 552.9 to read as follows:

§ 552.9 Investments, services, and borrowings.

A Charter S association may: (a) make any loan or investment authorized by this subchapter for a Charter N association, (b) be surety and perform

such services as are authorized by this subchapter for a Charter N association; and (c) borrow, issue obligations, and give security to the same extent authorized by this subchapter for a Charter N association which has amended its charter under § 544.2(f) of this subchapter.

PART 555—BOARD RULINGS

21. Revise §§ 555.1-555.3 to read as follows:

§ 555.1 Directors.

(a) *Number necessary for quorum*. If the number of directors provided for in the bylaws or fixed by resolution of the members has been elected, a majority of that number constitutes a quorum, regardless of any subsequent reduction in the number of directors actually serving. An increase in the authorized number of directors does not affect the number required for a quorum until the newly created directorships are filled.

(b) *Directors' power to fill vacancies*. The Board of directors of a Federal mutual association which has the prescribed bylaws may, without calling a special meeting of the members, elect directors to fill vacancies, including vacancies caused by resignation or by increase in the number of directors, unless the number was increased by a vote of the members and they elected directors to fill the new positions. Each director so elected by the board of directors shall serve until the next annual meeting of the members.

§ 555.2 Power to engage in escrow business.

A Federal association may not act generally as an agent for the public in handling escrows. It may, however, handle escrows relating to real estate loans it makes and, to the extent reasonably incidental to accomplishing its express purposes, may handle escrows for others involving the type of real estate transactions common to the savings and loan business. In handling any escrow, it may not assume duties or responsibilities or perform acts beyond its power under the Act, these regulations, or its charter.

§ 555.3 Real estate.

(a) For lending purposes, a motel is generally considered "other improved real estate." However, if the business use (tourist units) is merely incidental to its use as the borrower's residence, it qualifies as combination home and business property.

(b) *Definition of completed*. For purposes of § 545.6-2(a)(2) regarding loans in excess of 80 percent of value.

construction is "completed" when, in conformity with general practice in the community, a residential structure is ready for occupancy. For example, community custom and practice determine whether a house is completed when weather prevents application of the final coat of paint or when the street is unfinished but sufficient funds are held in escrow until completion.

(c) *Purchase of paving certificates.* A Federal association may purchase a paving certificate which constitutes a lien on property securing an association loan, if necessary to protect its interest in the property. However, it may not acquire such a certificate as an investment or as to property on which it does not have a mortgage.

22. Revise §§ 555.5-555.11 (including the captions for same) to read as follows:

§ 555.5 Insurance.

(a) *Control over placing of hazard insurance.* A Federal association's board of directors has the duty to establish and maintain such requirements over hazard insurance as it considers necessary to protect the association's interest in real estate security for its loans. The requirements may include establishment of fair standards based on such factors as recognized financial ratings of insurers and coverage forms, but such standards may not be based on the insurer's corporate structure. Subject to this limitation, the borrower should have reasonable freedom of choice in placing hazard insurance on the real estate security.

(b) *Advances for premiums on life insurance.* Section 545.8-3 of this subchapter authorizes an association to make uninsured advances for payment of life insurance premiums in connection with real estate loans. However, applicable law and regulations do not permit indiscriminate making of unsecured loans to finance life insurance premiums. No lending program which in general contemplates or promises such advances is authorized.

§ 555.6 Refinancing unsecured loans.

An uninsured, unsecured loan to refinance a loan previously made by another association for property alteration, repair, or improvement is not within a Federal association's authority under § 5(c) of the Act to invest in other loans for property alteration, repair, or improvement. A Federal association may, however, make an uninsured, unsecured loan to refinance for a borrower the unpaid balance of a loan

that the association previously made to that borrower under § 545.6-12(b) and that it still holds, if the refinancing loan is evidenced by a note(s) whose amount(s) and terms are such that the loans could be made as an original loan under § 545.6-12(b). The refinanced loan may exceed \$15,000 if the excess is caused solely by inclusion of loan charges permissible under § 545.8-2, inclusion of accrued interest (whether due or not), or carrying over original gross charges into the new note(s).

§ 555.7 Increase of a savings account with proceeds of a loan on a savings account.

A savings account in sufficient amount must be in existence before a loan secured by the savings account may be made, and no part of the proceeds of the loan may be used as collateral for the loan.

§ 555.8 Savings accounts.

(a) *Date payments considered received.* If a Federal association has fixed a determination date as provided in its charter, it usually must actually receive payments on its savings accounts by that date to consider them received on the first of the month. However, in a month when the determination date falls on a nonbusiness day for the association, it may consider payments received on the next business day after the determination date as received on the first of the month. The association may not, however, represent generally that payments received on a date later than the determination date receive earnings from the first, without stating the month in which that will occur.

(b) *Redemption of savings accounts must not be discriminatory.* Section 7 of a Federal mutual association's charter does not empower the association to redeem a shareholder's account discriminatorily. Authority to redeem savings accounts "by lot or otherwise" permits redemption only by methods similar to determination by lot, i.e., that are non-discriminatory.

(c) *Sale of merchandise in connection with soliciting savings accounts.* Even though a Federal association may (under § 563.24 of subchapter D) give away merchandise, within expressly stated limits, in connection with opening or increasing savings accounts, it may not, as an incident to powers prescribed in its charter, sell, except in connection with such a promotional campaign, merchandise other than coin banks and similar coin-savings devices.

§ 555.9 Effect of loan participation on status of borrowing members.

Solely for the purpose of determining borrower membership in a Federal mutual association under Parts 544 and 563b of this chapter, a person is a borrowing member of the association under its charter only if the association has singly or jointly originated a loan to the person, the loan has not been fully repaid, and the association has not sold its entire ownership interest in the loan to a third party or parties. If the loan is assumed in full, the person assuming the loan becomes a borrowing member of the association in lieu of the original borrower, regardless of whether the original borrower remains obligated on the loan.

§ 555.10 Service corporation secured debt limitation.

The unpaid balance of a note executed by a service corporation and secured by a mortgage or similar obligation is debt under § 545.9-1(c)(3), even if the holder of the note, in the event of default, may proceed only against the security property and has no legal basis for recovery of any deficiency from the service corporation.

§ 555.11 Loans for acquisition and development of land.

A Federal association may make a loan under § 545.6-6 to finance development of land to which the borrower already has title, but it may not make a loan under that section to finance purchase of land already completely developed into building sites.

23. Revise §§ 555.13-555.18, and the captions in §§ 555.13, 555.14 to read as follows:

§ 555.13 First liens on properties sold by the Secretary of HUD.

Under section 5(c) of the Act a Federal association may make mortgage loans insured by the Federal Housing Administration and secured by first liens on improved real estate. The Secretary of HUD, when disposing of properties acquired by lien under default provisions of an earlier insured loan may sell the properties to individuals and insure new loans to finance those purchases. Under the procedure prescribed in 24 CFR 203.390 and 203.402, such mortgages may be insured without documentary evidence establishing the quality and validity of the mortgagee's lien. Because that procedure offers protection to Federal associations equivalent to that of a first lien, such loans shall be considered secured by a first lien even though new title evidence has not been obtained.

§ 555.14 Chief executive officer of a branch office.

Section 5 of a Federal mutual association's bylaws provides, in part, that the association's board of directors may appoint such officers as they may determine from time to time. They may also designate appropriate titles for officers so appointed whose titles are not specified in the bylaws. The chief executive officer of a branch office may be titled division president, branch manager, or any other appropriate title which does not suggest that the branch office is an autonomous association.

§ 555.15 Prepayment penalty on mortgage loans.

Section 545.8-5(b) makes clear that charging a prepayment penalty is a matter of contract between a Federal association and a borrower, and that the borrower may wholly or partly prepay the loan without penalty unless the loan contract contains an express provision imposing a prepayment penalty. Section 545.8-5(b) also authorizes a Federal association to include a provision in its loan contract with a borrower (who occupies or will occupy the home securing the mortgage loan) imposing a prepayment penalty at any amount up to, but not exceeding, a specified limit. Thus, in view of the controlling Federal regulation, a Federal association may include a prepayment provision in the loan contract up to the maximum limitation of § 545.8-5(b) regardless of conflicting State law which sets a lower limit or imposes a different type of prepayment penalty, but it may not charge a prepayment penalty exceeding the limit in § 545.8-5(b) even if State law allows a higher charge.

§ 555.17 Insurance agencies—usurpation of corporate opportunity.

(a) *Definitions.* As used in this section—

(1) "Owned" and "ownership", in connection with an insurance agency, include, in addition to ownership by a person: (i) ownership by the person's spouse, minor child, or other relative by blood or marriage having the same home as the person; (ii) ownership through a broker or other nominee or agent; or (iii) ownership by a company controlled by the person. However, the terms do not include ownership by one such person of less than 10 percent of the insurance agency, or ownership by more than one such person of less than 25 percent of the agency;

(2) "Profits" means any form of remuneration received, or to be received, by officers, directors, or controlling persons of the association

other than salaries, fees, or commissions based upon, and reasonably related to, services actually performed respecting an insurance agency.

(3) "Referral" means directing the business of association members to an affiliated insurance agency, but does not include offering association members, without specific recommendation, a list of approved insurance agencies, including the affiliated agency, unless the list is designed or given in a manner calculated to cause members to select the affiliated agency over the other listed agencies;

(b) *General.* Subject to exceptions in paragraph (c) of this section, as limited by paragraph (d), and § 545.27 of this subchapter, referral of insurance business of an association's members to an insurance agency owned by one or more officers or directors of the association, or by one or more persons having the power to direct its management, constitutes usurpation of the association's corporate opportunity to engage in the insurance business.

(c) *Exceptions.* No corporate opportunity for a Federal association to enter the insurance business is deemed to have existed—

(1) If the referral described in paragraph (b) took place:

(i) While application for permission to engage in the insurance business was on file with the appropriate State agencies and/or the Board;

(ii) Before May 20, 1971;

(iii) while a specific State statute or regulation precluded Federal association service corporations (or their wholly-owned subsidiaries) from engaging in the insurance business;

(iv) While State licensing or regulatory authorities whose prior approval is required to engage in the insurance business followed an established and well-known policy of refusing to accept or process applications from Federal association service corporations (or their wholly-owned subsidiaries) for permission to engage in the insurance business (an association need not demonstrate existence of such a policy by instituting legal proceedings to compel approval);

(v) During a reasonable period (not over 18 months) following (A) May 20, 1971 or (B) a change in the State statute or regulation described in paragraph (c)(1)(iii) of this section or policy described in paragraph (c)(1)(iv) of this section for the association to have investigated the feasibility and desirability of acquiring or establishing its own service corporation insurance business and to have prepared and filed applications with respect thereto;

(2) If the association, after filing any necessary application and making a bona fide attempt to obtain any necessary approvals (such attempt need not involve instituting legal proceedings to compel such approvals), was denied permission by the appropriate State licensing or regulatory authorities for its service corporation, or a wholly-owned subsidiary thereof, to engage in the insurance business;

(3) If a disinterested and independent majority of the Federal association's board of directors, after receiving a full and fair presentation of the matter, rejected the opportunity to engage in the insurance business through acquisition or *de novo*, as a matter of sound business judgment, taking into consideration such factors as the financial resources of the association to establish or acquire an insurance agency, the risks involved in entering the insurance business, and the projected profitability of the agency; or if involvement in the existing affiliated insurance agency by members of the association's board of directors prevented a decision by a majority of disinterested and independent directors, the matter was submitted to the vote of the association's members at a special annual meeting (no existing proxies may be used at such meetings and proxy solicitations must be accompanied by material which makes full, fair, and accurate disclosure of all relevant material and information respecting the corporate opportunity to enter the insurance business);

(4) If lack of economic justification for the association to engage in the insurance business by either acquiring an existing affiliated insurance agency, or establishing or purchasing another insurance agency, was duly established.

(d) *Limitation to certain exceptions.* (1) Notwithstanding the provisions of paragraphs (c)(1)(i), (iii), (iv), and paragraph (c)(3) of this section, the exceptions provided thereunder do not apply to any period of time over 18 months after May 20, 1971, during which the conditions or actions described did not exist or were not instituted.

(2) It is no defense to the charge of usurpation of corporate opportunity that the existing affiliated insurance agency which the association could have acquired engages in business in which a service corporation may not engage under § 545.9-1 of this chapter, unless it was determined whether (i) the portion of the business of the existing affiliated insurance agency related to referrals from members of the association could have been acquired by the association or (ii) it was feasible and desirable for

the association, by means of a service corporation, or its wholly-owned subsidiary, to establish or acquire its own insurance agency.

(e) *Relief required.* (1) Usurpation of corporate opportunity under paragraph (b) of this section entitles the association to the resulting profits of the affiliated insurance agency during the period of usurpation, if such profits are attributable to (i) referrals by the association of the association borrowers to the agency during that period and (ii) renewals of such referrals made during such period, unless it can be shown that such renewals were made for a reason other than maintaining the original placement. The association is not entitled to profits for referrals (or renewals thereof) made before the period of usurpation or for referrals (or renewals thereof) made after the corporate opportunity ceased to exist.

(2) Notwithstanding paragraph (e)(1), an association whose corporate opportunity was usurped under this section is not entitled to recover insurance agency profits: (i) Which exceed profits actually accruing to the association's officers, directors, or controlling persons (e.g., their *pro rata* share of the profits based on their partial ownership of the insurance agency) during the period of usurpation; or (ii) from a person who was an officer of the association during the period of usurpation, if it is clearly shown that the person's receipt of such profits was in lieu of a portion of what otherwise would have been officer's compensation (profits that exceed an amount which could reasonably be regarded to have been in lieu of compensation, based on compensation of persons in comparable positions, are recoverable).

§ 555.18 Deposit assurance of direct deposit of social security payments.

(a) Under the Social Security Administration's "direct deposit program", a social security beneficiary may designate a financial institution, including a Federal association, to receive the beneficiary's benefit payments. Thereafter, benefit payments are made directly to the institution in the form of checks or magnetic tape notices.

(b) The Board has concluded that giving "deposit assurance" in connection with the program is within a Federal association's implied powers under section 5 of the Act. Deposit assurance consists of the association's undertaking to credit the beneficiary's account with a "deposit" in the amount of the benefit payment on the date it is due to be received, whether or not the

association actually receives the check or magnetic tape notice from the Treasury by that date. The Board has concluded, based on the unique nature of the social security direct-deposit program and the improbability of failure to receive payments on time, that the association "constructively" receives payment on that date.

(c) The Board believes, however, that such deposit assurance may involve some risk for Federal associations participating in the program and that they must therefore institute adequate safeguards and controls in conjunction therewith.

PART 556—STATEMENTS OF POLICY

24. Delete § 556.1 as follows:

§ 556.1 (Deleted, effective August 3, 1979)

25. Revise §§ 556.7–556.9 to read as follows:

§ 556.7 Service corporation involvement with gold or gold-related transactions.

Section 545.9–1 authorizes Federal associations to invest in service corporations engaging in certain preapproved activities and any other activities the Board approves upon application. Because transactions or activities involving gold (including gold coins) or gold related instruments or securities are not preapproved and the Board will not approve such activities or transactions on application, Federal associations should not invest, or maintain an investment, in a service corporation engaging in such transactions or activities.

§ 556.8 Suretyship.

The Board will authorize a Federal association to be surety under § 545.24–2 of this subchapter only if such activity would be properly incident to its other authorized activities.

§ 556.9 Imposition of late charges and due-on-sale clauses.

(a) The Board expects Federal associations to adopt procedures sufficient to ensure that, by the time of loan closing, the rights and obligations of the contracting parties regarding imposition of late charges and prepayment charges and exercise of acceleration clauses (including due-on-sale clauses) are fully and specifically disclosed to the borrower.

(b)(1) Although § 545.8–3(g) of this subchapter prohibits imposition of a prepayment charge upon exercise of a due-on-sale clause only with respect to loans on borrower-occupied homes made after July 31, 1976, the Board looks with disfavor on the practice respecting

all such loans and believes associations should, except in extraordinary circumstances, abstain from the practice in connection with such loans made before that date.

(2) Although there is no maximum limitation on the amount of late charges a Federal association may assess or collect, under contract, on loans made before August 1, 1976, secured by borrower occupied homes, the Board expects associations to be reasonable and fair in assessing and collecting late charges against delinquent borrowers as to such loans, taking into consideration the reason for delinquency, the length of delinquency, and the borrower's past practice respecting delinquencies.

(c) The Board believes there may be (in addition to the circumstances prescribed in § 545.8–3(g) in which exercise of a due-on-sale clause is prohibited) situations in which it will be appropriate for a Federal association to waive its contractual right to accelerate a loan. Those situations include transfer of title to members of the borrower's immediate family, including a former spouse in connection with a divorce, who occupy or will occupy the property (to the extent not covered by § 545.8–3(g)). Associations also should consider waiving, in cases of extreme hardship to the existing borrower, any right to require an increase in interest rate under a due-on-sale clause.

(d) Even though a Federal association may increase the interest rate as a condition of loan assumption, the Board expects that no association will request such an increase to a rate exceeding the then prevailing rate on comparable new loans made by the association applying its normal lending standards.

(e) Section 545.8–3(g) does not prohibit an association from requiring, as a condition to an assumption, continued maintenance of mortgage insurance by the existing borrower's successor in interest, whether by endorsement of the existing policy or by entrance into a new contract of insurance.

(Sec. 105, Pub. L. 93–495, October 28, 1974; Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464). Reorg. Plan No. 3 of 1947, 12 FR 4981; 3 CFR, 1943–48 Comp., p. 1071. Interpret or apply sec. 406, 48 Stat. 1259, as amended (12 U.S.C. 1729)

By the Federal Home Loan Bank Board.
 J. J. Finn,
 Secretary.

Appendix—Sources of Revised Sections—
 Continued

Appendix—Sources of Revised Sections

Revised section	Original section(s)
§ 541.1	New
§ 541.2	New
§ 541.3	§ 541.11-1
§ 541.4	§ 541.11
§ 541.5	§ 541.10-4
§ 541.6	§ 541.18
§ 541.7	§ 541.10-1
§ 541.8	§ 541.2
§ 541.9	§ 541.16
§ 541.10	§ 541.7
§ 541.11	§ 541.10-2
§ 541.12	§ 541.13
§ 541.13	§ 541.15
§ 541.14	§ 541.9
§ 541.15	§ 541.8-1
§ 541.16	§ 541.10-3
§ 541.17	§ 541.12
§ 541.18	New
§ 541.19	§ 541.5
§ 541.20	§ 541.10
§ 541.21	New
§ 541.22	§ 541.8
§ 541.23	§ 541.10-5
§ 541.24	§ 541.6
§§ 543.1-543.12	§§ 543.1-543.12
§ 544.1	§ 544.1
§ 544.2	§§ 544.2, 544.8, 545.1-3
§§ 544.3-544.7	§§ 544.3-544.7
§ 545.1	§ 545.1(a), (b), (c), (d)
§ 545.1-1(a)	§ 545.3-1(a), (b)(1), (b)(4)
(b)	§ 545.3(b)
(c)	§ 545.2-2(a)-(g)
(d)	§ 545.2-2(h)
(e)	§§ 545.3-1(b)(2), 545.3-1
(f)	§§ 545.3-1(b)(3), (c)(1), (c)(5), (e)
(g)	§ 545.3-1(f)
(h)	§§ 545.3-1(g), 545.3(b)(8)
§ 545.1-2	§§ 545.1-2(a), (b)(1)-(b)(3), (b)(5), (c)(1)-(c)(4), 545.1-5(f)
§ 545.1-3	§ 545.1-4
§ 545.1-4	§ 545.1-5
§ 545.2(a)	§ 545.2(a)
(b)	§§ 545.2(b), 545.3-1(c)
(c)	§ 545.1-4(e)
(d)	§ 545.2(c)
(e)	§ 545.2(d)
§ 545.3(a)	§ 545.1-1(b)
(b)	§§ 545.3-1(d)(1), (d)(2), 545.1-2(b)(4), 545.1-4(b)
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This is a voluntary program. (See CFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
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DOT/UMTA			DOT/UMTA	
CSA			CSA	

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

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

*NOTE: As of July 2, 1979, all agencies in the Department of Transportation, will publish on the Monday/Thursday schedule.

REMINDERS

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

Rules Going Into Effect Today**AGRICULTURE DEPARTMENT**

Food Safety and Quality Service—

- 26059 5-4-79 / Young chicken slaughter inspection rate maximums; effective date delayed until 7-3-79
[Originally published at 44 FR 22047, 4-13-79]

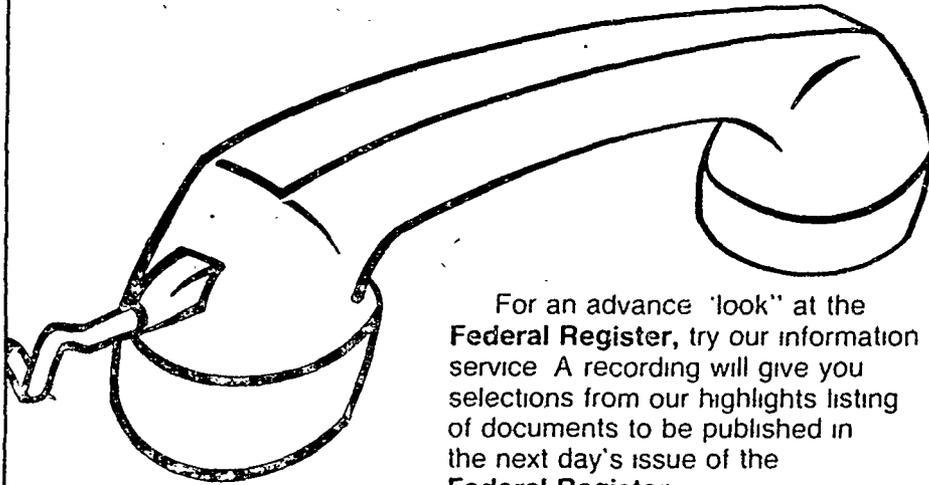
List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

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