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Monday  
July 30, 1979



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## Highlights

- 44780 **Community Development Block Grants** HUD proposes to revise its policies and procedures for the use of reallocated funds; comments by 9-28-79 (Part VI of this issue)
- 44471 **Guaranteed Rural Housing Loan Program** USDA/FmHA issues notice of suspension; effective 7-17-79
- 44706 **Housing** HUD/FHC issues correction on fair market rents for new construction and substantial rehabilitation (Part III of this issue)
- 44624 **Loan Repayment Program** HEW/PHS issues notice of phase-out
- 44553 **Income Tax** Treasury/IRS proposes rules relating to the treatment of certain transfers of appreciated property to political organizations
- 44544 **Credit Unions** NCUA provides rules for Corporate Central Federal Credit Unions where operations differ from natural person credit unions
- 44798 **Impoundment Control** OMB defers \$6.2 million in budget authority for the Bureau of Prisons of the Justice Department (Part IX of this issue)
- 44552 **Securities** SEC withdraws proposal to Forms S-5 and S-6, required for variable annuity prospectuses

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- 44638 **Series V-1981** Treasury/Sec'y announces interest rates of 9% percent per annum
- 44549 **Air Carriers** CAB proposes rules to enhance rate and fare changes, particularly deductions; comments by 8-29-79
- 44806 **Aircraft Loan Guarantee** DOT/FAA aligns program with recent deregulation which raised total guaranteed amount from 30 million to 100 million, effective 7-30-79 (Part XI of this issue)
- 44620 **Unleaded Gasoline** EPA clarifies what constitutes a *bona fide* emergency
- 44629 **Prisons** Justice/Office of the Attorney General classifies and lists various Bureau of Prisons institutions; effective 4-15-79
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- 44485 **Environmental Quality** NASA sets forth procedures for implementing provisions of the National Environmental Policy Act
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- 44643 **Sunshine Act Meetings**

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- 44706 Part III, HUD/FHC
- 44718 Part IV, USDA/FS
- 44740 Part V, FLRA, the General Counsel of the FLRA and the Federal Service Impasses Panel
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Federal Register

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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.

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## DEPARTMENT OF AGRICULTURE

### Soil Conservation Service

#### 7 CFR Part 650

#### Compliance With NEPA; Related Environmental Concerns

**AGENCY:** U.S. Department of Agriculture, Soil Conservation Service (SCS).

**ACTION:** Final rule.

**SUMMARY:** This rule prescribes the policy and general guidelines for SCS implementation of Executive Order 11988, Floodplain Management, dated May 24, 1977, in Federal assistance programs administered by SCS. It describes the policy and general constraints placed on SCS personnel relating to flood-plain management in assistance programs administered by SCS. This rule is in accordance with the U.S. Department of Agriculture Secretary's Memorandum No. 1827, Revised, Supplement No. 1, Implementation of Executive Orders 11988, Floodplain Management, and 11990, Protection of Wetlands.

**EFFECTIVE DATE:** July 30, 1979.

**FOR FURTHER INFORMATION CONTACT:** Gary A. Margheim, Acting Director, Environmental Services Division, Soil Conservation Service, U.S. Department of Agriculture, P.O. Box 2890, Washington, DC 20013, telephone 202-447-3839.

**SUPPLEMENTARY INFORMATION:** On June 2, 1978, SCS published in the Federal Register (43 FR 24223) its proposed policy and general guidelines for implementation of Executive Order 11988, Floodplain Management, Title 7, Chapter VI, Part 650, Subpart B, Related Environmental Concerns, § 650.25, Floodplain Management.

Written comments were received from four Federal agencies and three

environmental organizations. The comments were given full consideration in developing the final rules. The full text of all comments on the proposed rules is available for public inspection in Room 6105, South Agriculture Building, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Washington, D.C.

SCS has prepared these rules in consultation with the Water Resources Council (WRC), the Department of Housing and Urban Development's Federal Insurance Administration (FIA), and the Council on Environmental Quality (CEQ), in accordance with Section 2(d) of Executive Order 11988.

Most suggestions for clarification and editing were accepted. The more substantive comments and their consideration are summarized as follows:

*Comment 1:* Several agencies expressed concern that the proposed SCS rules do not take advantage of SCS's unique experience in flood-plain management. They had hoped that SCS's rules might be a point of reference or model for agencies with less experience in this area. In addition, the commenting agencies indicated that the proposed rules do not adequately and specifically tailor the Order to SCS's Federal assistance programs, nor do they clarify how the Order applies to the full range of SCS-assisted actions. Concern was expressed that the proposed rules do not adequately address the Order's requirements for actions involving Federal technical assistance programs.

*Response:* Because of the unique nature of SCS's programs, we do not believe that our rules would serve as an appropriate model for use by other agencies; but because of the unique nature of SCS assistance, we do believe that other agencies might benefit from our experience in encouraging flood-plain management.

SCS has had a long and unique experience in flood-plain management in a wide array of Federal assistance programs. In 1970, SCS initiated a program in cooperation with the responsible State agency to carry out requested technical flood hazard studies for local governments. SCS provides followup assistance to help the local government incorporate the technical findings into their flood-plain

regulations. SCS also carries out flood insurance studies for FIA on a reimbursable basis. Providing flood hazard data and interpretations for flood-plain management in flood-prone areas are continuing parts of environmental evaluation in SCS's project programs.

The unique nature of SCS's assistance is that the programs are entirely voluntary and involve primarily nonfederal land. SCS has no authority to regulate land use. It cannot require a land user to use his or her land in a particular manner or refrain from converting it to other uses, including development, or to restore or preserve natural values served by the flood plain. SCS exercises leadership in achieving sound flood-plain management by advising, counseling, and encouraging land users to voluntarily install needed conservation practices and use their land, including flood plains, wisely. SCS has been successful in carrying out its assistance programs for more than 40 years.

SCS believes that the proposed rules adequately tailor the requirements of the Order to its various programs by generally describing how the Order will be implemented in SCS's nonproject programs and how environmental evaluation in project programs integrates flood-plain management considerations into SCS's National Environmental Policy Act (NEPA) process. These rules have been added to SCS's NEPA rules by adopting a new section under Part 650, Subpart B, "Related Environmental Concerns." The more specific details of SCS's procedures for integrating flood-plain management into the NEPA process are being incorporated in SCS handbooks, manuals, and other internal memoranda. These rules are designed to apply to the full range of actions in the programs administered by this agency.

Because all programs administered by SCS are Federal assistance programs, the rules are specifically designed to address the Order's requirements for these types of programs that involve local sponsoring organizations or applicants (land users). Every type of direct or indirect action by SCS requires interaction with local, State, or Federal agencies and interdisciplinary planning. This planning assistance is provided only as requested. The environmental

evaluation is an inseparable part of the planning process (§ 650.3(a) of this Part). The environmental evaluation may be quite short if an SCS technician helps an individual land user solve a land or water resource problem. On the other hand, the environmental evaluation may be extensive, complex, and time consuming when an interdisciplinary planning staff helps a local sponsoring organization develop a coordinated watershed plan. The scope of the environmental evaluation and its documentation is in proportion to the scope of the task. Where flood plains will be affected by SCS-assisted actions, flood-plain management is considered in the evaluation, as are other significant environmental resources and values.

*Comment 2:* Three agencies expressed concern that SCS's proposed rules rely too heavily on SCS's existing NEPA process. They state that the Order imposes five specific and unique substantive procedural differences between NEPA and the Order.

(1) *Agency procedures.* They state that the Order requires specification of substantive procedures to avoid adverse effects and to support flood-plain development, but most agency procedures generally focus only on the preparation of environmental impact statements;

(2) *Mitigation.* They state the NEPA process requires avoidance and reduction of environmental damage in general terms, but the Order establishes specific standards to achieve such goals;

(3) *Alternatives.* They state that NEPA requires the development of alternatives that are environmentally sound. The Order requires the identification specifically to avoid incompatible development and to restore and preserve the natural and beneficial values served by flood plains;

(4) *Scope.* They state that the NEPA scope is very broad but that EIS's are required only for major Federal actions. However, the Order applies to all actions having adverse effects on or that directly or indirectly support development of the flood plain;

(5) *Public notice.* They state that NEPA's final EIS is a predecision document. The Order's public notice is a post decision document.

*Response:* We do not agree that there are procedural differences in implementing NEPA and the Order. SCS will use the NEPA process (i.e. environmental evaluation and an EIS where needed) for integrating flood-plain management into all stages of agency planning and decisionmaking. There is no reason why the requirements and responsibilities that

need to be specified in flood-plain procedures cannot be explicitly linked to and carried out through the NEPA process. SCS rules, procedures, handbooks, manuals, and other internal memoranda are being modified to address NEPA and flood-plain management in all programs and do not focus only on EIS's.

*Comment 3:* The concern was expressed that SCS's proposed rules do not provide an explicit decisionmaking process on which to base the development of more detailed handbooks and internal documents for carrying out SCS-assisted actions.

*Response:* We agree with this comment. The final rules have been modified to provide a more explicit policy statement on the decisionmaking process. This policy is the basis for the development of SCS handbooks, manuals, and internal memoranda. Although the recommended decisionmaking process is not duplicated in SCS's flood-plain management rule, decisionmaking with SCS assistance begins at the earliest contact with a land user and continues throughout the planning process.

It should be emphasized that the eight-step decisionmaking process in the WRC Guidelines, the six NEPA policy statements, and the six steps in the WRC's Principles and Standards are all encompassed in SCS guidelines for decisionmaking but are not specifically repeated in this rule, because the procedures as written encompass all the concerns in a single uniform approach for the agency.

*Comment 4:* Several comments questioned SCS's proposed rule as it relates to Federal land under SCS control.

*Response:* Because SCS owns or controls only some 30 relatively small properties and the vast majority of SCS assistance is provided to users of nonfederal land, SCS flood-plain management rules concerning such Federal lands are brief. The properties owned or controlled by SCS are not used by the public.

*Comment 5:* Several comments questioned the exclusion of certain nonproject SCS assistance from the public notice requirement (Section 2(a)(2)(ii) of the Order.

*Response:* Section 650.25(a)(1) has been reworded to emphasize the nature of the technical and financial assistance programs SCS administers. Because SCS receives an extremely large number of requests from land users for nonproject assistance and because of the policy restrictions on SCS personnel where flood-plain management is concerned,

the SCS Administrator has determined that public notice before every such action is not feasible. SCS assistance to land users in nonproject actions is normally through cooperative agreements with local conservation districts. Conservation districts have long-range plans and goals that are periodically updated in consultation with the public. Therefore, flood-plain management is an integral part of the conservation program for the district and provides for public participation in actions involving agricultural land use and development in flood plains.

It has been determined by Victor H. Barry, Jr., Deputy Administrator for Programs, SCS, that the following rules will bring Soil Conservation Service-assisted programs into full compliance with Executive Order 11988, Floodplain Management. Therefore, an impact analysis in accordance with Executive Order (EO) 12044 and U.S. Department of Agriculture Secretary's Memorandum 1955, is not necessary. Subsequent program decisions affected by these rules will be subject to EO 12044 and Secretary's Memorandum 1955.

(7 CFR 2.62; Executive Order 11988.)

Dated: July 18, 1979.

R. M. Davis,

Administrator, Soil Conservation Service.

A new Section 650.25 is added to Subpart B, "Related Environmental Concerns" as follows:

#### § 650.25 Flood-plain management.

Through proper planning, flood plains can be managed to reduce the threat to human life, health, and property in ways that are environmentally sensitive. Most flood plains are valuable for maintaining agricultural and forest products for food and fiber, fish and wildlife habitat, temporary floodwater storage, park and recreation areas, and for maintaining and improving environmental values. SCS technical and financial assistance is provided to land users primarily on nonfederal land through local conservation districts and other State and local agencies. Through its programs, SCS encourages sound flood-plain management decisions by land users.

(a) *Policy.* (1) *General.* SCS provides leadership and takes action, where practicable, to conserve, preserve, and restore existing natural and beneficial values in base (100-year) flood plains as part of technical and financial assistance in the programs it administers. In addition, 500-year flood plains are taken into account where there are "critical actions" such as schools, hospitals, nursing homes,

utilities, and facilities producing or storing volatile, toxic, or water-reactive materials.

(2) *Technical assistance.* SCS provides leadership, through consultation and advice to conservation districts and land users, in the wise use, conservation, and preservation of all land, including flood plains. Handbooks, manuals, and internal memoranda set forth specific planning criteria for addressing flood-plain management in SCS-assisted programs. The general procedures and guidelines in this part comply with Executive Order (E.O.) 11988, Floodplain Management, dated May 24, 1977, and are consistent with the Water Resources Council's Unified National Program for Floodplain Management.

(3) *Compatible land uses.* The SCS Administrator has determined that providing technical and financial assistance for the following land uses is compatible with E.O. 11988:

(i) Agricultural flood plains that have been used for producing food, feed, forage, fiber, or oilseed for at least 3 of the 5 years before the request for assistance; and

(ii) Agricultural production in accordance with official State or designated area water-quality plans.

(4) *Nonproject technical and financial assistance programs.* The SCS Administrator has determined that SCS may not provide technical and financial assistance to land users if the results of such assisted actions are likely to have significant adverse effects on existing natural and beneficial values in the base flood plain and if SCS determines that there are practicable alternatives outside the base flood plain. SCS will make a case-by-case decision on whether to limit assistance whenever a land user proposes converting existing agricultural land to a significantly more intensive agricultural use that could have significant adverse effects on the natural and beneficial values or increase flood risk in the base flood plain. SCS will carefully evaluate the potential extent of the adverse effects and any increased flood risk.

(5) *Project technical and financial assistance programs.* In planning and installing land and water resource conservation projects, SCS will avoid to the extent possible the long and short-term adverse effects of the occupancy and modification of base flood plains. In addition, SCS also will avoid direct or indirect support of development in the base flood plain wherever there is a practicable alternative. As such, the environmental evaluation required for each project action (§ 650.5 of this part)

will include alternatives to avoid adverse effects and incompatible development in base flood plains. Public participation in planning is described in § 650.6 of this part and will comply with Section 2(a)(4) of E.O. 11988. Flood-plain management requires the integration of these concerns into SCS's National Environmental Policy Act (NEPA) process for project assistance programs as described in Section 650 of this part.

(6) *Real property and facilities under SCS ownership or control.* SCS owns or controls about 30 properties that are used primarily for the evaluation and development of plant materials for erosion control and fish and wildlife habitat plantings (7 CFR 613, Plant Materials Centers, 16 U.S.C. 590 a-e, f, and 7 U.S.C. 1010-1011). If SCS real properties or facilities are located in the base flood plain, SCS will require an environmental evaluation when new structures and facilities or major modifications are proposed. If it is determined that the only practicable alternative for siting the proposed action may adversely affect the base flood plain, SCS will design or modify its action to minimize potential harm to or within the flood plain and will prepare and circulate a notice explaining why the action is proposed to be located in the base flood plain. Department of Housing and Urban Development (HUD) flood insurance maps, other available maps, information, or an onsite analysis will be used to determine whether the proposed SCS action is in the base flood plain. Public participation in the action will be the same as described in § 650.6 of this part.

(b) *Responsibility.* SCS provides technical and financial assistance to land users primarily through conservation districts, special purpose districts, and other State or local subdivisions of State government. Acceptance of this assistance is voluntary on the part of the land user. SCS does not have authority to make land use decisions on nonfederal land. SCS provides the land user with technical flood hazard data and information on flood-plain natural values. SCS informs the land user how alternative land use decisions may affect the aquatic and terrestrial ecosystems, human safety, property, and public welfare. Alternatives to flood-plain occupancy, modification, and development are discussed onsite with the land user by SCS.

(1) *SCS National Office.* (§ 600.2 of this part). The SCS Administrator, state conservationist, and district conservationist are the responsible Federal officials in SCS for

implementing the policies expressed in these rules. Any deviation from these rules must be approved by the Administrator. The Deputy Administrator for Programs has authority to oversee the application of policy in SCS programs. Oversight assistance to state conservationists for flood-plain management will be provided by the SCS technical service centers (§ 600.3 of this part).

(2) *SCS state offices.* (§ 600.4 of this part). Each state conservationist is the responsible Federal official in all SCS-assisted programs administered within the State. He or she is also responsible for administering the plant materials centers within the State. The state conservationist will assign a staff person who has basic knowledge of landforms, soils, water, and related plant and animal ecosystems to provide technical oversight to ensure that assistance to land users and project sponsors on the wise use, conservation, and preservation of flood plains is compatible with national policy. For SCS-assisted project actions, the staff person assigned by the state conservationist will consult with the local jurisdictions, sponsoring local organizations, and land users, on the basis of an environmental evaluation, to determine what constitutes significant adverse effects or incompatible development in the base flood plain. The state conservationist is to prepare and circulate a written notice for SCS-assisted actions for which the only practicable alternative requires siting in a base flood plain and may result in adverse effects or incompatible development. The SCS NEPA process will be used to integrate flood-plain management into project planning and consultations on land use decisions by land users and project sponsors.

(3) *SCS field offices.* The district conservationist (§ 600.6 of this part) is delegated the responsibility for providing technical assistance and approving financial assistance to land users in nonproject actions, where applicable, and for deciding what constitutes an adverse effect or incompatible development of a base flood plain. This assistance will be based on official SCS policy, rules, guidelines, and procedures in SCS handbooks, manuals, memoranda, etc. For SCS-assisted nonproject actions, the district conservationist, on the basis of the environmental evaluation, will advise recipients of technical and financial assistance about what constitutes a significant adverse effect or incompatible development in the base flood plain.

(c) *Coordination and implementation.* All planning by SCS staffs is interdisciplinary and encompasses the six NEPA policy statements, the WRC Principles and Standards, and an equivalent of the eight-step decisionmaking process in the WRC's February 1978 Floodplain Management Guidelines. SCS internal handbooks, manuals, and memoranda provide detailed information and guidance for SCS planning and environmental evaluation.

(1) *Steps for nonproject technical and financial assistance programs.* (i) SCS assistance programs are voluntary and are carried out through local conservation districts (State entities) primarily on nonfederal, privately owned lands.

(ii) After the land user decides the type, extent, and location of the intended action for which assistance is sought, the district conservationist will determine if the intended action is in the base flood plain by using HUD flood insurance maps, and other available maps and information or by making an onsite determination of the approximate level of the 100-year flood if maps or other usable information are lacking.

(iii) If the district conservationist determines that the land user's proposed location is outside the base flood plain, and would not cause potential harm within the base flood plain, SCS will continue to provide assistance, as needed.

(iv) If the district conservationist determines that the land user's proposed action is within the base flood plain and would likely result in adverse effects, incompatible development, or an increased flood hazard, it is the responsibility of the district conservationist to determine and point out to the land user alternative methods of achieving the objective, as well as alternative locations outside the base flood plain. If the alternative locations are determined to be impractical, the district conservationist will decide whether to continue providing assistance. If the decision is to terminate assistance for the proposed action, the land user and the local conservation district, if one exists, will be notified in writing about the decision.

(v) If the district conservationist decides to continue providing technical and financial assistance for a proposed action in the base flood plain, which is the only practicable alternative, SCS may require that the proposed action be designed or modified so as to minimize potential harm to or within the flood plain. The district conservationist will prepare and circulate locally a written

notice explaining why the action is proposed to be located in the base flood plain.

(2) *Steps for project assistance programs.* (i) SCS project assistance to local sponsoring organizations (conservation districts and other legal entities of State government) and land users is carried out primarily on nonfederal land in response to requests for assistance. SCS helps the local sponsoring organizations prepare a plan for implementing the needed resource measures.

(ii) SCS uses an interdisciplinary environmental evaluation (§ 650.6 of this part) as a basis for providing recommendations and alternatives to project sponsors. Flood-plain management is an integral part of every SCS environmental evaluation. SCS delineates the base flood plain by using detailed HUD flood insurance maps and other available data, as appropriate, and provides recommendations to sponsors on alternatives to avoid adverse effects and incompatible development in base flood plains. SCS will develop, as needed, detailed 100-year and 500-year flood-plain maps where there are none.

(iii) SCS's NEPA process (Part 650 of this chapter) is used to integrate the spirit and intent of E.O. 11988 Sections 2(a) and 2(c) into agency planning and recommendations for land and water use decisions by local sponsoring organizations and land users.

(iv) SCS will terminate assistance to a local sponsoring organization in project programs if it becomes apparent that decisions by land users and local jurisdictions concerning flood-plain management would likely result in adverse effects or incompatible development and the environmental evaluation reveals that there are practicable alternatives to the proposed project that would not cause adverse effects on the base flood plain.

(v) In carrying out the planning and installation of land and water resource conservation projects, SCS will avoid, to the extent possible, the long-term and short-term adverse effects associated with the occupancy and modification of base flood plains. In addition, SCS will also avoid direct or indirect support of development in the base flood plain wherever there is a practicable alternative. Where appropriate, SCS will require design modifications to minimize harm to or within the base flood plain. SCS will provide appropriate public notice and public participation in the continuing planning process in accordance with SCS NEPA process.

(vi) SCS may require the local government to adopt and enforce

appropriate flood plain regulations as a condition to receiving project financial assistance.

(3) *Actions on property and facilities under SCS ownership or control.* For real property and facilities owned by or under the control of SCS, the following actions will be taken:

(i) Locate new structures, facilities, etc., outside the base flood plain if there is a practicable alternate site.

(ii) Require public participation in decisions to construct structures, facilities, etc., in flood plains that might result in adverse effects and incompatible development in such areas if no practicable alternatives exist.

(iii) New construction or rehabilitation will be in accordance with the standards and criteria of the National Flood Insurance Program and will include floodproofing and other flood protection measures as appropriate.

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## 7 CFR Part 650

### Support Activities; Compliance With NEPA

AGENCY: U.S. Department of Agriculture, Soil Conservation Service (SCS).

ACTION: Final rule.

**SUMMARY:** These rules codify SCS policy for compliance with Executive Order 11990, Protection of Wetlands, in SCS-assisted programs. They describe the policy and general constraints on SCS personnel relating to the protection of wetlands in assistance programs administered by SCS. These rules are in accordance with the U.S. Department of Agriculture Secretary's Memorandum No. 1827, Revised, Supplement No. 1, Implementation of Executive Orders 11988, Floodplain Management, and 11990, Protection of Wetlands.

**EFFECTIVE DATE:** July 30, 1979.

**FOR FURTHER INFORMATION CONTACT:** Gary Margheim, Acting Director, Environmental Services Division, Soil Conservation Service, U.S. Department of Agriculture, P.O. Box 2890, Washington, DC 20013, telephone 202-447-3839.

**SUPPLEMENTARY INFORMATION:** On May 24, 1977, the President issued a comprehensive environmental message that included Executive Order (E.O.) 11990.

On June 30, 1978, SCS published in the Federal Register the proposed rules and general guidelines for implementation of E.O. 11990, Protection of Wetlands, Title 7, Chapter VI, Part 650, Subpart B,

Related Environmental Concerns,  
§ 650.26, Protection of Wetlands.

Written comments were received from two Federal agencies, four State agencies or institutions, two private organizations, and one representative to a State legislature. The comments were given full consideration in developing the final rules. The full text of all comments received on the proposed rules is available for public inspection in Room 6105, South Agriculture Building, U.S. Department of Agriculture, 14th and Independence Avenue, SW, Washington, D.C.

The following is a summary of substantive comments received and their consideration:

*Comment 1:* Several comments suggested editorial changes to § 650.26(a), Scope. Others suggested removing this section, changing it to a preamble, or making it a more accurate assessment of wetland values. One person expressed the view that the section overly favored wetland protection, but another suggested that it strongly endorsed wetland drainage. One comment also suggested that definitions be added to the proposed rules.

*Response:* SCS agrees that § 650.26(a) "Scope," is a discussion of wetlands and their values. It is intended to present a range of values and concerns about wetlands that are affected by SCS-assisted programs. The title of § 650.26(a) has been changed to "Background."

The intent of this section is not to make judgments but only to identify factors to be considered in decisionmaking. Editorial changes have been made for clarity throughout the rules. New construction and wetlands are defined in E.O. 11990. The words "substantially irrevocable" in § 650.26(b) Applicability, have been deleted and replaced with "wetlands previously converted to other uses." In § 650.21(c)(2)(v) the phrase "that are not irrevocably committed to other uses" was deleted. In § 650.26(c)(2)(ii) the phrase "in nonproject type areas" was changed to "nonproject assistance (assistance to individuals)".

*Comment 2:* One comment was received to the effect that the wetland management policies in the proposed rules were inconsistent with the requirements for protection of wetlands in the Executive Order.

*Response:* SCS believes that management of wetlands is consistent with Executive Order 11990. Wetlands management is designed to minimize the destruction, loss, or degradation of wetlands and assist in preservation and

enhancement of their natural and beneficial values as stated in the Executive Order.

*Comment 3:* Several comments suggested that SCS is severely limiting its technical assistance because of the proposed rules and expressed a desire for them to be more flexible. They objected to limitations of Federal assistance in Minnesota, South Dakota, and North Dakota. The comments suggested that these States are being discriminated against in application of Federal assistance and stated that Federal assistance without limitations is available in other States and, therefore, should be available in Minnesota, North Dakota, and South Dakota.

*Response:* SCS does not believe the Executive Order permits such flexibility. It directs SCS to take positive action to promote protection of wetlands. Pub. L. 87-732 constrains Federal assistance with drainage in the States of North Dakota, South Dakota, and Minnesota. SCS rules must conform to the mandates of this law. The proposes rules treat assistance in these States, as in other States, with the exception of the constraints mandated by The Soil Conservation and Domestic Allotment Act, Pub. L. 87-732, 16, U.S.C. 590, p 1, October 2, 1962.

*Comment 4:* One comment requested that SCS prepare a regulatory analysis so that people could consider effects of the proposed rules and alternative approaches early in the decisionmaking process.

*Response:* In accordance with the criteria established by USDA for compliance with E.O. 12044, it has been determined that a regulatory impact analysis is not necessary for these rules. This was stated in the Supplementary Information section of the proposed rules published in the Federal Register on June 30, 1978.

*Comment 5:* Another comment questioned whether the procedures for consideration of alternatives provided by § 650.26(c)(1) were sufficiently broad or rigorous to implement Executive Order 11990(2)(a)(2).

*Response:* Section 650.26(c)(1) incorporates the planning criteria set forth by Section 5 of E.O. 11990 into the comprehensive environmental assessment procedures used by SCS pursuant to 7 CFR Part 650. SCS believes that this incorporation will ensure implementation of the Executive Order's policies through a unified planning process.

*Comment 6:* Another comment challenged the statement in § 650.26(c)(2)(ii) that assistance should not be provided for altering wetlands to

enable them to be used for agriculture or other uses, because it implied that activities such as drainage might be approved if conversion to other uses were not the objective. It was requested that the phrase be deleted so that it would not be misconstrued.

*Response:* This section has been reworded for clarity. If wetlands are not to be drained or otherwise modified, they will continue to function as wetlands. The purpose of the phrase is to indicate that technical assistance to land users is given for the purpose of managing wetlands.

*Comment 7:* Three comments objected to SCS providing technical assistance that would alter wetlands types 1 and 2. Those comments indicated that SCS had violated the Order by establishing certain exceptions to the Order.

*Response:* For clarity, a reference to the SCS environmental evaluation has been added to § 650.26(c)(2)(i) to emphasize that assistance will be provided only in accordance with the Executive Order. Executive Order 11990 (Section 2(a)) requires that each agency, to the extent permitted by law, shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction and (2) that the proposed action includes all practicable measures to minimize harm to wetlands that may result from such use. In making this finding, the head of the agency may take into account economic, environmental, and other pertinent factors. Section 5 of the Executive Order specifies the factors to be considered. The SCS environmental evaluation provides for consideration of these factors. Wetlands types 1 and 2, as defined in "Wetlands of the United States," USDI, Fish and Wildlife Service Circular-39, 1956, have a high economic and social potential for farmland as well as high value to wildlife. SCS took this into consideration in preparing § 650.26(c)(2)(iii).

*Comment 8:* Two comments suggested that the exceptions in § 650.26(c)(3) constitute a blanket exception in violation of the Executive Order.

*Response:* SCS does not agree. This section delineates the limited area for consideration of exceptions, which is in connection with water quality control and water conservation. The criteria for such exceptions are taken from the Executive Order. SCS believes that its environmental evaluation process referred to in § 650.26(c)(1) includes the specific criteria needed to guide the granting of exceptions. The purpose of

§ 650.26(c)(3) is to alert the public that some wetlands may be lost by installing salinity control and water conservation measures and that exceptions to the procedures may be granted as specified in the Executive Order.

*Comment 9:* A comment was made on § 650.26(c)(4) to the effect that the proposed rule was in error in citing 7 CFR 650.6 as the source of review procedures; the correct section was cited as 7 CFR 650.7, "Public involvement and coordination." The comment went on to say that the section was in many ways inadequate with respect to provision for public involvement.

*Response:* The citation in the comment is incorrect because the August 8, 1978, revision of CFR Part 650, Subpart A, entitled Compliance With NEPA, is section 7 CFR 650.6, "Public Involvement During Environmental Assessment."

SCS's Guide for Environmental Assessment, program handbooks and manuals, and internal memoranda clearly direct SCS planners to involve the public in its project planning and decisionmaking. SCS believes that these guidelines, together with the previously cited codified rules, 7 CFR 650.6 provide adequate compliance with Section 2(b) of the Order.

*Comment 10:* Two comments requested that mitigation, as mentioned in § 650.26(c)(2)(iv), not be considered a reasonable substitute for unavoidable wetland alteration and that decisions should be coordinated with the U.S. Fish and Wildlife Service and the State in which the action is to occur.

*Response:* Section 650.26(c)(2)(iii) refers to unavoidable losses caused by construction primarily for purposes other than the drainage of wetlands. In granting the exceptions in (c)(2), the state conservationist will contact the State fish and wildlife agency as well as the U.S. Fish and Wildlife Service. The SCS environmental evaluation process provides for this.

*Comment 11:* One comment expressed the view that present policies ignore the effect of wetlands types 1, 2, and 3 on adjacent agricultural lands. The comment said that, in one county in a particular State, about 10 percent of the agricultural land had become partially nonproductive because of the high lime content of the soil around and between wetlands. The comment suggested that the only practical solution is "elimination of the cause—remove wetlands."

*Response:* This high-lime content is a natural soil condition often associated with wetland areas having a source of

calcium carbonate. The drainage of adjacent wetland areas would not reduce the lime content. Even if it would, the Executive Order directs agencies to protect wetlands, and these rules are written to provide that protection.

*Comment 12:* One comment requested that an environmental impact statement (EIS) as required by the National Environmental Policy Act be prepared before any decision is made on the proposed rules and procedures to implement E.O. 11990.

*Response:* SCS believes that the procedures set forth in the proposed rules are not a major Federal action. They are elements of a decisionmaking process that incorporates specific environmental concerns into overall interdisciplinary planning. Therefore, it has been determined that an EIS is not necessary.

*Comment 13:* One comment objected to exclusion from these rules of all projects where SCS commitments were made before May 5, 1975 (§ 650.26(b)(2)).

*Response:* SCS agrees with this comment. The rules have been modified to include applicable dates as specified in the Executive Order.

It has been determined by Victor H. Barry, Jr., Deputy Administrator for Programs, SCS, that the following rules will bring Soil Conservation Service-assisted programs into full compliance with Executive Order 11990, Protection of Wetlands. Therefore, an impact analysis in accordance with Executive Order (E.O.) 12044 and U.S. Department of Agriculture Secretary's Memorandum 1955, is not necessary. Subsequent program decisions affected by these rules will be subject to E.O. 12044 and Secretary's Memorandum 1955.

(7 CFR 2.62; Executive Order 11990.)

Dated: July 18, 1979.

R. M. Davis,

Administrator, Soil Conservation Service.

A new § 650.26 is added to Subpart B, Related Environmental Concerns, as follows:

#### § 650.26 Protection of wetlands.

(a) *Background.* (1) Because of the fragile nature of wetlands, human activity can and often does inflict lasting change on them, sometimes seriously altering their natural functions. Millions of acres of the Nation's original wetlands have been impaired or converted to other uses. Extraordinary care and effort are required to protect the remaining aquatic ecosystems.

(2) Wetlands moderate extremes in waterflow and have value as natural flood-control mechanisms. They aid in

water purification by trapping, filtering, and storing sediment and other pollutants and by recycling nutrients. Many serve as ground-water recharge areas. All function as nursery areas for numerous aquatic animal species and are critical habitat for a wide variety of plant and animal species. Wetlands produce economically important crops of fur, fish, wildlife, timber, wild rice, wild hay, wild cranberries, and other products. Many wetlands produce revenues through fees for hunting, fishing, and trapping privileges.

(3) The plants that grow in tidal marshes and estuaries produce the nutrients required to sustain high yields of aquatic life. Tidal and wind currents redistribute the nutrients and sediments throughout the aquatic areas, thereby helping to maintain the habitat for all creatures using these areas. Tidal marshes and estuaries are a primary base for many commercial and sport fisheries. Many saltwater finfish and shellfish spend some phase of their lives in such areas.

(4) Wetlands support adjacent or downstream aquatic ecosystems. Bordering marshes, for example, provide the spawning areas required by northern pike to maintain their populations in associated streams, rivers, lakes, and reservoirs.

(5) Various kinds and degrees of management may be required to ensure desired stages of productivity of existing wetlands. Management involves manipulation of plant species and densities through measures such as water depth control, burning, grazing, and mowing. Offsite measures often are essential to control wind and water erosion, to minimize sedimentation, to maintain optimum salinity, and to divert pollutants.

(6) Many wetlands have a potential for conversion to cropland for the production of food and fiber. It is important to balance the Nation's need for productive farmlands with long-term needs for protection of environmental resources for the enjoyment and well-being of future generations. The resource inventory, interpretation, and planning assistance provided by SCS are of value in achieving this balance.

(b) *Applicability.* This policy applies to SCS technical and financial assistance that will result in new construction in wetlands types 1 through 20 as described in Circular 39 of the U.S. Department of the Interior, Fish and Wildlife Service, published in 1956 and republished in 1971. These rules do not apply to lands artificially diked and flooded to produce commercial crops of domestic rice, wild rice, or cranberries,

or to wetlands previously converted to other uses. These rules do not apply to projects or actions now under construction or to projects for which all the funds have been appropriated through fiscal year 1979 or to projects or programs for which a draft or final environmental impact statement was filed before October 1, 1977.

(c) *Policy.* (1) *Environmental evaluation.* SCS uses an environmental evaluation (§ 650.4 of this part), which is initiated in the early stages of planning, to identify the effects of proposed actions that may occur in wetlands. The environmental evaluation identifies and evaluates practicable alternatives to avoid action that may destroy or degrade wetlands. The environmental evaluation also identifies actions that may preserve and enhance natural and beneficial values of wetlands. In compliance with Section 5 of E.O. 11990, the following factors are considered in the environmental evaluation:

(i) Public health, safety, and welfare, including water supply, quality, recharge, and discharge; pollution; flood and storm hazards; and sedimentation and erosion.

(ii) Maintenance of natural systems, including conservation and long-term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources.

(iii) Other uses of wetlands in the public interest, including recreation and scientific and cultural uses.

(2) *Compliance with sections 1(a) and 2(a) of E.O. 11990.* It is the general policy of SCS to aid in protecting, maintaining, managing, and restoring wetlands to ensure the continued realization of their beneficial values. Within this general policy and on the basis of an environmental evaluation, the following specific policies apply:

(i) *All SCS-assisted activities.* (A) SCS may provide technical and financial assistance to alter wetlands types 1 and 2, including conversion to cropland, pastureland, or other uses, only under the following very limited circumstances. The decision to provide technical assistance must be based on an environmental evaluation that indicates that the land has been cultivated to produce food, feed, fiber, and/or oilseed for at least 3 or the 5 years before the request for assistance and that there is no practicable alternative. Assistance in Minnesota, South Dakota, and North Dakota is to be given in accordance with item (ii)(C). SCS will encourage the preservation of wetlands types 1 and 2 that are adjacent to wetlands types 3 through 20 and are

needed to maintain a balanced aquatic or semiaquatic ecosystem. If a land user decides to alter types 1 and 2 or to convert them to other uses, SCS will encourage the application of conservation land treatment measures needed to reduce erosion and sedimentation and protect environmental values. SCS also will encourage decisions to preserve key areas and, where possible, to include enhancement measures on such areas.

(B) SCS will assist in restoring damaged wetlands and in establishing wetland habitat where appropriate.

(C) SCS will encourage land users and project sponsors to consider and use the programs of other Federal, State, and local agencies and private organizations that may help to preserve wetlands.

(ii) *Nonproject assistance (assistance to individuals).* (A) SCS will not provide technical and financial assistance for draining or otherwise altering wetlands types 3 through 20 to convert them to other uses.

(B) If wetlands types 3 through 20 would be drained or otherwise altered because of structural measures designed for other purposes, landowners will be advised of alternative ways to avoid or mitigate the incidental loss of these wetlands. Assistance will be provided only if one of the alternatives is selected for installation.

(C) In addition, in the States of Minnesota, North Dakota, and South Dakota, SCS will limit technical and financial assistance for draining or otherwise altering wetlands types 1 and 2 in order to convert them to other uses in accordance with provisions of Section 16 A of Pub. L. 87-732 as follows:

Soil Conservation and Domestic Allotment Act; Pub. L. 87-732, 16 U.S.C. 590 P-1, October 2, 1962

Sec. 16A. The Secretary of Agriculture shall not enter into an agreement in the States of North Dakota, South Dakota, and Minnesota to provide financial or technical assistance for wetland drainage on a farm under authority of this Act if the Secretary of the Interior has made a finding that wildlife preservation of such land in its undrained status will materially contribute to wildlife preservation and such finding, identifying specifically the farm and the land on that farm with respect to which the finding was made, has been filed with the Secretary of Agriculture within 90 days after the filing of the application for drainage assistance: Provided, That the limitation against furnishing such financial and technical assistance shall terminate (1) at such time as the Secretary of the Interior notifies the Secretary of Agriculture that such limitations should not be applicable, (2) one year after the date on which the adverse finding of the Secretary of the Interior was filed unless during that time an offer has been made by the Secretary of the Interior or a

State Government agency to lease or to purchase the wetland area from the owner thereof as a waterfowl resource, or (3) five years after the date on which such adverse finding was filed if such an offer to lease or to purchase such wetland area has not been accepted by the owner thereof: Provided further, That upon any change in the ownership of the land with respect to which such adverse finding was filed, the eligibility of such land for such financial or technical assistance shall be redetermined in accordance with the provisions of this section.

(iii) *Project assistance (watersheds and RC&D).* SCS will not provide assistance in project actions, such as watershed projects or Resource Conservation and Development (RC&D) areas, that include features designed for the purpose of draining or otherwise altering wetlands types 3 through 20 to convert them to other uses. If these projects include features for other purposes that unavoidably result in losses to types 3 through 20 wetlands, the loss is to be mitigated by establishing wetland habitat values in the same vicinity that are equivalent, insofar as possible, to the wetland habitat values lost. Provisions are to be made for managing these established wetlands in a way to ensure that the habitat values provided are equal to those lost, insofar as possible. Sponsors, conservation organizations, State fish and wildlife agencies, or others can assume these management responsibilities.

(3) *Exceptions.* (i) For project activities, the SCS Administrator may grant exceptions on a case-by-case basis if necessary to meet identified irrigation water management, water quality, and water conservation objectives.

(ii) For nonproject activities, state conservationists may grant exceptions on a farm-by-farm basis if irrigation water management, water quality, and water conservation objectives conflict with wetland protection. SCS will evaluate economic, environmental, and other pertinent factors in such proposed actions.

(4) *Early public review.* SCS will provide an opportunity for early public review of any plans or proposals for new construction in wetlands, as described in § 650.9(d) of this part.

[FR Dec. 79-22718 Filed 7-27-79; 8:45 am]  
BILLING CODE 3410-16-M

## Agricultural Marketing Service

## 7 CFR Part 917

## [Pear Regulation 9]

Fresh Pears, Plums, and Peaches  
Grown in California; Grade, Size, and  
Container RequirementsAGENCY: Agricultural Marketing Service,  
USDA.

ACTION: Final rule.

**SUMMARY:** This regulation sets minimum grade, size, and container requirements for shipments of fresh California Bartlett, Max-Red Bartlett, and Red Bartlett varieties of pears. The regulation takes into consideration the marketing situation facing the California pear industry and is needed to provide for orderly marketing in the interest of producers and consumers.

**EFFECTIVE DATES:** August 1, 1979, through July 31, 1980.

**FOR FURTHER INFORMATION CONTACT:** Malvin E. McGaha, 202-447-5975.

**SUPPLEMENTARY INFORMATION:** *Findings.* On July 9, 1979, notice was published in the Federal Register (44 FR 40071) inviting written comments on proposed grade, size, and container requirements applicable to California Bartlett, Max-Red Bartlett, and Red Bartlett varieties of pears during the 1979 season. No such material was submitted.

This regulation is issued under the marketing agreement, as amended, and Order No. 917, as amended (7 CFR Part 917), regulating the handling of fresh pears, plums, and peaches grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action is based upon the recommendations and information submitted by the Pear Commodity Committee, and upon other available information.

The regulation is based upon an appraisal of the current and prospective market conditions for California pears. The committee estimates that 3,570 cars of pears will be available for fresh shipment during the 1979 season compared to actual shipment of 2,516 cars last season.

Under the regulation, shipments of Bartlett, Max-Red Bartlett, and Red Bartlett varieties of pears must grade at least U.S. Combination with not less than 80 percent, by count, of the pears grading U.S. No. 1 and be of a size not smaller than the size known commercially as size 165. Containers must be marked with the name of the variety. Pears when packed in closed containers must conform to the requirements of standard pack, except

such pears may be fairly tightly packed. Pears when packed in other than closed containers must not vary more than  $\frac{3}{8}$  inch in their transverse diameter for counts 120 or less, and  $\frac{1}{4}$  inch for counts 135 to 165, inclusive. Volume fill cartons (pears not packed in rows and not wrap packed) must be well filled with pears uniform in size, packed fairly tight, include a top pad in each carton, and the top of the carton must be securely fastened to the bottom.

The grade and size requirement are designed to ensure the shipment of ample supplies of pears of the better grades and more desirable sizes in the interest of producers and consumers. Orderly marketing conditions would be maintained by preventing the demoralizing effect on the market caused by the shipment of lower quality and smaller-size pears when more than ample supplies of the more desirable grades and sizes are available to serve consumers' needs. The container requirements are designed to prevent deceptive packaging practices and to promote buyer confidence.

After consideration of all relevant matter presented, including the proposals in the notice and other available information, it is hereby found that the following regulation is in accordance with this marketing agreement and order and will tend to effectuate the declared policy of the act.

It is further found that good cause exists for not postponing the effective date of this regulation until 30 days after publication in the Federal Register (5 U.S.C. 553) in that (1) shipments of pears are currently in progress and this regulation should be applicable to all shipments made during the season in order to effectuate the declared policy of the act; (2) the regulation is the same as that specified in the notice to which no exceptions were filed; (3) the regulatory provisions are the same as those currently in effect; and (4) compliance with this regulation will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

This final rule has been reviewed under the USDA criteria established to implement Executive Order 12044. A determination has been made that this action should not be classified "significant". An impact statement has been prepared and is available from Malvin E. McGaha, 202-447-5975.

## § 917.451 Pear Regulation 9.

(a) During the period August 1, 1979, through July 31, 1980, no handler shall ship:

(1) Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears which do not grade at least U.S. Combination with not less than 80 percent, by count, of the pears grading at least U.S. No. 1;

(2) Any box or container of Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears unless such pears are of a size not smaller than the size known commercially as size 165;

(3) Any box or container of Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears unless such box or container is stamped or otherwise marked, in plain sight and in plain letters, on one outside end with the name of the variety;

(4) Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears, when packed in closed containers, unless such box or container conforms to the requirements of standard pack; except, that such pears may be fairly tightly packed;

(5) Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears, when packed in other than a closed container, unless such pears do not vary more than  $\frac{3}{8}$  inch in their transverse diameter for counts 120 or less, and  $\frac{1}{4}$  inch for counts 135 to 165, inclusive: *Provided*, That 10 percent of the containers in any lot may fail to meet the requirements of this paragraph; and

(6) Any box or container of Bartlett or Max-Red (Max-Red Bartlett, Red Bartlett) varieties of pears in volume fill cartons (not packed in rows and not wrap packed) unless (i) such cartons are well filled with pears fairly uniform in size; (ii) such pears are packed fairly tight; (iii) there is an approved top pad in each carton that will cover the fruit with no more than  $\frac{1}{4}$  inch between the pad and any side or end of the carton; and (iv) the top of the carton shall be securely fastened to the bottom: *Provided*, That 10 percent of the cartons in any lot may fail to meet the requirements of this paragraph.

(b) *Definitions.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order.

(2) "Size known commercially as size 165" means a size of pear that will pack a standard pear box, packed in accordance with the specifications of standard pack, with 165 pears and that one-half of the count size designated, representative of the size of the pears in the box or container, shall weigh at least 22 pounds.

(3) "Standard pear box" means the container so designated in § 1380.19 of

the regulations of the California Department of Food and Agriculture.

(4) "U.S. No. 1", "U.S. Combination", and "standard pack" shall have the same meaning as when used in the U.S. Standards for Pears (summer and fall) 7 CFR 2851.1260-2851 1280.

(5) "Approved top pad" shall mean a pad of wood-type excelsior construction, fairly uniform in thickness, weighing at least 160 pounds per 1,000 square feet (e.g., an 11 inch by 17 inch pad will weigh at least 21 pounds per 100 pads) or an equivalent made of material other than wood excelsior approved by the committee.

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

Dated, July 25, 1979, to become effective August 1, 1979.

William J. Doyle,

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

[FR Doc. 79-23433 Filed 7-27-79; 8:45 am]

BILLING CODE 3410-02-M

## 7 CFR Part 927

[Pear Regulation 18]

Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau Varieties of Pears Grown in Oregon, Washington, and California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

**SUMMARY:** This regulation sets certain quality requirements for fresh shipment of Beurre D'Anjou variety of winter pears shipped from the designated areas of Oregon and Washington, during the period August 1 through September 30, 1979. This action is necessary to assure that pears shipped will be of suitable quality in the interest of consumers and producers.

**EFFECTIVE DATE:** August 1 through September 30, 1979.

**FOR FURTHER INFORMATION CONTACT:** Malvin E. McGaha, 202-447-5975.

**SUPPLEMENTARY INFORMATION:** *Findings.* This regulation is issued under the marketing agreement, as amended, and Order No. 927, as amended (7 CFR Part 910), regulating the handling of Beurre D'Anjou, Beurre Bosc, Winter Nelis, Doyenne du Comice, Beurre Easter, and Beurre Clairgeau varieties of pears grown in Oregon, Washington, and California. The action is based upon the recommendations and information

submitted by the Control Committee, and upon other information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action reflects the Department's appraisal of the crop and the need for regulation based on current and prospective market conditions. The committee estimates that about 6.3 million boxes of Beurre D'Anjou pears will be produced this year as compared with 6.7 million in 1978. The quality regulation, hereinafter provided, is designed to prevent the handling of any Beurre D'Anjou pears of lower quality than specified so as to provide satisfactory quality fruit in the interest of producers and consumers consistent with the declared policy of the act.

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

Further, the emergency nature of this regulation warrants publication without opportunity for further public comment, in accord with emergency procedures in Executive Order 12044. The regulation has not been classified significant under USDA criteria for implementing the Executive Order. An impact analysis is available from Malvin E. McGaha, 202-447-5975.

### § 927.318 Pear Regulation 18.

During the period August 1 through September 30, 1979, no handler shall ship any Beurre D'Anjou variety of pears from the Medford, Hood River-White Salmon-Underwood, Wenatchee, and Yakima Districts unless such pears have an appropriate certification by the Federal-State Inspection Service, issued prior to shipment, showing that the core temperature of such pears has been lowered to 35 degrees Fahrenheit or less, and any such pears for domestic shipment shall have an average pressure test of 14 pounds or less.

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

Dated: July 25, 1979.

William J. Doyle,

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

[FR Doc. 79-23435 Filed 7-27-79; 8:45 am]

BILLING CODE 3410-02-M

## 7 CFR Part 928

[Papaya Regulation 9, Amendment 5]

Papayas Grown in Hawaii; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

**SUMMARY:** This amendment continues relaxed quality requirements for shipments of Hawaiian papayas during the period August 1 through December 31, 1979. Papayas for export and intrastate shipments must grade at least Hawaii No. 1, except that allowable tolerances for defects may total 10 percent. Such action recognizes the current and prospective marketing situation for Hawaiian papayas and is consistent with the composition of the crop.

**EFFECTIVE DATE:** August 1, 1979.

**FOR FURTHER INFORMATION CONTACT:** Malvin E. McGaha, 202-447-5975.

**SUPPLEMENTARY INFORMATION:** *Findings.* This amendment is issued under the marketing agreement and Order No. 928 (7 CFR Part 928), regulating the handling of papayas grown in Hawaii. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action is based upon the recommendation and information submitted by the Papaya Administrative Committee, and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The committee reports heavy rains and flooding in the production area has reduced available supplies and increased quality problems which has caused loss of trees and fruit. Production estimates for 1979 have been revised by the committee to 40.0 million pounds, as compared to 45.0 million pounds estimated in March, and 57.0 million pounds estimated at the start of the 1979 season. Therefore, the committee has recommended that the quality requirements currently in effect through July 31, 1979, be continued for the period August 1-December 31, 1979. Intrastate and export shipments of papayas are

required to grade at least Hawaii No. 1 with 10 percent tolerance for defects (including not more than 5% for serious damage, 1% for immature fruit, and 1% for decay). The amendment would increase supplies available to meet strong demand and would permit growers to market a larger proportion of the remaining crop. The weight requirement of 11 ounces for export shipments and 13 ounces for intrastate shipments would remain unchanged.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date of this amendment until August 29, 1979 (5 U.S.C. 553) in that the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient; and this amendment relieves restrictions on the handling of papayas grown in Hawaii.

Further, the emergency nature of this amendment warrants publication without opportunity for further public comment, in accord with emergency procedures in Executive Order 12044. The amendment has not been classified significant under USDA criteria for implementing the Executive Order. An impact analysis is available from Malvin E. McGaha, 202-447-5975.

In § 928.309 (Papaya Regulation 9; 44 FR 30, 3669, 6706, 12606, 22433) paragraphs (b) and (c) are amended to read as follows:

§ 928.309 Papaya Regulation 9.

(b) Notwithstanding the provisions of paragraph (a)(2) of this section, any handler may during the period August 1 through December 31, 1979, handle papayas to any export destination which meet the requirements of the Hawaii No. 1 grade, except that allowable tolerances for defects may total 10 percent: *Provided*, That not more than 5 percent shall be for serious damage, not more than 1 percent for immature fruit, and not more than 1 percent for decay: *Provided further*, That such papayas shall individually weigh not less than 11 ounces each.

(c) Notwithstanding the provisions of paragraph (a)(1) of this section, any handler may during the period August 1 through December 31, 1979, handle papayas to any destination within the production area which meet the requirements of Hawaii No. 1 grade, except that allowable tolerances for defects may total 10 percent: *Provided*,

That not more than 5 percent shall be for serious damage, of which not more than 1 percent shall be for immature fruit, and not more than 1 percent shall be for decay: *Provided further*, That such papayas shall individually weigh not less than 13 ounces each.

\* \* \* \* \*

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

Dated: July 24, 1979, to become effective August 1, 1979.

William J. Doyle,

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

[FR Doc. 79-23336 Filed 7-27-79; 8:45 am]

BILLING CODE 3410-02-M

**7 CFR Part 958**

[Handling Regulation (958.324)]

**Onions Grown in Certain Designated Counties in Idaho and Malheur County, Oreg.**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This regulation requires fresh market shipments of onions grown in certain designated counties in Idaho and Malheur County, Oregon, to be inspected and meet minimum quality and size requirements. The regulation should promote orderly marketing of such onions and keep less desirable qualities and sizes from being shipped to consumers.

**EFFECTIVE DATE:** August 1, 1979.

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

**SUPPLEMENTARY INFORMATION:** Marketing Agreement No. 130 and Order No. 958, both as amended (7 CFR Part 958), regulate the handling of onions grown in certain designated counties in Idaho and Malheur County, Oregon. It is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The Idaho-Eastern Oregon Onion Committee, established under the order, is responsible for its local administration.

Notice of rulemaking was published in the June 29, 1979, Federal Register (44 FR 37952). The notice afforded interested persons through July 16, 1979, to file written data, views or arguments pertaining to that proposal. None was filed.

This regulation is based upon unanimous recommendations made by the committee at its public meeting in Ontario, Oregon, on June 19, 1979. The recommendations of the committee

reflect its appraisal of the composition of the 1979 crop of Idaho-Eastern Oregon onions and the marketing prospects for this season and are consistent with the marketing policy it adopted. Harvesting of onions is expected to begin about August 1.

The grade, size, pack, maturity and inspection requirements specified herein are necessary to prevent onions of low quality or less desirable sizes from being distributed in fresh market channels. They also provide consumers with good quality onions consistent with the overall quality of the crop, and maximize returns to producers for the preferred quality and sizes.

Exceptions are specified to certain of these requirements to recognize special situations in which such requirements are inappropriate or unreasonable. Shipments are allowed to certain special purpose outlets without regard to the grade, size, maturity, pack and inspection requirements, provided that safeguards are met to prevent such onions from reaching unauthorized outlets.

Special purpose shipments are allowed for planting, livestock feed, charity, dehydration, extraction and pickling since such shipments normally do not enter the commercial fresh market channels and no useful purpose is served by regulating such shipments. Onions for canning and freezing are exempt under the legislative authority for this part.

*Findings.* After consideration of all relevant matters, including the proposal in the notice, it is found that the handling regulation will tend to effectuate the declared policy of the act.

It is further found that good cause exists for not postponing the effective date of this regulation until August 29, 1979, (5 U.S.C. 553) and that (1) shipments of onions grown in the production area will begin on or about the effective date specified herein, (2) to maximize benefits to producers, this regulation should apply to as many shipments as possible during the marketing season, (3) notice of the regulation was published in the Federal Register of June 29, 1979, and information regarding its provisions, which are similar to those in effect during the previous season, has been made available to producers and handlers in the production area, and (4) compliance with this regulation will not require any special preparation by handlers which cannot be completed by the effective date.

7 CFR Part 958 is amended by adding a new § 958.324 as follows:

**§ 958.324 Handling regulation.**

During the period August 1, 1979, through April 30, 1980, no person may handle any lot of onions, except braided red onions, unless such onions are at least "moderately cured," as defined in paragraph (f) of this section, and meet the requirements of paragraphs (a) and (b) of this section, or unless such onions are handled in accordance with paragraphs (c) and (d), or (e) of this section.

(a) *Grade and size requirements.* (1) *White varieties.* Shall be either:

(i) U.S. No. 2, 1 inch minimum to 2 inches maximum diameter; or

(ii) U.S. No. 2, if not more than 30 percent of the lot is comprised of onions of U.S. No. 1 quality, and at least 1½ inches minimum diameter; or

(iii) U.S. No. 1, at least 1½ inches minimum diameter.

However, none of these three categories of onions may be commingled in the same bag or other container.

(2) *Red varieties.* U.S. No. 2 or better grade, at least 1½ inches minimum diameter.

(3) *All other varieties.* Shall be either:

(i) U.S. No. 2 grade, at least 3 inches minimum diameter, if not more than 30 percent of the lot is comprised of onions of U.S. No. 1 quality; or

(ii) U.S. No. 1, 1½ inches minimum to 2¼ inches maximum diameter; or

(iii) U.S. No. 1, at least 2¼ inches minimum diameter.

However, none of these three categories of onions may be commingled in the same bag or other container.

(b) *Inspection.* No handler may handle any onions regulated hereunder unless such onions are inspected by the Federal-State Inspection Service and are covered by a valid applicable inspection certificate, except when relieved of such requirement pursuant to paragraphs (c) or (e) of this section.

(c) *Special purpose shipments.* The minimum grade, size, maturity and inspection requirements of this section shall not be applicable to shipments of onions for any of the following purposes:

(1) planting; (2) livestock feed; (3) charity; (4) dehydration; (5) canning; (6) freezing; (7) extraction; and (8) pickling.

(d) *Safeguards.* Each handler making shipments of onions for dehydration, canning, freezing, extraction or pickling pursuant to paragraph (c) of this section shall:

(1) First apply to the committee for and obtain a Certificate of Privilege to make such shipments;

(2) Prepare, on forms furnished by the committee, a report in quadruplicate on each individual shipment to such outlets

authorized in paragraph (c) of this section;

(3) Bill or consign each shipment directly to the applicable processor; and

(4) Forward one copy of such report to the committee office and two copies to the processor for signing and returning one copy to the committee office. Failure of the handler or processor to report such shipments by promptly signing and returning the applicable report to the committee office may be cause for cancellation of such handler's Certificate of Privilege and/or the processor's eligibility to receive further shipments pursuant to such Certificate of Privilege. Upon cancellation of any such Certificate of Privilege the handler may appeal to the committee for reconsideration.

(e) *Minimum quantity exemption.* Each handler may ship up to, but not to exceed, one ton of onions each day without regard to the inspection and assessment requirements of this part, if such onions meet minimum grade, size and maturity requirements of this section. This exception shall not apply to any portion of a shipment that exceeds one ton of onions.

(f) *Definitions.* The terms "U.S. No. 1" and "U.S. No. 2" have the same meaning as defined in the United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Types), as amended (7 CFR 2851.2830-2851.2854), or the United States Standards for Grades of Bermuda-Granex-Grano Type Onions (7 CFR 2851.3195-2851.3209), whichever is applicable to the particular variety, or variations thereof specified in this section. The term "braided red onions" means onions of red varieties with tops braided (interlaced). The term "moderately cured" means the onions are mature and are more nearly well cured than fairly well cured. Other terms used in this section have the same meaning as when used in Marketing Agreement No. 130 and this part.

(g) *Applicability to imports.* Pursuant to § 8e of the act and § 980.117 "Import regulations; onions" (43 FR 5499); onions imported during the effective period of this section shall meet the grade, size, quality and maturity requirements specified in the introductory paragraph and paragraph (a) of this section.

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

*Note.*—This final rule has been reviewed under the USDA criteria implementing Executive Order 12044. A determination has been made that this action should not be classified "significant." An Impact Statement has been prepared and is available from Peter G. Chapogas (202) 447-5432.

Dated: July 24, 1979 to become effective August 1, 1979.

William J. Doyle,

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

[FR Doc. 79-23325 Filed 7-27-79; 8:45 am]

BILLING CODE 3410-02-M

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**Farmers Home Administration**
**7 CFR Part 1980**
**Guaranteed Rural Housing Loan Program**

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Notice of Suspension.

**SUMMARY:** The Farmers Home Administration suspends for the remainder of fiscal year 1979 the Administrative 45 day limit provided in paragraphs A and B of the "Administrative" section of § 1980.332, Subpart D, Part 1980, Subchapter H, Chapter XVIII, Title 7 of the Code of Federal Regulations. The 45 day limitation is to control guarantee authority at the end of a fiscal year. Since there is adequate funding authority available this fiscal year, guaranteed rural housing loans may be obligated by the Farmers Home Administration and Conditional Commitments for Guarantee may be issued during the remainder of fiscal year 1979 until September 20, 1979, without waiting for the Acknowledgement of Obligated Funds to be received from the Finance Office.

**EFFECTIVE DATE:** July 17, 1979.

**FOR FURTHER INFORMATION CONTACT:** Mr. Reed J. Petersen, 202-447-4295.

Dated: July 17, 1979.

Gordon Cavanaugh,  
*Administrator, Farmers Home Administration.*

[FR Doc. 79-23318 Filed 7-27-79; 8:45 am]

BILLING CODE 3410-07-M

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**DEPARTMENT OF ENERGY**
**10 CFR Part 205**
**Administrative Procedures and Sanctions; 1979 Interpretations of the General Counsel**

**AGENCY:** Department of Energy.

**ACTION:** Notice of Interpretations.

**SUMMARY:** Attached are the interpretations issued by the Office of General Counsel of the Department of Energy under 10 CFR Part 205, Subpart F, during the period June 1, 1979, through June 30, 1979.

Appendix B identifies those requests for interpretation which have been dismissed during the same period.

**FOR FURTHER INFORMATION CONTACT:**

Diane Stubbs, Office of General Counsel, Department of Energy, 12th & Pennsylvania Avenue, NW., Room 1121, Washington, D.C. 20461, (202) 633-9070.

**SUPPLEMENTARY INFORMATION:**

Interpretations issued pursuant to 10 CFR Part 205, Subpart F, are published in the Federal Register in accordance with the editorial and classification criteria set forth in 42 FR 7923 (February 8, 1977), as modified in 42 FR 46270 (September 15, 1977).

These interpretations depend for their authority on the accuracy of the factual statement used as a basis for the interpretation (10 CFR 205.84(a)(2)) and

may be rescinded or modified at any time (§ 205.85(d)). Only the persons to whom interpretations are addressed and other persons upon whom interpretations are served are entitled to rely on them (§ 205.85(c)). An interpretation is modified by a subsequent amendment to the regulation(s) or ruling(s) interpreted thereby to the extent that the interpretation is inconsistent with the amended regulation(s) or ruling(s) (§ 205.85(e)). The interpretations published below are not subject to appeal.

Issued in Washington, D.C., July 24, 1979.  
Everard A. Marseglia, Jr.,  
Assistant General Counsel for Interpretations  
and Rulings, Office of General Counsel.

*Issue*

Does the normal business practices rule as set forth in 10 CFR 210.62(a) require Chevron to deliver the various grades of motor gasoline in whatever proportions Time may currently request?

*Interpretation*

For the reasons set forth below, the Department of Energy (DOE) has determined that the normal business practices rule as set forth in 10 CFR 210.62(a) does not require Chevron to deliver motor gasoline to Time in whatever proportion of grades Time may currently request.

The Mandatory Petroleum Allocation Regulations do not specifically allocate motor gasoline by grade except as provided in 10 CFR 211.108 with respect to unleaded motor gasoline. Those regulations, set forth at 10 CFR Part 211 and adopted on January 14, 1974, 39 FR 1924 (January 15, 1974), were intended to apply to the allocation of "crude oil, residual fuel oil and refined petroleum products produced in or imported into the United States." 10 CFR 211.1. Subpart F of these regulations provided for the mandatory allocation of "all motor gasoline produced in or imported into the United States." 10 CFR 211.101(a). However, motor gasoline is defined in 10 CFR 211.51 without reference to grade. Except for a provision relating to unleaded motor gasoline, the DOE allocation regulations do not distinguish between grades of motor gasoline. See § 211.108. On the contrary, § 211.108(a) provides in relevant part:

All the provisions of this subpart shall apply to all substances meeting the definition of motor gasoline, including unleaded gasoline, premium and regular gasoline without regard to the different characteristics of those substances except as provided in this section with respect to unleaded gasoline \* \* \*.

Thus, with the exception of unleaded motor gasoline, the allocation regulations do not mandate expressly that a supplier deliver a particular grade of motor gasoline to a purchaser.

The General Allocation and Price Regulations, set forth in 10 CFR Part 210 and adopted on January 14, 1974, 39 FR 1924 (January 15, 1974), are applicable to the Mandatory Petroleum Allocation and Price Regulations and require a supplier to maintain normal business practices that were in effect during the base period for sales of an allocated product. 10 CFR 210.62. Section 210.62 regulates normal business practices in recognition of the varying roles that such practices play in the flow of

APPENDIX A.—Interpretations

No.	To	Date	Category	File No.
1979-10	Time Oil Co	May 18 (reissued June 25).	Allocation	A-331
1979-12	Charles P. Brocato	June 19.	Price	A-412
1979-13	Solar Turbines International	June 19.	Allocation	A-396
1979-14	Crystal Oil Co	June 19.	Price	A-122

**Interpretation 1979-10**

To: Time Oil Company.

Regulation Interpreted: 10 CFR 210.62.

Code: GCW-AI—Allocation Entitlement; Normal Business Practices.

*Facts*

Time Oil Company (Time) has purchased motor gasoline since 1969 from Chevron U.S.A. (Chevron), a wholly-owned subsidiary of Standard Oil of California (Socal). Time is a wholesale purchaser-reseller as defined in 10 CFR 211.51, and, therefore, its relationship with Chevron for the purchase of motor gasoline is subject to the provisions of 10 CFR Parts 210 and 211.

In 1971, Time and Socal entered into two agreements whereby Time purchased motor gasoline in Washington and Oregon from Chevron and Socal purchased aviation fuel in Hawaii from Time. The practice under these agreements was for Chevron to deliver regular and premium grade motor gasoline in whatever quantities Time chose to purchase.<sup>1</sup> From 1971 until 1974, Chevron delivered motor gasoline in the quantities and grades requested by Time, in accordance with the agreements. In 1972 under the agreements, Chevron delivered more

than — gallons of motor gasoline to Time, — percent of which was regular grade and — percent of which was premium grade. Chevron did not deliver any unleaded motor gasoline as none was requested by Time. However, in 1974, instead of selling Time the amount of each grade of motor gasoline it requested at that time, Chevron began to require Time to take the same percentage of each grade of motor gasoline as Time had received during 1972, except that Time was allowed to take part of the percentage of premium motor gasoline as unleaded motor gasoline.

In its present submission, Time contends that the arrangement whereby it received as much of each grade of motor gasoline as it requested from Chevron is a normal business practice within the meaning of 10 CFR 210.62(a). Specifically, Time seeks assurance that the normal business practices rule requires that Chevron allow Time to purchase grades of motor gasoline in proportions and amounts consistent with the needs of Time and its customers.

<sup>1</sup> The June 1, 1971, contact provided that "the regular grade gasoline shall be delivered by Standard at times, in method of delivery and in quantities as shall be reasonable giving consideration to Standard's delivery problems."

product. Section 210.62(a) provides in relevant part:

Suppliers will deal with purchasers of an allocated product according to normal business practices in effect during the base period specified in Part 211 for that allocated product, and no supplier may modify any normal business practice so as to result in the circumvention of any provision of this chapter \* \* \*

The applicable "base period" for motor gasoline as set forth in 10 CFR 211.102 is "the month of 1972 corresponding to the current month."<sup>2</sup>

Those rules and regulations were adopted to implement the statutory mandate of Section 4(a) of the Emergency Petroleum Allocation Act of 1973 (EPAA), as amended, Pub. L. No. 93-159 (November 27, 1973).<sup>3</sup> Section 2(b) of the EPAA states its purpose as follows:

The purpose of this Act is to grant to the President of the United States and direct him to exercise specific temporary authority to deal with shortages of crude oil, residual fuel oil, and refined petroleum products or dislocations in their national distribution system. *The authority granted under this Act shall be exercised for the purpose of minimizing the adverse impacts of such shortages or dislocations on the American people and the domestic economy.* [Emphasis added.]

The language of the EPAA clearly indicates as a major congressional concern the prevention of dislocations in the national distribution of refined petroleum products. The DOE Mandatory Petroleum Allocation Regulations implemented this congressional mandate by freezing the supplier/purchaser relationships for

<sup>2</sup>The base period for motor gasoline, as set forth in 10 CFR 211.102, was recently updated by an Interim Final Rule, 44 FR 26712 (May 4, 1979). Effective May 1, 1979, through September 30, 1979, § 211.102 is amended to read in pertinent part: "Base period" means the month of the period November 1977 through October 1978 corresponding to the current month." Section 211.102 was previously amended by Activation Order No. 1, 44 FR 11202 (February 28, 1979), which activated certain provisions of the Standby Petroleum Product Allocation Regulations, Special Rule No. 1 to 10 CFR Part 211, for the period March 1, 1979, through May 1, 1979. Activation Order No. 1 established the base period for motor gasoline as the month of the 12-month period from July 1, 1977, through June 30, 1978, corresponding to the current month.

Since the DOE regulations have not permitted any change in the normal business practices which were in effect during the original base period for motor gasoline, the normal business practices in effect during the updated base periods should be the same as those in effect during calendar year 1972. Therefore, for purposes of this interpretation, the term "base period" shall refer to the month of the calendar year 1972 corresponding to the current month.

<sup>3</sup>15 U.S.C. § 751 *et seq.* (1976).

motor gasoline that were in effect during calendar year 1972. Section 210.62, which was intended as a general mechanism to ensure compliance with the price and allocation regulations, prohibits any deviation by a supplier from normal base period business practices which would result in a circumvention of any provision of those regulations. The normal business practices rule was not intended, however, to expand or restrict the basic rights and obligations conferred under the allocation or price regulations themselves.

Section 210.62(a) does not incorporate private contractual arrangements during the base period into and establish them as requirements of the Mandatory Petroleum Allocation and Price Regulations. This section prohibits sellers from altering normal business practices, such as credit arrangements, that would have the effect of circumventing the allocation and price regulations, by making it more expensive or more difficult for the purchaser of the product to obtain it than if the business practices actually established during the base period were continued. *See, e.g., Pasco Petroleum Co.*, Interpretation 1978-38, 43 FR 29544 (July 10, 1978); *Oil Transit Corporation*, Interpretation 1977-35, 42 FR 54269 (October 5, 1977); and *Sterling Stations Inc.*, Interpretation 1977-19, 42 FR 39962 (August 8, 1977). Chevron's practice in this case, of continuing to supply the proportion of grades of motor gasoline actually sold to Time during the base period, does not make motor gasoline more expensive or more difficult for Time to obtain and therefore is proper so long as Chevron is not discriminating among purchasers<sup>4</sup> and so long as the provisions of § 211.108 are satisfied.<sup>5</sup>

Accordingly, based upon the facts presented for our consideration, and in view of the preceding discussion, we have concluded that the refusal of Chevron to supply motor gasoline to Time, in whatever proportions of grades

<sup>4</sup>Section 210.62(b) specifically prohibits discrimination among purchasers and provides in pertinent part:

No supplier shall engage in any form of discrimination among purchasers of any allocated product. For purposes of this paragraph, "discrimination" means extending any preference or sales treatment which has the effect of frustrating or impairing the objectives, purposes and intent of this chapter or of the Act, \* \* \*

<sup>5</sup>Unleaded motor gasoline is specifically allocated under § 211.106. The fact that Time may be entitled to receive a particular volume of unleaded motor gasoline from Chevron under this provision would not affect the proportion of the grade of the other motor gasoline that Time purchases. The amount of unleaded motor gasoline Time receives from Chevron would be subtracted from Time's total allocation.

Time may currently elect to specify, does not constitute a violation of 10 CFR 210.62(a).

Issued in Washington, D.C., on May 18, 1979.

Everard A. Marseglia, Jr.,  
Assistant General Counsel for Interpretations  
and Rulings.

Interpretation 1979-12

To: Charles P. Brocato.  
Regulation Interpreted: 10 CFR 212.128.  
Code: GCW-PI—Recordkeeping  
Requirements.

#### Facts

Charles P. Brocato (Brocato) is the operator of the Mary Willeen Schmidt Lease, Well No. 1, Midway Field, San Patricio County, Texas, and is therefore a crude oil producer subject to the price regulations set forth in 10 CFR Part 212, Subpart D. In June 1978, Brocato leased the production rights to this property<sup>1</sup> and now seeks to certify the crude oil produced and sold from this property as stripper well property crude oil pursuant to the provisions of 10 CFR 212.131(a). According to his submission, Brocato does not have access to original records of production for this property for the period of time before he obtained the production rights. Brocato has represented, however, that the records of the Oil and Gas Division of the Texas Railroad Commission (Railroad Commission) indicate that this property qualifies as a stripper well property based upon the volume of crude oil produced during calendar year 1973. Brocato has requested an interpretation that a certified copy of the Railroad Commission's records is sufficient to satisfy the recordkeeping requirements set forth in 10 CFR 212.128(a).

#### Issue

Where Brocato does not have access to original production records, may he fulfill the recordkeeping requirements for a stripper well property as set forth in 10 CFR 212.128(a) by maintaining a certified copy of the Railroad Commission's records on file at his principal place of business?

#### Interpretation

For the reasons set forth below, the Department of Energy (DOE) has

<sup>1</sup>Brocato has not sought our determination that the lease described in this interpretation constitutes a "property" as that term is defined in the Mandatory Petroleum Price Regulations. Accordingly, for purposes of this interpretation, we assume that Brocato has correctly defined the property. Moreover, we assume that the production records on file with the Texas Railroad Commission, upon which Brocato intends to rely, relate to production of crude oil from the same "property" that is the subject of this request.

determined that where, through no fault of Brocato, original production records are unavailable, certified copies of *bona fide* records of the Railroad Commission will fulfill the recordkeeping requirements for a stripper well property as set forth in 10 CFR 212.128(a), if such copies are maintained on file at the producer's principal place of business and insofar as such records contain all the information required in § 212.128(a).

"Stripper well property" is defined in 10 CFR 212.54(c) as " \* \* \* a 'property' whose average daily production of crude oil (excluding condensate recovered in non-associated production) per well did not exceed 10 barrels per day during any preceding consecutive 12-month period beginning after December 31, 1972." Section 212.54(c) further provides in pertinent part:

"Average daily production" means the qualified maximum total production of crude oil (excluding condensate recovered in non-associated production) produced from a property, divided by a number equal to the number of days in the 12-month qualifying period times the number of wells that produced crude oil (excluding condensate recovered in non-associated production) from that property in that 12-month qualifying period. To qualify as maximum total production, each well on the property must have been maintained at the maximum feasible rate of production throughout the 12-month qualifying period and in accordance with recognized conservation practices, and not significantly curtailed by reason of mechanical failure or other disruption in production.

In order to facilitate enforcement and compliance with the first sale price regulations by crude oil producers, § 212.128(a) imposes certain recordkeeping requirements on producers with respect to all properties in general and with respect to stripper well properties in particular. Section 212.128(a) provides:

Each producer of crude oil shall, with respect to each property, prepare and maintain at its principal place of business, (1) a reasonable description of the property concerned, (2) a statement of the property's base production control level and how determined, and (3) documentation of the highest posted prices used to determine any sales of upper and lower tier crude oil from the property, specifying the reference field and posting and the basis for its selection. Each producer of crude oil shall, with respect to any stripper well property, *prepare and maintain* at its principal place of business, records on a well-by-well basis, of production,

including records to indicate each time that production was significantly curtailed by reason of mechanical failure, or other disruption in production, for the period during which the property qualified as a stripper well lease. [Emphasis added.]

Section 212.128(a) requires that records containing the above information be *prepared* by the producer and *maintained* at its principal place of business. We believe that this dual requirement was intended to insure that the best evidence of production be available to a producer to establish qualification of the property for the exemption. However, in this case, the original records are unavailable, through no fault of Brocato. Under these circumstances, considerations of administrative fairness suggest that Brocato be permitted to fulfill the recordkeeping requirement with other than the original records,<sup>2</sup> so long as the records Brocato maintains contain all the necessary information set forth in § 211.128. In the event that original records become available, however, they will supersede any other records and will be recognized by DOE to the extent that they conflict with the records Brocato chooses to maintain.

Issued in Washington, D.C. on June 19, 1979.

Everard A. Marseglia, Jr.,

*Assistant General Counsel for Interpretations and Rulings.*

#### Interpretation 1979-13

To: Solar Turbines International.  
Regulation Interpreted: 10 CFR 211.51.  
Code: GCW-AI—Allocation Levels;  
Definition of Energy Production.

#### Facts

Solar Turbines International (Solar Turbines) is engaged principally in the business of designing, developing, and manufacturing gas turbine engines and power systems which are used primarily for production and transmission of crude oil and natural gas. Solar Turbines currently produces five separate engine models which are "incorporated into pump drive, compressor, generator

<sup>2</sup> While Brocato has not indicated precisely what information is contained in the Railroad Commission records, we believe that so long as the information required by § 212.128 is contained in *bona fide* records of the Railroad Commission, a certified copy of those records will suffice. It is important to note, however, that the meaning of the term "stripper well property" for purposes of the DOE Mandatory Petroleum Price Regulations is not the same as the definition of "stripper well" used by the Railroad Commission. Therefore, records of the Railroad Commission that indicate only generally that a property may be certified as "stripper" but that do not contain all the necessary information are not sufficient to satisfy the requirements of § 212.128(a).

packages, and aircraft auxiliary power units." Although these turbine engines and power systems are utilized primarily by the oil and gas industry, they are also used by the armed forces for shipboard, standby, and aircraft uses, and by government, public utilities, and industry to provide emergency and standby electric power for communication, telecommunication, and sanitary services.<sup>1</sup>

With respect to the oil and gas industry, the equipment manufactured by Solar Turbines serves a variety of purposes associated with the production and transmission of crude oil and natural gas. Solar Turbines' units pump gas and crude oil through pipelines and are used to inject various liquids or gases at high pressure into oil fields to increase production. In addition, some of the units manufactured by the firm will become components of electric generator sets for use on remote offshore platforms. Solar Turbines predicts that approximately — percent of its expected total unit production of — horsepower during the 1978-85 period will be used by the oil and gas industry.

In conjunction with the manufacture of these units, it is necessary that Solar Turbines continuously test all the equipment under simulated conditions. These tests therefore require significant volumes of propane, kerojet, middle distillate fuels and natural gas.<sup>2</sup> In addition, Solar Turbines states that it needs motor gasoline to transport parts and equipment among its several plants and that that use should be treated as "energy production" inasmuch as these activities are an integral component of the development and production of its units.

#### Issue

Is the use of fuels by Solar Turbines to manufacture turbines and power systems for oil and gas production, including the use of fuels to test the units and transport parts among the firm's several plants, properly characterized as "energy production" for purposes of the Mandatory Petroleum Allocation Regulations?

<sup>1</sup> This interpretation will address only those uses which qualify as "energy production" (as defined in 10 CFR 211.51) and exclude from consideration those activities conducted by Solar Turbines which might qualify under some other category of priority use in the petroleum allocation regulations.

<sup>2</sup> Solar Turbines should note that natural gas is not regulated by the Mandatory Petroleum Allocation Regulations. In addition, kerojet fuel is no longer subject to the allocation controls of 10 CFR Part 211. See § 211.1(b). The allocation of middle distillates is governed by Special Rule No. 7, 44 FR 18640 (March 29, 1979), and Special Rule No. 9, 44 FR 31828 (June 1, 1979).

*Interpretation*

For the reasons set forth below, the Department of Energy (DOE) has determined that the production by Solar Turbines of those units used for oil and gas production in the manner described above, including the fuel required by the firm for testing these units and for transporting parts and equipment (related to the production of these units) among its various plants, is properly characterized as energy production, as that term is defined in § 211.51.

The determination that a particular activity falls within the definition of energy production under the DOE allocation regulations has a direct impact on the quantity of allocated products that will be available to a firm during periods in which the products are in short supply. With respect to propane and motor gasoline, the Mandatory Petroleum Allocation Regulations provide that energy production uses are entitled to "[o]ne hundred (100) percent of current requirements (as reduced by the application of an allocation fraction)." 10 CFR §§ 211.83(c)(1)(ii) and 211.103(c)(1)(ii). Other uses of these products may receive lower allocation levels. Thus, during periods of short supply, it is essential that firms properly characterize their uses of these products in order to insure that those activities which Congress intended to protect receive priority allocation levels.

The term "energy production" originated with the adoption of the Mandatory Petroleum Allocation Regulations on January 14, 1974, by the Federal Energy Office, a predecessor of the DOE. 39 FR 1924 (January 15, 1974). Although there have been several modifications of the definition since its initial adoption, the language relevant to this discussion has remained unaltered since January 14, 1974. The definition of "energy production" appears in § 211.51 and provides:

"Energy production" means the exploration, drilling, mining, refining, processing, production and distribution of coal, natural gas, geothermal energy, petroleum or petroleum products, shale oil, nuclear fuels and electrical energy. *It also includes the construction of facilities and equipment used in energy production, such as pipelines, mining equipment and similar capital goods.* Excluded from this definition are synthetic natural gas manufacturing, electrical generation whose power source is petroleum based, gasoline blending and manufacturing and refinery fuel use. [Emphasis added.]

The definition indicates that the "exploration, drilling, mining, refining,

processing, production and distribution of coal, natural gas, geothermal energy, petroleum or petroleum products, shale oil, nuclear fuels and electrical energy" are activities which constitute energy production. In addition, however, the language emphasized above states that the "construction of \* \* \* equipment used in energy production, such as pipelines, mining equipment and similar capital goods" is also included within the definition. This provision recognizes the function that such essential and specifically designed equipment, such as pipelines, performs in the maintenance of energy production activities. Consequently, the units manufactured by Solar Turbines for use in actual energy production activities are eligible for treatment as energy production. Furthermore, the testing of these turbines and power systems is such an integral component of their development and production that it would be inappropriate to disassociate it from energy production. Accordingly, the use of these fuels in this respect is to be treated as energy production and is therefore eligible for the priority status designated by the applicable allocation regulations.

The issue regarding the treatment accorded the use of motor gasoline by Solar Turbines for transporting parts among its several plants has been previously addressed by this office. In an interpretation issued to the Florida Power & Light Company, the DOE determined that motor gasoline consumed in activities relating to the generation of electricity from nuclear fuels, which included the operation of service vehicles at the firm's various plants, is eligible for priority treatment as a use for energy production under the allocation regulations. *Florida Power & Light Company*, Interpretation 1979-9, issued May 17, 1979. Moreover, unless Solar Turbines is permitted to treat this use of motor gasoline as energy production, the firm might be unable to obtain sufficient quantities of fuel to continue the routine operations attendant to the development and manufacture of the equipment vital to the oil and gas industry.

Based on the considerations discussed above, we have concluded that the various fuels used by Solar Turbines for testing the equipment which is properly characterized as energy production is necessarily and directly related to the production of such units. Both activities are therefore accorded the same priority status with respect to the applicable allocation regulations. Moreover, the motor gasoline used in Solar Turbines' plant vehicles in activities associated

with the manufacture of the units utilized by the oil and gas industry is also a use for energy production entitled to a priority allocation status pursuant to § 211.103(c) (1) (ii).

Issued in Washington, D.C., on June 19, 1979.

Everard A. Marseglia, Jr.,

*Assistant General Counsel for Interpretations and Rulings.*

*Interpretation 1979-14*

To: Crystal Oil Company.

*Regulation Interpreted:* 10 CFR 212.162.

*Code:* GCW-PI—Part 212, Subpart K; Def. Net-back and First Sale.

*Facts*

Crystal Oil Company ("Crystal") owns and operates crude oil refineries and natural gas processing plants. At one of these gas plants, located at Kings Bayou, Louisiana, Crystal extracts liquefiable hydrocarbons from "wet gas" supplied by the Phillips Petroleum Company ("Phillips"), the Kerr-McGee Corporation ("Kerr-McGee"), and the Shell Oil Company ("Shell"), pursuant to contractual agreements with Crystal. The Cities Services Company ("Cities Services"), at its Lake Charles plant, fractionates the natural gas liquids ("NGL's") extracted at the Kings Bayou plant, thereby producing natural gas liquid products ("NGLP's"), also pursuant to contractual agreements with Crystal. Cities Services is entitled to receive a limited amount of these products as compensation for its services.

Crystal, Phillips, Shell, Kerr-McGee, and Cities Services each refines crude oil and extracts NGL's from natural gas. Each firm is a "refiner" as that term is defined in 10 CFR 212.31 and a "gas plant owner" and a "gas plant operator" as those terms are defined in § 212.162 of the Mandatory Petroleum Price Regulations. As a result, they must calculate the maximum lawful prices of the covered products that they own and sell to other firms. Under the DOE regulations, maximum lawful selling prices are computed by adding the firm's May 15, 1973, selling prices and allowable increased costs since May 1973. Both May 15, 1973, selling prices and increased costs attributable to gas plant operations are calculated pursuant to 10 CFR Part 212, Subpart K. 10 CFR 212.161(b)(2)(i). Firms that operate both gas plants and crude oil refineries are required to insert their increased costs into the refiner cost allocation formulae of 10 CFR Part 212, Subpart E, to determine their maximum lawful selling prices. *Ibid.*

In its request for interpretation, Crystal asserts that under these agreements, described in detail below, it merely processes natural gas for a fee and thus is not the seller of any NGLP's sold pursuant to these agreements to Phillips. Under this view, whatever transfers of NGLP's Crystal makes under these agreements to Phillips would not be sales subject to the Mandatory Petroleum Price Regulations, particularly 10 CFR Part 212, Subpart K, and Crystal would have no responsibility to determine and observe maximum lawful prices in any such transfers. Phillips asserts that Crystal is the seller of NGLP's transferred to it by Crystal under these agreements and has a responsibility to determine and observe maximum lawful prices in these transfers, although Phillips would have such a responsibility for its sales of NGLP's taken at the outlet of the Lake Charles' plant as the firm's in-kind share under its agreement with Crystal.

Under the agreement that is currently in effect between Phillips as producer and Crystal,<sup>1</sup> Crystal takes title to the liquefiable portion of Phillips' "wet" gas stream and the gas consumed in the processing plant at the inlet to its Kings Bayou plant, but Phillips retains title to the residue gas. Phillips Agreement, Article IV. In consideration for these liquefiable hydrocarbons and gas consumed or extracted in the plant, Crystal pays Phillips (1) — percent of the proceeds from the sale of the natural gas liquid products derived from Phillips' gas stream or (2) — percent of those products in-kind. *Id.*, Articles VII and VIII (as amended). Under option one, Crystal has title to all of the products refined from Phillips' gas stream prior to their sale. Under option two, Crystal has title to — percent of all products and Phillips takes title to — percent of all products prior to their sale.<sup>2</sup> The agreement requires Crystal to sell to Phillips, at Phillips' option, all of the NGLP's which Crystal owns that are fractionated from the NGL's extracted at the Kings Bayou Plant, including those Crystal owns as a result of processing agreements with other producers, such as Kerr-McGee and Shell. The NGLP's which other producers take in-kind

pursuant to processing agreements with Crystal are excepted. *Id.*, Article IX. The agreement gives Crystal the right to offer to sell on an annual basis all the NGLP's it owns that are fractionated from the NGL's extracted at the Kings Bayou plant.<sup>3</sup> If Crystal desires to make sales to third parties that have submitted bids to purchase these NGLP's, Phillips has the option of matching the highest lawful bid received by Crystal and purchasing the NGLP's by paying that amount. Otherwise Phillips may refuse to meet the bid and Crystal may then sell to the third party bidder all of the NGLP's which Crystal owns that are fractionated from the NGL's extracted at the Kings Bayou plant.

Under their extraction agreements with Crystal, which are substantially similar to that between Crystal and Phillips,<sup>4</sup> Shell and Kerr-McGee as producers have the option to receive a specified percentage of the proceeds from the sale by Crystal of products derived from their natural gas streams or the same percentage of those products in-kind.<sup>5</sup> Unlike Phillips, Shell does not have the right of first refusal to the NGLP's Crystal owns as a result of these processing agreements, since such NGLP's are subject to Phillips' right of first refusal, described above. Kerr-McGee, however, does have the right under certain conditions to purchase the NGLP's Crystal owns as a result of the Kerr-McGee Agreement.<sup>6</sup> Pursuant to their processing agreements with Crystal, Shell, Phillips and Cities Service have chosen to take products in-kind, rather than to take the proceeds from Crystal's sales. Kerr-McGee has elected to receive a percentage of the sale

<sup>3</sup> These NGLP's include the — percent of the NGLP's refined from Phillips' gas that belong to Crystal pursuant to the Phillips Agreement.

<sup>4</sup> The agreement between Kerr-McGee and Oilchem (Kerr-McGee Agreement) is entitled "Agreement for Extracting Liquefiable Hydrocarbons from the Hog Bayou Field Raw Gas" and was entered into on December 15, 1970. Oilchem's rights and duties under this agreement, as amended, were subsequently assigned to Crystal. The agreement between Shell and Crystal (Shell Agreement) is entitled "Agreement for Extraction of Liquefiable Hydrocarbons from the Kings Bayou Field Gas" and was entered into in July 1972.

<sup>5</sup> Under the Agreements that are currently in effect Shell may receive — percent of either the proceeds from Crystal's sale of the NGLP's or may take — percent of these products in-kind. Shell Agreement, Article VIII. The similar figure presently applicable to Kerr-McGee is — percent. Kerr-McGee Agreement, Article VII.

<sup>6</sup> By letter to Oilchem Corporation, Crystal's predecessor, dated January 14, 1971, Phillips waived its rights to purchase any NGLP's attributable to Kerr-McGee's gas and owned by Crystal during any period Kerr-McGee asserts its option to purchase the NGLP's Crystal owns that are derived from Kerr-McGee's gas.

proceeds from the NGLP's refined from its gas.

During a portion of 1973 and extending into 1974, Phillips declined to meet the highest bona fide bids received by Crystal for plant products not taken in-kind by Phillips, Shell, and Cities Service. Consequently, Crystal Petroleum, a subsidiary of Crystal Oil, purchased Crystal's plant products in that year at the prices it offered.<sup>7</sup> Since March 1974, Phillips has exercised its option to purchase all plant products owned by Crystal, *i.e.* all products refined at the Kings Bayou and Lake Charles plants except those taken in-kind by Phillips, Shell, and Cities Service pursuant to these processing agreements.

#### Issue

Is Crystal the seller of the NGLP's transferred pursuant to these contractual agreements between Crystal, Phillips, Shell, Kerr-McGee, and Cities Service pertaining to the Kings Bayou and Lake Charles plants, and do the Mandatory Petroleum Price Regulations require that Crystal determine maximum lawful prices for any such sales?

#### Interpretation

For the reasons set forth below, the DOE has determined that Crystal is the seller of all NGLP's that Crystal owns and that are processed from the gas streams of Phillips, Shell and Kerr-McGee at the Kings Bayou and Lake Charles plants pursuant to these contractual agreements and is thus responsible for determining the maximum lawful prices in all "first sales" of these NGLP's, *i.e.* in all transfers of NGLP's between firms at the outlet of the Lake Charles plant, except transfers of products taken in-kind under these agreements by Phillips, Shell and Cities Services.

#### I. Application of Price Regulations

The application of the price regulations to the transfers at the inlet of the Kings Bayou plant is determined by reference to the classification of the parties under the regulations and the manner in which the liquid hydrocarbons are transferred. The regulatory status of these firms as "refiners" subject to Part 212, Subparts E and K has been set forth in the factual section above, and is not disputed by any of the parties.

<sup>7</sup> These sales were not "first sales" under Subpart K, since they were merely intra-firm transfers. See generally, *Atlantic Richfield Co.*, Interpretation 1970-61, 43 FR 57583 (December 8, 1978); and *Northern Natural Gas Co.*, Interpretation 1976-03, 44 FR 3023 (January 15, 1979).

<sup>1</sup> This agreement is entitled "Agreement for Extraction of Liquefiable Hydrocarbons" and was entered into on February 19, 1970, between Phillips and Oilchem Corporation, which on August 12, 1971, assigned all of its "rights, titles, interests, options, elections and benefits" under the agreement to Crystal, which in turn agreed to assume all of Oilchem's obligations under the agreement. This agreement, as amended, is referred to herein as the "Phillips Agreement."

<sup>2</sup> Under earlier contractual agreements, Phillips and Crystal received different percentages of the NGLP's.

### A. Inlet Transfers

Under the Phillips, Shell, and Kerr-McGee agreements with Crystal, only title to the liquids that are extracted and to the plant fuel that will be consumed in the extraction process is transferred to Crystal at the inlet of the plant. Title to the "residue gas" remains with Phillips, Shell and Kerr-McGee. *E.g.*, Phillips Agreement, Article IV. Since the liquid content is extracted from the natural gas stream and the liquids are sold to the purchaser at a price that reflects their value as NGL's rather than their value as a component of the natural gas stream, these are transfers of "natural gas liquids" as that covered product is defined in § 212.162. *El Paso Natural Gas Co.*, Interpretation 1978-32, 43 FR 29534 (July 10, 1978).

Part 212, Subpart K, applies to sales of NGL's by producers of natural gas and refiners such as Phillips, Shell, Kerr-McGee, Cities Services, and Crystal. 10 CFR 212.161(a). For purposes of Subpart K, a transfer of NGL's for value to an unaffiliated entity is deemed to be either a "first sale" or a "net-back sale." 39 FR 44407, 44408 (December 24, 1974). Section 212.162, in pertinent part, defines these two general regulatory concepts:

"Net-back sale" means, with respect to natural gas liquids, any transfer, for value to a class of purchaser for which a percentage of the revenues from the first sale of natural gas liquids or natural gas liquid products is received.

\* \* \* \* \*

"First sale" means, with respect to natural gas liquids or natural gas liquid products, the first transfer for value to a class of purchaser for which a fixed price per unit of volume is determined.

The general price rule of Subpart K, which limits "first sale" prices, was designed to be the functional equivalent of the "maximum allowable price" (formerly "base price" plus "allowable costs") rules of Subpart E, formerly applicable to natural gas processors prior to the issuance of Subpart K. Subpart E limited a gas processor's prices for NGL's and NGLP's to appropriate May 15, 1973 prices in transactions to classes of purchaser plus allowable increased costs. The "net-back sale" price rule for natural gas processors was created as a regulatory exception, because a price for NGL's is not normally determined until the NGLP's are fractionated and sold separately. 39 FR at 44408. That exception was created as a more easily administered method of treating the complex contractual arrangements associated with the extraction and

fractionation of NGL's from natural gas than was formerly provided by Subpart E. Since the inlet transfers at issue here are made pursuant to contractual arrangements for the extraction and fractionation of NGL's, these transfers may be within the scope of the "net-back sale" exception.

Kerr-McGee has the option to receive as consideration for the liquids either a specified percentage of the products in-kind or a fixed percentage from the proceeds of sales of the fractionated products. It has elected to receive a percentage of the revenues from the first sale of the NGLP's. This transfer of liquids to Crystal therefore fulfills the definition of "net-back sale." § 212.162.

The "net-back sale" price rule contained in § 212.163(b) therefore governs the prices charged by Kerr-McGee to Crystal for the liquids. *See generally, El Paso, supra.* As the owner and seller of the liquids in this transfer, Kerr-McGee would normally determine the maximum allowable prices that it is permitted to charge under the DOE regulations. However, Subpart K does not require that a gas processor calculate a maximum lawful selling price for a particular product unless the product is transferred in a "first sale." As we noted above, the transfers of NGL's from Kerr-McGee to Crystal are not "first sales." Therefore, neither Kerr-McGee nor Crystal is required to determine maximum lawful selling prices for any of these volumes of NGL's transferred from Kerr-McGee to Crystal at the inlet side of the Kings Bayou plant.

Like Kerr-McGee, Phillips and Shell have an option to take as their compensation for the NGL's transferred to Crystal either a percentage of the fractionated products or a fixed percentage of the proceeds from sales of those products. Phillips and Shell have elected to take their products in-kind, rather than to take a percentage of the proceeds. Although such a situation is not expressly included in the language of the "net-back sales" definition, examination of the purpose of this definition makes it plain that the inlet transfers of NGL's from Phillips and Shell to Crystal should be classified as "net-back sales." When Subpart K was adopted, the Federal Energy Administration ("FEA"), a predecessor of the Department of Energy ("DOE"), recognized that price rules for NGL's and NGLP's were complicated by the fact that typically a fixed price sale did not occur until the NGLP's were sold separately. *Ibid.* 39 FR 32718, 32719 (September 10, 1974). A pertinent motivation for adopting the "first sale"

and the "net-back sale" concepts is set forth in the preamble to Subpart K, which states:

The FEA has determined that it would be administratively impracticable to seek to regulate, in effect, the various terms of the many contractual arrangements under which "net-backs" are determined. Accordingly, FEA regulations will not address the manner in which the net-back revenues are allocated between parties, except to provide specifically that the manner in which net-back revenues are allocated shall not constitute a basis upon which a first sale price may be increased. 39 FR 44407, § II (December 24, 1974).

Thus, the regulations were designed to limit "net-back" arrangements between producers, royalty owners, and gas processors only insofar as necessary to insure, that net-back payments for NGL's do not serve as a means of escalating maximum lawful prices of NGLP's.

This purpose is achieved simply and effectively by classifying the Phillips and Shell inlet transfers of NGL's to Crystal as "net-back sales" pursuant to § 212.162. Phillips and Shell are therefore not required to calculate maximum lawful prices for the NGL's they transfer to Crystal. Nevertheless, the amount of any net-back payments from Crystal to Phillips and Shell would be limited, primarily by §§ 212.163(b) and 212.169. *See generally, El Paso, supra.* Moreover, any increased "net-back" payments from Crystal to Phillips and Shell for these NGL's could not, under § 212.166(d), serve as the basis for increasing the first sale prices of the NGLP's derived from Phillips' and Shell's natural gas streams. The classification of the inlet transfers from Phillips and Shell to Crystal as "net-back sales" permits the parties the greatest flexibility in negotiating terms and conditions without authorizing price increases which are not cost justified.

Furthermore, the classification of these inlet transfers from Phillips and Shell to Crystal as "first sales" or "net-back sales" depending solely upon whether Phillips or Shell received products in-kind could create substantial, unnecessary pricing problems. Under such a theory of classification, if one of the producers elected to take the NGLP's in-kind, the inlet transfers of NGL's would be "first sales" for which the producer would have to determine maximum lawful prices. In contrast, if the producer elected to receive a percentage of the proceeds from a sale of the NGLP's then the inlet transfers of NGL's would be "net-back sales;" the producer would

not have to calculate maximum lawful prices for those "net-back sales," but the net-back payments would be limited by the price regulations. Thus, under an interpretation which classified the producer's inlet transfers on the basis of how the producer subsequently exercised its option to take in-kind, all parties to such transfers would find it difficult to comply prospectively with the price regulations. That result could substantially increase the administrative burden of complying with the DOE regulations without serving any purpose that is not already accomplished by the classification of Phillips and Shell's inlet transfers of NGL's to Crystal as "net-back sales."

### B. Outlet Transfers

The products derived from Kerr-McGee's gas stream are sold at a fixed price per unit, with the proceeds divided on a percentage basis pursuant to the contract between Crystal and Kerr-McGee. Because these sales to Phillips are the first inter-firm transfers for value of the fractionated products at a fixed price, they are "first sales" of NGLP's as defined in § 212.162. The price rule in § 212.163(a) governs these outlet transfers, or "first sales," of the NGLP's derived from Kerr-McGee's gas. As the owner and seller of the NGLP's derived from Kerr-McGee's gas streams, Crystal must determine their maximum lawful prices, because Crystal, as the gas plant owner and operator, sells the NGLP's in "first sales" derived from this gas stream. Neither Phillips nor Kerr-McGee can be considered the owner and seller of these NGLP's with a responsibility for determining their maximum lawful prices under the regulations. Phillips has been the purchaser, not the seller, of these products and therefore cannot be responsible for establishing the seller's (Crystal's) maximum lawful price. As discussed previously, the net-back payments which Kerr-McGee receives from Crystal are compensation for the NGL transfers at the inlet of the extraction facilities. Kerr-McGee is not responsible for determining maximum lawful prices for hydrocarbons which it sold in a "net-back sale" and never received again.

While Shell and Kerr-McGee have executed contracts with Crystal which structure the options for transfers in the same manner, they have exercised their options in different ways. Consequently, the application of the price regulations to the transfers of NGLP's derived from Shell's gas stream must be considered separately. Shell has the same option as Kerr-McGee to receive a percentage of the sale proceeds, but Shell has elected

to receive a percentage of the NGLP's derived from its gas as its consideration for the liquids transferred to Crystal. Effectively, Shell and Crystal take their shares of the NGLP's in-kind and dispose of them according to their individual business decisions. Therefore, the sales of NGLP's derived from Shell's gas stream should not be considered *in toto*, but with reference to the in-kind shares taken by Shell and Crystal which are sold separately.

As discussed previously, the transfers of NGL's from Shell to Crystal are "net-back sales." The transfers of NGLP's from Crystal to Shell which are made in lieu of receipt of a specified percentage of the revenues from a sale of these products are Shell's compensation for the "net-back sales." Because a fixed price per unit is not established in these transfers for value at the outlet of the Lake Charles plant there is no "first sale" and no first seller.<sup>8</sup> Because Shell has the sole financial interest in the NGLP's that represent its in-kind share, Shell, not Crystal, is subject to § 212.163(a) if Shell sells its in-kind share of the NGLP's to an unaffiliated entity at a fixed price per unit.<sup>9</sup>

Similarly, Crystal is responsible for calculating maximum lawful prices in sales of the NGLP's which it owns and which represent its in-kind share of the products derived from Shell's gas stream. Crystal maintains that it is not governed by § 212.163(a) when these NGLP's, not taken in-kind by Shell, are sold. Nevertheless, it is Crystal that

<sup>8</sup> When Shell takes its in-kind share of NGLP's from Crystal, there is no "first sale" of these products because no price is fixed for them per unit. 10 CFR 212.162. Normally, the taker of products in-kind then will sell the products at a fixed price per unit. The taker may sell such products in one sale or may divide the in-kind share and make several "first sales." If the taker of product in-kind consumes the products itself, there will never be a "first sale" under Subpart K. When a firm takes NGLP's in-kind as compensation for "net-back" transfers of NGL's, the taker must compute maximum lawful prices for the NGLP's according to § 212.163(a) if the products are then sold by the taker in arm's-length transfers to unaffiliated entities at a fixed price per unit. Furthermore, the compensation received in such "net-back" transfers will not constitute a basis upon which "first sale" prices may be increased. 10 CFR 212.163(b). It should be noted that taking an in-kind share also does not fulfill the requirements of a "net-back" sale. Rather, these transfers are subject to Subpart K, but are not classified as "first sales" or "net-back sales." 10 CFR 212.161(a); *CF. Sun Gas Company, Interpretation 1978-37, 43 FR 29543 (July 10, 1978).*

<sup>9</sup> Cities Service takes an in-kind share of the NGLP's fractionated at the Lake Charles plant pursuant to its contractual arrangement with Crystal. The taking of this in-kind share by Cities Services is not a first sale and represents Cities Service's fee for fractionating products. Because Cities Service is the owner of and has the sole financial interest in its in-kind share, Cities Service is responsible for determining maximum lawful prices in "first sales" of its in-kind share.

bears the sole financial benefits and burdens of price fluctuations associated with the sale of its in-kind share of NGLP's derived from Shell's gas stream. The price regulations are designed to regulate the interest that Crystal alone possesses, and therefore Crystal is responsible for determining maximum lawful prices for these products.

Both Shell and Phillips elect to receive an in-kind share of the NGLP's as compensation for the "net-back sales" of NGL's. Phillips also acquires the remaining NGLP's derived from its gas stream according to the bidding procedures set forth in its contract with Crystal. Although all NGLP's derived from Phillips' gas stream are transferred to Phillips at the outlet of the Lake Charles plant, all of those volumes are not accounted for in an identical manner. Some of the NGLP's taken by Phillips represent its in-kind share (— percent) of NGLP's derived from Phillips' gas stream. For the reasons set forth in the preceding discussion relating to NGLP's derived from Shell's gas stream, Phillips, as a "refiner," is the owner of the NGLP's representing its in-kind share and must determine maximum lawful prices for any sales of the products at a fixed price per unit to unaffiliated entities. The remaining NGLP's (— percent) derived from Phillips' gas stream which represent Crystal's compensation for processing services are transferred in "first sales" from Crystal as owner and seller to Phillips as purchaser, because a price per unit is fixed by the bidding procedures specified in the contract between Crystal and Phillips. § 212.162. Since Crystal is the owner and seller of these NGLP's and the sole recipient of the proceeds from their sale, Crystal must determine maximum lawful prices.

Accordingly, Crystal is the "refiner" which generally must compute maximum lawful prices in "first sales" at the outlet of the Lake Charles fractionation plant. Crystal is not the seller with respect to all products which have been transferred to Shell as Shell's in-kind share of the products processed from its gas stream (*i.e.*, — percent of the NGLP's derived from Shell's gas stream). Furthermore, Crystal is not the "refiner" and seller with respect to the — percent of the products derived from Phillips' gas which represents Phillips' in-kind share.

## II. Crystal's Arguments

In its Request for Interpretation, Crystal maintains that it is not the seller of any of the NGLP's that it and Cities Services process at the Kings Bayou and Lake Charles plants pursuant to the

agreements between Crystal and Phillips, Shell, Kerr-McGee, and Cities Services because under these agreements Crystal receives only a processing fee in-cash as a gas processor. Request, pp. 13-17. Although Crystal concedes that it is "in form" the owner and seller of some of these NGLP's (Request, pp. 9, 19-22), under Crystal's view, the appropriate "refiner," i.e., Phillips or Shell, is "in substance" the seller of all NGLP's derived from its gas stream at these plants pursuant to these agreements, because Phillips and Shell entered into processing agreements whereby they retained ownership in some of the products. Crystal contends that Phillips' and Shell's ownership interests in a specified percentage of the products processed by Crystal constitute processing agreements for the purposes of the allocation and price regulations. 10 CFR 211.62. In support of this contention, Crystal refers to the definition of "refiner," set forth at 10 CFR 212.31, which includes "the owner of covered products which contracts to have those covered products refined and then sells the refined covered products to resellers, retailers, reseller-retailers or ultimate consumers." Crystal argues furthermore that the parties to these agreements have treated Crystal as providing a processing service for a fee, and not as the seller of any NGLP's pursuant to them. Request, pp. 17-18. This argument is strongly disputed by Phillips and Kerr-McGee in their comments.

Contrary to Crystal's assertions, the definition of "refiner" contained in § 212.31 is not interpreted with reference to the definition of "processing agreement" in § 211.62. The definition of "processing agreement" is an important element in the crude oil allocation ("entitlements" and "buy-sell") programs, but is wholly absent from and not applicable to the refiner price regulations. As part of the crude oil allocation program, those terms operate to reflect more accurately the bases for equalizing refinery use and the cost of crude oil. The issues presented here concern the proper costing and pricing of NGL's and NGLP's and, therefore, the price regulations in Subpart K apply to these transfers. § 212.161(a). Subpart K provides no mechanism analogous to § 211.62 which recognizes processing agreements in the manner suggested by Crystal.

Crystal's assertions must be considered in light of the definition of "refiner" set forth in § 212.31 rather than with reference to the allocation regulations. The refiner with respect to

the NGLP's in question in this case is the firm that owns the NGLP's and sells them for a fixed price per unit to an unaffiliated entity. See §§ 212.162 and 212.163. Crystal maintains that while it is the owner and operator of the Kings Bayou gas plant, for purposes of the price regulations it is not the owner and seller of any NGLP's sold under the processing agreements because the Phillips Agreement effectively precludes Crystal's control over the disposition of any of those products. According to Crystal, its compensation is simply a fee for services rendered, which does not imply any ownership rights under the regulations in the plant products. Crystal attempts to rationalize its possession of title to the NGLP's sold under these agreements as simply representing its possession of the risk of loss for the NGLP's, arguing that "in substance" it does not own and sell NGLP's pursuant to these agreements. Request, pp. 9, 20-22.

Crystal relies on an Interpretation of the refiner price regulations that was issued to the Wanda Petroleum Company in support of its contention that it is not the seller under the regulations of any NGLP's processed at the Kings Bayou and Lake Charles plants.<sup>10</sup> *Wanda Petroleum Co.*, Interpretation 1976-2, 42 FR 7925 (February 8, 1977). Wanda was

<sup>10</sup> Crystal also cites in support of its position an appeal of an exception decision, *Marvin E. Boyer Oil Co.*, 4 FEA ¶80,506 (July 23, 1976), *aff'd*, 3 FEA ¶83,068 (January 30, 1976). Apparently, Crystal refers to this decision to support the proposition that a "first sale" of NGL's or NGLP's is made at the time of the first transfer for value. However, the definition of a "first sale" of crude oil is different from that of a "first sale" of NGL's or NGLP's. Compare § 212.72 with § 212.162. A "first sale" under Subpart K is the first transfer for value at a fixed price per unit to an unaffiliated entity. Thus, as discussed previously, the transfers of NGL's by the producers to Crystal at the inlet side of the Kings Bayou plant are not "first sales" as defined in § 212.162. In the *Boyer* case, the firm argued that there were no "first sales" of crude oil when it purchased crude oil from stripper well leases, but rather "first sales" of crude oil were made when the firm sold the crude oil after transporting it. The decision concluded that "first sales" of crude oil were made when the crude oil was acquired from the leases, because those transfers were the first transfers for value. Instead of this decision supporting Crystal's contention, it suggests that Crystal is the seller under the price regulations of the NGLP's representing Crystal's in-kind shares. Boyer maintained that it primarily transported the crude oil to a pipeline and merely facilitated the sale of crude oil from purchasers to the pipeline. Therefore, according to the firm, it should not be classified as a "reseller." The FEA regarded that contention as without merit, stating that the firm took title to the crude oil and had the financial responsibility for any loss. 4 FEA at 80,519. This decision supports the view that even if the transfer of covered products is considered as simply compensation for services rendered, Crystal must calculate maximum lawful prices in sales of the NGLP's to which it has title and for which it bears the financial risk of price fluctuations.

considering leasing a gas plant to unrelated business concerns for a specified term at a fixed dollar sum, with Wanda continuing to operate the plant. The FEA concluded that Wanda, by virtue of these proposed arrangements, would not be deemed a "refiner":

[I]t is FEA's interpretation that since the lessee, under the proposal, would be the owner of a natural gas liquid stream (the "raw mix") and would contract with Wanda to operate the plant in which that stream would be refined, and since the lessee would then sell the refined natural gas liquid products (propane, butane, and natural gasoline) to resellers, retailers, reseller-retailers, and ultimate consumers, the lessee would properly be considered a "refiner" for purposes of § 212.31 of the FEA price rules by virtue of these activities.

Since Wanda would transfer unencumbered title in the "raw mix" to the lessee under the proposal and *since Wanda would not retain any interest in this mix or the products derived therefrom*, although it might in a subsequent and unrelated arms-length transaction purchase processed products for purposes of resale, Wanda would properly be considered either a "reseller," "reseller-retailer," or "retailer" for purposes of § 212.31 of the FEA price rules, notwithstanding the fact that it operated a plant which refined the "raw material" on the lessee's behalf, on a fee basis.

*Id.* at 7926 (emphasis added). Because Wanda received a fixed dollar sum, Wanda retained no interest in the "raw mix" or the products. In this case, however, the processing "fee" that Crystal claims it receives under these contractual agreements is not independent of product prices, but is measured solely by product prices. Furthermore, when Phillips and Shell elect to take products in-kind, Crystal is the sole recipient of the proceeds from the "first sale" of the products not taken in-kind. Since Crystal has a financial interest in the proceeds from the sales of NGLP's at the Kings Bayou and Lake Charles plant, Crystal is not merely performing a service at a price not regulated by the DOE, but is the seller of the NGLP's not taken in-kind by Phillips, Shell and Cities Services.

Crystal further argues that it does not own those products under a "right-of-control" test, and, therefore, it is not the seller of these NGLP's under the price regulations and need not determine maximum lawful prices when the NGLP's are sold. Request, pp. 14-17. The firm argues that its contractual arrangements prevent it from controlling

any of the products derived from these gas streams. According to Crystal, the contracts operate so that Crystal receives only a processing fee in cash, although Crystal would prefer to take the products in-kind. To support the firm's position, Crystal refers to a number of decisions construing various statutes and the Mandatory Petroleum Allocation Regulations. *E.G., Crystal Oil Company*, 3 FEA ¶ 80,514 (December 1, 1975). Crystal also argues that Louisiana law supports its requested interpretation. Request, pp. 18-20.

These arguments and decisions are irrelevant to the question of the character of ownership that is required for a sale under the price regulations and do not alter the conclusion that Crystal is the owner and seller of the NGLP's transferred for a fixed price per unit at the outlet of the Lake Charles plant to Phillips or other firms except sales of in-kind shares by Phillips, Shell, and Cities Services. The assertion that Crystal does not possess the full bundle of ownership rights for these NGLP's even if true, does not mean that under the price regulations Crystal is not the owner and seller of these NGLP's with the responsibility to determine their maximum lawful prices, especially when Crystal is the sole recipient of the sale proceeds. Crystal solicits bids to

determine the market value of the NGLP's and Crystal fully bears the financial risk of market price fluctuations, *i.e.*, the price a willing buyer will pay for the NGLP's. Crystal gains or loses if maximum lawful prices are improperly calculated and, therefore, it is Crystal that must make and bear the responsibility for such determinations under the regulations.

Moreover, at the outlet of the Lake Charles plant, Phillips is the purchaser of the NGLP's (other than its in-kind share) at a fixed price per unit, not the seller of the products. Phillips need not purchase (and at times in the past has chosen not to purchase) the—percent of NGLP's processed from its gas-stream which it had an option to purchase from Crystal. If Phillips elects not to purchase these products, then under Crystal's "right of control" theory maximum lawful prices of the products for sale could not be determined until a satisfactory purchaser (and seller) had been procured—which is neither a plausible nor an intended result of the Subpart K price rules.

Issued in Washington, D.C., on June 19, 1979.

Everard A. Marseglia, Jr.,  
*Assistant General Counsel for Interpretations and Rulings.*

be obtained from local Beechcraft Aviation and Aero Centers or Beech Aircraft Corporation, Commercial Service Department, 9709 East Central, Wichita, Kansas 67201. Copies of these service instructions are contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106 and Room 916, 800 Independence Avenue, S.W., Washington, D.C. 20591.

**FOR FURTHER INFORMATION CONTACT:** William L. (Bud) Schroeder, Aerospace Engineer, Engineering and Manufacturing Branch, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 374-3446.

**SUPPLEMENTARY INFORMATION:** Airworthiness Directives 70-25-01 (Amendment 39-1120 as amended by 39-1331) and 70-25-04 (Amendment 39-1121 as amended by Amendment 39-1332) currently include requirements for repetitive visual and dye penetrant inspections of the outboard wing to center section lower forward attachment fittings for fatigue cracks on certain airplanes that are affected by this AD.

Subsequent to the issuance of the two previously noted AD's, the right outboard lower forward wing to center section fitting (Beech Part Number 50-110057-1) failed, in-flight, on a Beech Model 65-90 airplane. The airplane was used primarily in low altitude (Below 2500 feet altitude) operations and the failure occurred at approximately 5,425 hours time-in-service. Inspection of the fitting shows that failure resulted from a corrosion fatigue crack. This occurrence indicates that AD's 70-25-01 and 70-25-04 need to be reassessed to determine that they are sufficient to assure the continued structural integrity of right and left lower forward inboard and outboard wing to center section attachment fittings. Cracks in these fittings can result in in-flight separation of the wing if the cracks are not detected prior to reaching critical lengths and new components installed. Accordingly, since the condition described herein is likely to exist or develop on other airplanes of the same type design, the FAA is issuing an AD applicable to Beech Model 65, L-23F, U-8F, 65-80, 65-A80, 65-A80-8800 and 65-90 airplanes which have Part Number 50-110057 and 50-110057-1 outboard wing attachment fittings installed. It requires (1) a one-time special inspection of the right and left lower forward inboard and outboard wing to center section attach fittings for cracks in accordance with instructions in Class I Beechcraft Service Instructions No. 0393-018 Revision I and

#### APPENDIX B.—Cases Dismissed

File No.	Requestor	Category	Date dismissed
A-372	Arnold Wilson	Price	June 15.
A-358	National Distillers and Chemical Corp.	Price	June 15.

[FR Doc. 79-23421 Filed 7-27-79; 8:45 am]

BILLING CODE 6450-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 79-CE-13-AD; Amendment 39-3520]

**Beech Models 65, L-23F, U-8F, 65-80, 65-A80, 65-A80-8800 and 65-90 Airplanes; Airworthiness Directive**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

#### **ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new Airworthiness Directive (AD), applicable to Beech Models 65, L-23F, U-8F, 65-80, 65-A80, 65-A80-8800 and 65-90 airplanes. The AD requires a one-time dye penetrant inspection of the outboard wing to center section lower forward attachment fittings for fatigue cracks. This action is necessary to detect and correct fatigue cracks which may exist and can impair the ability of the wing attachment fittings to carry design loads.

**EFFECTIVE DATE:** August 6, 1979.

**COMPLIANCE SCHEDULE:** As prescribed in the body of the AD.

**ADDRESSES:** Class I Beechcraft Service Instructions No. 0394-018 and 0393-018 Revision 1, applicable to this AD, may

0394-018, and (2) the submittal of a report showing results of the special one-time inspection and certain information pertaining to the type of operations in which the airplane is being utilized.

Since a situation exists that requires the expeditious adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

**Adoption of the Amendment**

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

**Beech**

Applies to Models 65 (Military Models L-23F or U-8F) (Serial Numbers L-1 through L-6, LC-1 through LC-180 and LF-7 through LF-76), 65-80 (Serial Numbers LD-1 through LD-33, LD-35 through LD-45 and LD-47 through LD-150), 65-A80 and 65-A80-8800 (Serial Numbers LD-34, LD-46 and LD-151 through LD-244) and 65-90 (Serial Numbers LJ-1 through LJ-67) airplanes certificated in all categories.

**Compliance**

Required as indicated unless already accomplished. To detect fatigue cracks that may exist in certain critical components of the wing structure, accomplish the following:

A) On or before September 7, 1979, except in no event is this one-time inspection required sooner than 30 days after the last inspection in accordance with AD 70-25-01 or 70-25-04, whichever is applicable, inspect right and left lower forward inboard and outboard wing to center section attach fittings (2 on left side and 2 on right side of the airplane) for cracks using dye penetrant procedures in accordance with the wing attachment fittings inspection instructions in Class I Beechcraft Service Instructions No. 0393-018 Revision I (Models 65, L-23F, U-8F, 65-80, 65-A80 and 65-A80-8800) or No. 0394-018 (Model 65-90), whichever is applicable.

Note.—While inspecting the fittings with the wing attachment bolt removed, special attention should be directed towards inspection of the entire counterbore area in the recess of each fitting.

B) Accomplish the dye penetrant inspections required by Paragraph "A" of this AD (1) using only those materials specified in Table I of this AD and, (2) in accordance with application and developing instructions provided by the manufacturer of the material except that the penetrant must remain on the surface for a minimum of 30 minutes before excess penetrant is removed and developer is applied.

Table I

Manufacturer	Penetrant	Remover	Developer
Ardox, Ltd.	Ardox 906	Ardox 9PR 551	Ardox 906
Magnaflux Corp.	SKL-HF SKL-SF Formula B Spot Chek	SKC-S Spot Chek	SKD-S Spot Chek
Met-L-Chek Co.	VP-31	E-59	D-70
Sherwin, Inc.	Dubl-Chek DP-40	Dubl-Chek DR-60	Dubl-Chek D-100
Testing Systems, Inc.	Flaw Finder DD60B	Flaw Finder SD60B	Flaw Finder AD70B
Tokushu Toryo Co.	PT (Visible)	RT	DT
Turco Products	Dy-Chek #2	Dy-Chek #3	Dy-Chek NAD
Uresco, Inc.	P-300A	K-410E	D-495

C) Within 48 hours after completion of the inspection required by Paragraph "A" of this AD, complete the reporting form included with this AD as Figure I and mail it to the address shown thereon. (Reporting approved by the Office of Management and Budget under OMB No. 04-R0174.)

**Reporting Form**

Airplane Model Number \_\_\_\_\_  
 Airplane Serial Number \_\_\_\_\_  
 Date of inspection required by this AD \_\_\_\_\_  
 Results of inspection, i.e., findings \_\_\_\_\_  
 Airframe total hours time-in-service \_\_\_\_\_  
 Total hours time-in-service on fittings inspected:  
 Left outboard \_\_\_\_\_  
 Right outboard \_\_\_\_\_  
 Left inboard \_\_\_\_\_  
 Right inboard \_\_\_\_\_  
 Airplane usage: (Check those for which airplane has been used, if known)  
 1. General service \_\_\_\_\_

2. Executive Transport \_\_\_\_\_  
 3. Air Taxi service \_\_\_\_\_  
 4. Tours of gusty areas \_\_\_\_\_  
 5. Calibration or patrolling of items on ground or water \_\_\_\_\_  
 6. Weather studies \_\_\_\_\_  
 Show approximate percentages (%) of airframe total hours time-in-service, if known, for the following:  
 1. % of flight time accumulated below 10,000 feet MSL \_\_\_\_\_  
 2. % of flight time accumulated above 10,000 feet MSL \_\_\_\_\_  
 3. Approximate indicated airspeed: Above 10,000 feet MSL \_\_\_\_\_, Below 10,000 feet MSL \_\_\_\_\_  
 4. Approximate number of flight hours per landing \_\_\_\_\_  
 Name and telephone number of person who can supply more information about usage of the airplane \_\_\_\_\_, phone number \_\_\_\_\_

**Figure 1**

Federal Aviation Administration, Wichita Engineering and Manufacturing District Office, Attention: Airframe Unit, Room 238, Terminal Building, Mid-Continent Airport, Wichita, Kansas 67206.

D) If fatigue cracks are found during the inspection required by Paragraph "A" of this AD, prior to further flight, replace specified wing and center section components with new production parts in accordance with instructions in Beechcraft Service Instructions No. 0393-018 Revision I (Models 65, L-23F, U-8F, 65-80, 65-A80 and 65-A80-8800) or 0394-018 (Models 65-90) whichever is applicable. If stress corrosion cracks are found during the inspection required by Paragraph "A" of this AD, prior to further flight, replace right and left lower forward outboard wing to center section attach fittings (2 right side and 2 left side) with new fittings in accordance with the above noted Beechcraft Service Instructions.

E) Aircraft may be flown in accordance with Federal Aviation Regulation 21.197 to a location where this AD can be accomplished.

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

This Amendment becomes effective August 6, 1979.

(Secs. 313(a), 601 and 603, Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and Sec. 11.89 of the Federal Aviation Regulations (14 CFR 11.89).)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri on July 19, 1979.

C. R. Melugin, Jr.,

Director, Central Region.

[FR Doc. 79-23314 Filed 7-27-79; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 39**

[Docket No. 69-SO-129, Amdt. 39-3521]

Piper Aircraft Corp., Models PA-28-140, PA-28-150/-160/-180, PA-28-235, PA-32-260, PA-32-300;  
**Airworthiness Directives**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment amends an existing airworthiness directive (AD) applicable to Piper Aircraft Corporation Models PA-28-140, PA-28-150/-160/-180, PA-28-235, PA-32-260, and PA-32-300 aircraft, by increasing the serial number effectivity of the original AD, and by providing an alternative means of compliance which will terminate the repetitive inspections required by the original AD. This amendment is needed because the FAA has determined that aircraft in addition to those originally listed in the AD may be affected by the same problem. The amendment also allows replacement of the suspect part with a new design part, which eliminates the repetitive inspection requirement imposed by the original AD.

**DATES:** Effective July 30, 1979.

**Compliance schedule—**As prescribed in body of AD.

**ADDRESSES:** The applicable Piper Service Letter may be obtained from Piper Aircraft Corporation, Lock Haven Division, Lock Haven, Pennsylvania 17745, telephone (717) 748-6711.

A copy of the Piper Service Letter is contained in the Rules Docket Room 275, Engineering and Manufacturing Branch, Federal Aviation Administration, 3400 Whipple Street, East Point, Georgia.

**FOR FURTHER INFORMATION CONTACT:** Steve Flanagan, Aerospace Engineer, Engineering and Manufacturing Branch, FAA, Southern Region, P.O. Box 20636, Atlanta, Georgia 30320, telephone (404) 763-7407.

**SUPPLEMENTARY INFORMATION:** This amendment further amends amendment 39-865, AD 69-22-02, as amended by amendment 39-1288, which currently requires a 100 hour repetitive inspection of molded plastic control wheels on certain PA-28 and PA-32 series aircraft. After issuing amendment 39-1288, the FAA has determined that the inspection requirements of the AD should be extended to additional aircraft in the PA-28-140 model series. Also, the manufacturer has developed a replacement metal control wheel, which is subject to more rigorous quality control inspection procedures, and when installed, justifies termination of the repetitive inspection requirements of AD 69-22-02. Therefore, the FAA is further amending amendment 39-865, as amended, by increasing the serial number effectivity of AD 69-22-02, and by allowing replacement of the plastic control wheels with metal control wheels to serve as an alternate means of compliance with AD 69-22-02, which would eliminate the repetitive

inspections currently required by the AD.

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

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by further amending Amendment 39-865, AD 69-22-02 (as amended by Amendment 39-1288), as follows:

a. By revising the serial number effectivity to read as follows:

The following are affected serial numbers: PA-28-140, 28-20001 through 28-7725290 inclusive; PA-28-150/-160/-180, 28-1 through 28-4377 inclusive; PA-28-235, 28-10001 through 28-11039 inclusive; PA-32-260, 32-1 through 32-1110 inclusive; and PA-32-300, 32-40001 through 32-40565 inclusive.

b. By revising paragraph (e) to read as follows:

(e) The repetitive inspection requirements of this AD may be terminated by replacing the plastic control wheel(s) with metal ramshorn type control wheel Piper part number 78729-02V (.750" o.d. shaft) or 79276-00V (1.125" o.d. shaft) as applicable. Replacement of one control wheel (i.e., left or right) does not terminate the requirement for continuing repetitive inspections of the other control wheel, if that other control wheel is the molded plastic type.

c. By adding a new paragraph (f) to read as follows:

(f) Piper Service Letter No. 527D, dated June 21, 1978, or later approved revisions, pertains to this same subject.

d. By adding a new paragraph (g) to read as follows:

(g) Make appropriate logbook entry indicating compliance with the provisions of this AD.

Amendment 39-865 became effective November 4, 1969. Amendment 39-1288 became effective September 15, 1971. This amendment becomes effective July 30, 1979.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c); 14 CFR 11.89).)

**Note.**—The FAA has determined that this document involves a regulation which is not considered to be significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in East Point, Georgia, on July 19, 1979.

Lonnie D. Parrish,

Acting Director, Southern Region.

[FR Doc. 79-23316 Filed 7-27-79; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 19378; Amdt. 39-3522]

#### Airworthiness Directives; Short Brothers Ltd. Model SD3-30 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts an Airworthiness Directive (AD) that requires an inspection of the area between wing drag link attachment longerons and spar frames to ensure adequacy of packing and shimming material and inspection of attachment fittings for deformation and as necessary, repacking and reshimming, and replacement of attachment fittings on certain Short Brothers Ltd. Model SD3-30 airplanes. This AD is needed to prevent fatigue of the associated structure which could occur if the condition is present in service beyond 10,000 flights, which could result in failure of the wing structure.

**DATES:** Effective—August 13, 1979.  
**Compliance—**As prescribed in body of AD.

The applicable service bulletin may be obtained from: Manager-Spares Support, Production Support Department, Short Brothers Ltd., P.O. Box 241—Airport Road, Belfast BT3 9DZ, Northern Ireland.

A copy of the service bulletin is contained in the Rules Docket, Rm. 910, 800 Independence Avenue, SW, Washington, D.C. 20591.

**FOR FURTHER INFORMATION CONTACT:** D. C. Jacobsen, Chief, Aircraft Certification Staff, AEU-100, Europe, Africa, and Middle East Region, Federal Aviation Administration, c/o American Embassy, Brussels, Belgium, Telephone 513.38.30, or C. Christie, Chief, Technical Standards Branch, AFS-110, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, D.C. 20591, Telephone: (202) 426-8374.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that structural failure of the wing could occur on early production Short Brothers Ltd. Model SD3-30 airplanes if left in service beyond 10,000 flights.

A condition exists where insufficient packing or shimming material was fitted between wing drag link attachment longerons and spar frames. The condition was discovered and reported by the manufacturer. It may have resulted in deformation of the flange of the attachment fittings. Since this condition is likely to exist on other airplanes of the same type design, an airworthiness directive is being issued which requires a one-time inspection and as necessary, repacking and reshimming, and replacement of attachment fittings on certain Short Brothers Ltd. Model SD3-30 airplanes.

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

#### Adoption of Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

#### Short Brothers Ltd.

Applies to Model SD3-30 airplanes, Serial Numbers SH.3001 through SH.3013, certificated in all categories.

Compliance is required prior to the accumulation of 10,000 flights, or within the next 100 flights after the effective date of this AD, whichever occurs later, unless already accomplished.

To prevent fatigue of the affected components and possible structural failure of the wing, accomplish the following:

(a) Inspect to determine the adequacy of packing and shimming material between wing drag link attachment longerons and spar frames on the left and right sides of the airplane, and inspect the flange of Cleats SD3 11-0479/A and SD3 11-0480/A and Brackets SD3 11-1119, SD3 11-1121, and SD3 11-1123 for deformation due to the tightening of the bolts with inadequate packing or shimming under the flange, all in accordance with Section 2, "Accomplishment Instructions" of Short Brothers, Ltd. Service Bulletin SD3-53-29, dated June 21, 1978 (hereinafter referred to as the Service Bulletin) or an FAA-approved equivalent.

Note.—As used in the Service Bulletin the term "packing" means thick shimming. In British usage, shim stock is measured in thousandths and packing stock is measured in sixteenths.

(b) If, during the inspection required by paragraph (a) of this AD, inadequate packing or shimming material is found, repack and reshim, as necessary, in accordance with Section 2 of the Service Bulletin or an FAA-approved equivalent.

(c) If, during the inspection required by paragraph (a), of this AD, it is found that the

flange of a part specified in paragraph (a) of this AD is deformed due to the tightening of the bolts with inadequate packing under the flange, replace the part with a new part of the same part number and ensure that the packing and shimming material between wing drag link attachment longerons and spar frames is adequate, all in accordance with Section 2 of the Service Bulletin or an FAA-approved equivalent.

(d) For purposes of this AD, an FAA-approved equivalent must be approved by the Chief, Aircraft Certification Staff, AEU-100, FAA, Europe, Africa, and Middle East Region, c/o American Embassy, Brussels, Belgium, Telephone 513.38.30.

(e) For purposes of this AD, a flight consists of one take-off and one landing.

This Amendment becomes effective August 13, 1979. (Sec. 313(a), 601, and 603, Federal Aviation Act of 1958), as amended, (49 U.S.C. 1354(a), 1421, and 1423); Sec. 8(c), Department of Transportation Act (49 U.S.C. 1655(c); 14 CFR 11.89).

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 CFR 11034; February 26, 1979).

Issued in Washington, D.C., on July 20, 1979.

James M. Vines,

Acting Director, Flight Standards Service.

[FR Doc. 79-23127 Filed 7-27-79; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 79-GL-4-AD; Amdt. 39-3519]

**Airworthiness Directives; Indiana Mills and Manufacturing, Inc.; IMM 111040-1, IMM 111040-2, IMM 111040-3, IMM 111040-4 and IMM 111040-8**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This notice adopts an airworthiness directive (AD) that requires the removal from service within the next 120 days of the following safety belt assemblies manufactured by Indiana Mills and Manufacturing, Inc. and marked as meeting the standards of FAA TSO-C22f:

IMM 111040-1 Shoulder and Lap Belt Assembly (only Lap Belt Assembly TSO approved).

IMM 111040-2 Front Passenger Harness Assembly (only Lap Belt Assembly TSO approved).

IMM 111040-3 Rear Passenger Harness Assembly (only Lap Belt Assembly TSO approved).

IMM 111040-4 Shoulder and Lap Belt Assembly (only Lap Belt Assembly TSO approved).

#### IMM 111040-8 Lap Belt Assembly.

The AD is needed since it was determined that the criteria of TSO-C22f and previously accepted deviation criteria for push-button release mechanisms are not met by these safety belt assemblies. The high release forces required to release the latch mechanism under certain conditions are considered unsatisfactory.

**DATES:** Effective August 2, 1979.

Compliance required within the next 120 days after the effective date of this AD, unless already accomplished.

**FOR FURTHER INFORMATION CONTACT:** Terry Fahr, Engineering and Manufacturing Branch, Flight Standards Division, AGL-212, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-4500, extension 424.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an Airworthiness Directive requiring that certain models of Indiana Mills and Manufacturing, Inc. safety belt assemblies be removed from service was published in the Federal Register. The proposal was prompted by reports of higher than acceptable push-button release loads for these safety belt assemblies.

Interested persons have been afforded an opportunity to participate in the making of the amendment. The only commenter recommended that the AD should not be issued since (1) service history for these belts has not shown a problem with release forces and (2) the criteria used to evaluate this type of safety belt release mechanism is unrealistic.

The fact that service history has not shown a problem to this date with the release mechanism is in itself not sufficient grounds to conclude that the high push-button release force is not a potential hazard to expeditious emergency exit. The service exposure so far may not have included the situation envisioned by the push-button release criteria.

The push-button release force criteria has been specifically reviewed by the FAA since this problem arose. The present criteria has been accepted as a deviation to TSO-C22 for qualifying push-button release mechanisms. Since further acceptable deviation criteria based on sufficient data to be representative of the potential user environment has not been put forth, the present criteria is the only standard for push-button safety belt release mechanisms available. Alternate criteria

have not been ruled out, however, and will be evaluated when and if presented.

The FAA has determined that the above identified Indiana Mills and Manufacturing, Inc. safety belt assemblies do not meet the requirements of TSO-C22f or present acceptable deviation criteria for push-button release mechanisms. This latter criteria requires that the release force under a 250 pound load be no greater than 8 pounds on the push-button and under no conditions should the release force be less than 2.5 pounds on the push-button. Since this condition exists in the other safety belts of the noted models, this AD requires that these safety belts be removed from service.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

#### Indiana Mills and Manufacturing, Inc.

Applies to Model IMM 111040 -1, -2, -3, -4 and -8 safety belt assemblies marked as meeting the standards of FAA TSO-C22f. These safety belts are installed in, but not limited to, Gulfstream American Corp. (formerly Grumman American Aviation Corp.) AA-1B, AA-1C, AA-5, AA-5A, AA-5B model airplanes.

These safety belts can no longer be considered to meet the standards prescribed by FAA TSO-C22f and the approved special criteria for push-button release mechanisms which requires the push-button release force to be between 2.5 and 8 pounds when using the loading conditions specified in FAA TSO-C22f (§ 4.3.2.2 of NAS 802).

Within 120 days from the effective date of the AD, these safety belts shall not be used in type certificated aircraft.

Note.—Information regarding replacement safety belts for Gulfstream American airplanes can be obtained from: Gulfstream Light Aircraft Customer Service, P.O. Box 2206, Savannah, Georgia 31410, Telephone (912) 984-3000, Telex 54-6470.

This amendment becomes effective August 2, 1979.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended, [49 U.S.C. 1354(a), 1421, and 1423]; Sec. 6(c), Department of Transportation Act [49 U.S.C. 1655(c)]; 14 CFR 11.89.)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this document is contained in the docket. A

copy of it may be obtained by writing to Terry Fahr, Engineering and Manufacturing Branch, Flight Standards Division, AGL-212, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-4500, extension 424.

Issued in Des Plaines, Illinois on July 19, 1979.

Wayne J. Barlow,  
Acting Director, Great Lakes Region.

[FR Doc. 79-23129 Filed 7-27-79; 8:45 am]  
BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 79-WE-14-AD; Amdt. 39-3518]

#### Varga Aircraft Corp., Model 2150A Airplanes; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

**SUMMARY:** This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new Airworthiness Directive (AD) which was previously made effective as to known U.S. operators of Varga Aircraft Corporation Model 2150A airplanes by priority mail dated June 27, 1979. This AD was issued because failures of the elevator horn flange assembly will result in loss of elevator control and possible flutter. This AD requires, before further flight and before each subsequent flight, a close visual check for cracks in the horn flange, and also requires replacement with a modified horn assembly within ten (10) hours additional time in service.

**DATES:** Effective August 2, 1979, except with respect to certain persons specified in the body of the AD.

**Compliance schedule—**As prescribed in the body of the AD.

**ADDRESSES:** The applicable service information may be obtained from: Varga Aircraft Corporation, 12250 East Queen Creek Road, Chandler, Arizona 85224.

Also, a copy of the service information may be reviewed at, or a copy obtained from: Rules Docket in Room 916, FAA, 800 Independence Avenue SW., Washington, D.C. 20591, or Rules Docket in Room 6W14, FAA Western Region, 15000 Aviation Boulevard, Hawthorne, California 90261.

**FOR FURTHER INFORMATION CONTACT:** Wallace M. Frei, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536-6351.

**SUPPLEMENTARY INFORMATION:** An emergency Airworthiness Directive (AD) was adopted on June 26, 1979 and made effective immediately upon receipt of the airmail letter dated June 27, 1979 to all known U.S. operators of Varga Aircraft Corporation Model 2150A airplane because of failures of the elevator horn flange assembly. This condition has caused the loss of elevator control. The AD required a visual check before further flight and replacement of horn assembly if cracks are found, and within 10 hours additional time in service from date of notification to replace horn assembly with a modified assembly.

Since it was found that immediate corrective action was required, notice and public procedure thereon was impracticable and contrary to the public interest and good cause existed for making the AD effective immediately as to all known operators of Varga Aircraft Corporation Model 2150A airplane. These conditions still exist and the AD is hereby published in the Federal Register as an amendment to Part 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 89.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new airworthiness directive:

#### Varga Aircraft Corp.

Applies to Varga Aircraft Corporation Model 2150A airplanes certificated in all categories.

Compliance required as indicated.

To prevent failure of the elevator horn flange assembly, which will result in loss of elevator control capability and possible flutter, accomplish the following:

(a) Before further flight after the effective date of this AD, accomplish the following procedures and checks:

(1) Raise elevator for access to elevator horn.

(2) Remove paint from the elevator horn and flange in the area of the flange radius.

Note 1.—To prevent possible damage to this structure, use a recommended paint remover.

(3) Conduct a close visual check of this flange radius for cracks, and

(4) If any cracks are found, before further flight, accomplish replacement of complete elevator horn/balance arm assembly in accordance with (c) below.

(b) Before each subsequent flight, until (c) below is accomplished, conduct the procedures of close visual checks provided in (a)(1), (a)(2), and (a)(3) above.

If any cracks are found, before further flight, accomplish replacement of complete

elevator horn/balance arm assembly in accordance with (c) below.

The checks required by this AD may be performed by the pilot.

**Note 2.**—For the requirements regarding the listing of compliance and method of compliance with this AD in the airplane's permanent maintenance record, see FAR 91.173

(c) Within ten (10) hours additional time in service, after the effective date of this AD, unless already accomplished, remove the complete elevator horn/balance arm assembly, P/N VAC 6000J-26, and replace with a modified arm assembly, P/N VAC 6000K-26, in accordance with Varga Service Bulletin No. SB2150A-6, dated June 22, 1979.

(d) Equivalent modifications may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

This amendment becomes effective August 2, 1979 as to all persons except those persons to whom it was made immediately effective by the airmail letter dated June 27, 1979, which contained this amendment.

[Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89]

Issued in Los Angeles, California on July 18, 1979.

Benjamin Demps, Jr.,

Acting Director, FAA Western Region.

[FR Doc. 79-23315 Filed 7-27-79; 8:45 am]

BILLING CODE 4910-13-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 14 CFR Parts 1204, 1216

#### Policy on Environmental Quality and Control; Procedures for Implementing the National Environmental Policy Act (NEPA)

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

**SUMMARY:** This rule sets forth procedures for implementing the provisions of the National Environmental Policy Act (NEPA) in accordance with the latest regulations of the Council on Environmental Quality (CEQ), 43 FR 55978 (1978) (to be codified in 40 CFR 1500 et seq.).

**EFFECTIVE DATE:** July 30, 1979.

**ADDRESS:** Mr. Nathaniel B. Cohen, Director, Management Support Office (External Relations), Code LB-4, National Aeronautics and Space Administration, Washington, D.C. 20546.

**FOR FURTHER INFORMATION CONTACT:** Mr. Nathaniel B. Cohen, 202-755-8383.

**SUPPLEMENTARY INFORMATION:** On May 9, 1979, NASA published proposed procedures (44 FR 27161-27168) for implementing the provisions of the National Environmental Policy Act (NEPA), 43 FR 55978 (1978) (to be codified in 40 CFR 1500 et seq.). Interested persons were given until June 8, 1979, to submit comments or suggestions. No such comments or suggestions were received.

Six changes were made, however, to improve clarity of certain sections of the proposed regulations and to correct minor errors. In §§ 1216.303(c), 1216.305(b)(3), and 1216.305(d)(3), the sentences have been rewritten to remove unintended ambiguity. In § 1216.305(d)(6), the word "funding" has been added. In § 1216.312(b), consultation with EPA has been substituted for consultation with CEQ on changing time periods in accordance with § 1506.10(d) of the CEQ Regulations. Finally, in § 1216.321(d)(1), the requirement for an EIS if there are significant environmental effects on the global commons has been added.

The proposed regulation is hereby adopted with the above changes and is set forth below.

Robert A. Frosch,  
Administrator.

### PART 1216—ENVIRONMENTAL QUALITY

1. In 14 CFR Chapter V, Subpart 1204.11 is redesignated as Subparts 1216.1 and 1216.3 and revised to read as follows:

#### Subpart 1216.1—Policy on Environmental Quality and Control

##### Sec.

- 1216.100 Scope.
- 1216.101 Applicability.
- 1216.102 Policy.
- 1216.103 Responsibilities of NASA officials.

#### Subpart 1216.3—Procedures for Implementing the National Environmental Policy Act (NEPA)

- 1216.300 Scope.
- 1216.301 Applicability.
- 1216.302 Definition of key terms.
- 1216.303 Responsibilities of NASA officials.

#### Agency Procedures

- 1216.304 Major decision points.
- 1216.305 Criteria for actions requiring environmental assessments.
- 1216.306 Preparation of environmental assessments.
- 1216.307 Scoping.
- 1216.308 Preparation of draft statements.
- 1216.309 Public involvement.
- 1216.310 Preparation of final statements.
- 1216.311 Record of the decision.
- 1216.312 Timing.

##### Sec.

- 1216.313 Implementing and monitoring the decision.
- 1216.314 Tiering.
- 1216.315 Processing legislative environmental impact statements.
- 1216.316 Cooperating with other agencies and individuals.
- 1216.317 Classified information.
- 1216.318 Deviations.

#### Other Requirements

- 1216.319 Environmental resources document.
- 1216.320 Environmental review and consultation requirements.
- 1216.321 Environmental effects abroad of major Federal actions.

Authority. The National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2451 et seq.); the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 et seq.); the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.); Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609); Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977); the Council on Environmental Quality NEPA Regulations (43 FR 55978); and Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, January 4, 1979 (44 FR 1957).

#### Subpart 1216.1—Policy on Environmental Quality and Control

##### § 1216.100 Scope.

This Subpart sets forth NASA policy on environmental quality and control and the responsibilities of NASA officials in carrying out these policies.

##### § 1216.101 Applicability.

This Subpart is applicable to NASA Headquarters and field installations.

##### § 1216.102 Policy.

NASA policy is to:

- (a) Use all practicable means, consistent with NASA's statutory authority, available resources, and the national policy, to protect and enhance the quality of the environment;
- (b) Provide for proper attention to and ensure that environmental amenities and values are given appropriate consideration in all NASA actions, including those performed under contract, grant, lease, or permit;
- (c) Recognize the worldwide and long-range character of environmental concerns and, when consistent with the foreign policy of the United States and its own responsibilities, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of the world environment;
- (d) Use systematic and timely approaches which will ensure the

integrated use of the natural and social sciences and environmental design arts in planning and decisionmaking for actions which may have an impact on the human environment;

(e) Pursue research and development, within the scope of NASA's authority or in response to authorized agencies, for application of technologies useful in the protection and enhancement of environmental quality;

(f) Initiate and utilize ecological and other environmental information in the planning and development of resource-oriented projects; and

(g) Invite cooperation, where appropriate, from Federal, State, local, and regional authorities and the public in NASA planning and decisionmaking processes.

#### § 1216.103 Responsibilities of NASA officials.

(a) The Associate Administrator for External Relations or designee shall:

(1) Coordinate the formulation and revision of NASA policies and positions on matters pertaining to environmental protection and enhancement;

(2) Represent NASA in working with other governmental agencies and interagency organizations to formulate, revise, and achieve uniform understanding and application of governmentwide policies relating to the environment;

(3) Develop and ensure the implementation of agencywide standards, procedures, and working relationships for protection and enhancement of environmental quality and compliance with applicable laws and regulations;

(4) Develop, as an integral part of NASA's basic decision processes, procedures to ensure that environmental factors are properly considered in all proposals and decisions;

(5) Establish and maintain working relationships with the Council on Environmental Quality, Environmental Protection Agency, and other national, state, and local governmental agencies concerned with environmental matters;

(6) Acquire information for and ensure the preparation of appropriate NASA reports on environmental matters.

(b) Officials-in-Charge of Headquarters Offices and NASA Field Installation Directors are responsible for:

(1) Identifying matters under their cognizance which may affect protection and enhancement of environmental quality and for employing the proper procedures to ensure that necessary actions are taken to meet the

requirements of applicable laws and regulations;

(2) Coordinating environmental quality-related activities under their cognizance with the Associate Administrator for External Relations; and

(3) Supporting and assisting the Associate Administrator for External Relations on request.

(c) Officials-in-Charge of Headquarters Offices are additionally responsible for:

(1) Giving high priority, in the pursuit of program objectives, to the identification, analysis, and proposal of research and development which, if conducted by NASA or other agencies, may contribute to the achievement of beneficial environmental objectives; and

(2) In coordination with the Associate Administrator for External Relations, making available to other parties, both governmental and nongovernmental, advice and information useful in protecting and enhancing the quality of the environment.

(d) NASA Field Installation Directors are additionally responsible for:

(1) Implementing the NASA policies, standards and procedures for the protection and enhancement of environmental quality and supplementing them as appropriate in local circumstances;

(2) Specifically assigning responsibilities for environmental activities under the installation's cognizance to appropriate subordinates, while providing for the coordination of all such activities; and

(3) Establishing and maintaining working relationships with national, state, regional and governmental agencies responsible for environmental regulations in localities in which the field installations conduct their activities.

#### Subpart 1216.3—Procedures for Implementing the National Environmental Policy Act (NEPA)

##### § 1216.300 Scope.

This Subpart sets forth NASA procedures implementing the provisions of Section 102(2) of the National Environmental Policy Act (NEPA). The NASA procedures of this Subpart supplement the regulations of the Council on Environmental Quality (43 FR 55978) which establish uniform procedures for implementing those provisions of NEPA.

##### § 1216.301 Applicability.

(a) This Subpart is applicable to NASA Headquarters and field installations.

(b) The procedures established by this Subpart apply to all NASA actions which may have an impact on the quality of the environment. These actions may fall within any of the three NASA budget categories: Research and Development (R&D), Construction of Facilities (COF), and Research and Program Management (R&PM), or, if not involving budget authority or other Congressional approval, may be separate from the categories.

##### § 1216.302 Definition of key terms.

The definitions contained within Part 1508, *Terminology and Index*, CEQ Regulations, 43 FR 55978, apply to Subpart 1216.3. Additional definitions, necessary for the purpose of this Subpart, are as follows:

(a) *Budget Line Items*. The individual items in the annual NASA authorization legislation which are used here to classify the range of NASA actions. The three main budget line items are:

(1) *Research and Development (R&D)*. Those activities directed towards attaining the objectives of a specific mission, project, or program. All NASA's aeronautics and space program elements are categorized within the R&D program categories. R&D funds are expended chiefly for contracted research and development and for research grants. Some R&D funds are also expended in support of in-house research (e.g., equipment purchases and other research support, but *not* civil service salaries).

(2) *Research and Program Management (R&PM)*. Those activities directed towards the general support of the NASA institution charged with the conduct of the aeronautics and space program. R&PM funds are expended for the NASA civil service work force (both for performing in-house R&D and for planning, managing, and supporting contractor and grantee R&D), and for other general supporting functions.

(3) *Construction of Facilities (C of F)*. Those activities directed towards construction of new facilities; repair, rehabilitation, and modification of existing facilities; acquisition of related facility equipment; design of facilities projects; and advance planning related to future facilities needs.

(b) *Construction of Facilities Project*. The consolidation of applicable specific individual types of facility work, including related collateral equipment, which is required to fully reflect all of the needs, generally relating to one

facility, which have been or may be generated by the same set of events or circumstances which are required to be accomplished at one time in order to provide for the planned initial operational use of the facility or a discrete portion thereof. Facility projects are subject to the NASA decision processes of § 1216.304.

(c) *Environmental Analysis.* The analysis of the environmental effects of proposed actions, including alternative proposals. The analyses are carried out from the very earliest of planning studies for the action in question, and are the materials from which the more formal environmental assessments, environmental impact statements, and public record of decisions are made.

(d) *Institutional Action.* An action to establish, change, or terminate an aspect of the NASA institution, defined as the total NASA resource (plant, employees, skills).

(e) *R&D Project.* A discrete research and development activity, with a scheduled beginning and ending, which normally involves one of the following primary purposes:

(1) The design, development, and demonstration of major advanced technology hardware items;

(2) The design, construction, and operation of a new launch vehicle (and associated ground support) during its research and development phase; and

(3) The construction and operation of one or more aeronautics or space vehicles (and necessary ground support) in order to accomplish a scientific or technical objective. R&D projects are each subelements in the NASA R&D budget line item. R&D projects are subject to the decision processes of § 1216.304.

#### § 1216.303 Responsibilities of NASA officials.

(a) The Associate Administrator for External Relations or designee, who is responsible for developing the procedures of this Subpart and for ensuring that environmental factors are properly considered in all NASA planning and decisionmaking, shall:

(1) Monitor these processes to ensure that the agency procedures are achieving their purposes;

(2) Advise line management and inform NASA employees of technical and management requirements of environmental analysis, of appropriate expertise available in and out of NASA, and—with the assistance of the NASA General Counsel—of relevant legal developments; and

(3) Consolidate and transmit to the appropriate parties NASA comments on

environmental impact statements and other environmental reports prepared by other agencies.

(b) Officials-in-Charge of Headquarters Offices (hereafter termed "Headquarters officials") are responsible for implementing the procedures established by these regulations for the consideration and documentation of the environmental aspects of the decision processes in their respective areas of responsibility.

(c) The Director, Office of Legislative Affairs, is responsible for ensuring that legislative environmental impact statements accompany NASA legislative proposals or recommendations or reports on proposals for legislation submitted to Congress. The Associate Administrator for External Relations, the Comptroller, and General Counsel will provide guidance as required.

#### Agency Procedures

##### § 1216.304 Major decision points.

The possible environmental effects of a proposed action must be considered, along with technical, economic, and other factors, in the earliest planning. At that stage, the responsible Headquarters official shall begin the necessary steps to comply with all the requirements of Section 102(2) of the National Environmental Policy Act of 1969. Major NASA activities, particularly R&D and facility projects, generally have four distinct phases: The conceptual study phase; the detailed planning/definition phase; the development/construction phase; and the operation phase. (Other NASA activities have fewer, less well-defined phases, but can still be characterized by phases representing general or feasibility study, detailed planning or definition, and implementation.) Environmental documentation shall be linked to major decision points as follows:

(a) Completion of an environmental assessment and the determination as to whether an environmental impact statement is required must be made prior to the decision to proceed from the conceptual study phase to the detailed planning/definition phase of the proposed action. For example, this determination must be concurrent with:

(1) Proposal of an R&D project for detailed planning and project definition;

(2) Proposal of a major Construction of Facilities project for detailed planning and project definition;

(3) Proposal of an institutional action (other than a facility project) for detailed planning and definition; and

(4) Proposal of a plan to define changes in an approved project.

(b) The final environmental impact statement (EIS) should be completed and circulated prior to the decision to proceed from the detailed planning/definition phase to the development/construction (or implementation) phase of the proposed action. For example, the EIS should be completed by, and incorporated with:

(1) Proposal of an R&D project for development/construction;

(2) Proposal of a major Construction of Facilities project for development/construction;

(3) Proposal to undertake a significant institutional action (other than a facility project); and

(4) Proposal to implement a program change.

#### § 1216.305 Criteria for actions requiring environmental assessments.

(a) Whether a proposed NASA action within the meaning of the CEQ Regulations (43 FR 55978) requires the preparation of an environmental assessment, an environmental impact statement, both, or neither, will depend upon the scope of the action and the context and intensity of any environmental effects expected to result. A NASA action shall require the preparation of an environmental assessment (§§ 1501.3 and 1508.9 of the CEQ Regulations) provided the action is not one normally requiring an environmental impact statement (paragraph (c)) or it is not categorically excluded from the requirement for an environmental assessment and an environmental impact statement (paragraph (d)).

(b) Specific NASA actions normally requiring an environmental assessment are:

(1) Specific spacecraft development and flight projects in space science.

(2) Specific spacecraft development and flight projects in space and terrestrial applications.

(3) Specific experimental projects in aeronautics and space technology and energy technology applications.

(4) Development and operation of new space transportation systems and advanced development of new space transportation and spacecraft systems.

(5) Reimbursable launches of non-NASA spacecraft or payloads.

(6) Major Construction of Facilities projects.

(7) Actions to alter ongoing operations at a NASA installation which could lead, either directly or indirectly, to natural or physical environmental effects.

(c) NASA actions expected to have a significant effect upon the quality of the human environment shall require an environmental impact statement. For these actions an environmental assessment is not required. Criteria to be used in determining significance are given in § 1508.27 of the CEQ Regulations (43 FR 55978). Specific NASA actions requiring environmental impact statements, all in the R&D budget category, are as follows:

(1) Development and operation of new launch vehicles.

(2) Development and operation of space vehicles likely to release substantial amounts of foreign materials into the earth's atmosphere, or into space.

(3) Development and operation of nuclear systems, including reactors and thermal devices used for propulsion and/or power generation. Excluded are devices with millicurie quantities or less of radioactive materials used as instrument detectors and small radioisotope heaters used for local thermal control, provided they are properly contained and shielded.

(d) NASA actions categorically excluded from the requirements to prepare either an environmental assessment or an EIS (§ 1508.4 of the CEQ Regulations) fit the following criteria: They are each sub-elements of an approved broadbased level-of-effort NASA science and technology program (basic research, applied research, development of technology, ongoing mission operations), facility program, or institutional program; and they are each managed relatively independently of other related sub-elements by means of separate task orders, Research and Technology Operating Plans, etc. Specific NASA actions fitting these criteria and thus categorically excluded from the requirements for environmental assessments and environmental impact statements are:

(1) R&D activities in space science (e.g., Physics and Astronomy Research and Analysis, Planetary Exploration Mission Operations and Data Analysis) other than specific spacecraft development and flight projects.

(2) R&D activities in space and terrestrial applications (e.g., Resource Observations Applied Research and Data Analysis, Technology Utilization) other than specific spacecraft development and flight projects.

(3) R&D activities in aeronautics and space technology and energy technology applications (e.g., Research and Technology Base, Systems Technology Programs) other than experimental projects.

(4) R&D activities in space transportation systems engineering and scientific and technical support operations, routine transportation operations, and advanced studies.

(5) R&D activities in space tracking and data systems.

(6) Facility planning and design (funding).

(7) Minor construction of new facilities including rehabilitation, modification, and repair.

(8) Continuing operations of a NASA installation at a level of effort, or altered operations, provided the alterations induce only social and/or economic effects but no natural or physical environmental effects.

(e) Even though an action may be categorically excluded from the need for a formal environmental assessment or environmental impact statement, it is not excluded from the requirement for an environmental analysis conducted during the earliest planning phases. If that analysis shows that the action deviates from the criteria for exclusion and it is concluded that there may be significant environmental effects, an environmental assessment must be carried out. Based upon that assessment, a determination must then be made whether or not to prepare an environmental impact statement.

#### § 1216.306 Preparation of environmental assessments.

(a) For each NASA action meeting the criteria of § 1216.305(b), and for other actions as required, the responsible Headquarters official shall prepare an environmental assessment (§§ 1501.3 and 1508.9 of the CEQ Regulations) and, on the basis of that assessment, determine if an EIS is required.

(b) If the determination is that no environmental impact statement is required, the Headquarters official shall, in coordination with the Associate Administrator for External Relations, prepare a "Finding of No Significant Impact." (See § 1508.13 of the CEQ Regulations.) The "Finding of No Significant Impact" shall be made available to the affected public through direct distribution and publication in the Federal Register.

(c) If the determination is that an environmental impact statement is required, the Headquarters official shall proceed with the "notice of intent to prepare an EIS" (see § 1508.22 of the CEQ Regulations). The Headquarters official shall transmit this notice to the Associate Administrator for External Relations for review and subsequent publication in the Federal Register (see section 1507.3(e) of the CEQ

Regulations). The Headquarters official shall then apply procedures set forth in § 1216.307 to determine the scope of the EIS and proceed to prepare and release the environmental statement in accordance with the CEQ Regulations and the procedures of this Subpart.

(d) Environmental assessments may be prepared for any actions, even those which meet the criteria for environmental impact statements (§ 1216.305(c)) or for categorical exclusion (§ 1216.305(d)), if the responsible Headquarters official believes that the action may be an exception or that an assessment will assist in planning or decisionmaking.

#### § 1216.307 Scoping.

The responsible Headquarters official shall conduct an early and open process for determining the scope of issues to be addressed in environmental impact statements and for identifying the significant issues related to a proposed action. The elements of the scoping process are defined in § 1501.7 of the CEQ Regulations and the process must include considerations of the range of actions, alternatives, and impacts discussed in § 1508.25 of the CEQ Regulations. The range of environmental categories to be considered in the scoping process shall include, but not be limited to:

- (a) Air quality;
- (b) Water quality;
- (c) Waste generation, treatment, transportation disposal and storage;
- (d) Noise, sonic boom, and vibration;
- (e) Toxic substances;
- (f) Biotic resources;
- (g) Radioactive materials and non-ionizing radiation;
- (h) Endangered species;
- (i) Historical, archeological, and recreational factors;
- (j) Wetlands and floodplains; and
- (k) Economic, population and employment factors, provided they are interrelated with natural or physical environmental factors.

#### § 1216.308 Preparation of draft statements.

(a) The responsible Headquarters official shall prepare the draft environmental impact statement in the manner provided in Part 1502 of the CEQ Regulations and shall submit the draft statement and any attachments to the Associate Administrator for External Relations for NASA review prior to any formal review outside NASA. This submission shall be accompanied by a list of Federal, state, and local officials (Part 1503 of the CEQ Regulations) and a list of other

interested parties (§ 1506.6 of the CEQ Regulations) from whom comments should be requested.

(b) After the NASA review is completed, the Associate Administrator for External Relations shall submit the approved draft statement to the Environmental Protection Agency (EPA), Office of Federal Activities, and shall seek the views of appropriate agencies and individuals in accordance with Part 1503 and § 1506.6 of the CEQ Regulations.

(c) Comments received shall be provided to the originating official for consideration in preparing the final statement. To the extent possible, requirements for review and consultation with other agencies on environmental matters established by statutes other than NEPA, such as the review and consultation requirements of the Endangered Species Act of 1973, as amended, should be met prior to or through this review process (§ 1216.320).

#### § 1216.309 Public involvement.

(a) Interested persons can get information on NASA environmental impact statements and other aspects of NASA's NEPA process by contacting the Director, Management Support Office (Code LB), NASA, Washington, DC 20546, 202-755-8383. Pertinent information regarding any aspect of the NEPA process may also be mailed to the above address.

(b) Responsible Headquarters officials and NASA Field Installation Directors shall identify those persons, community organizations, and environmental interest groups who may be interested or affected by the proposed NASA action and who should be involved in the NEPA process. They shall submit a list of such persons and organizations to the Associate Administrator for External Relations at the same time they submit:

- (1) A recommendation regarding a "Finding of No Significant Impact,"
- (2) A "Notice of Intent to Prepare an EIS,"
- (3) A recommendation for public hearings,
- (4) A preliminary draft EIS,
- (5) A preliminary final EIS,
- (6) Other preliminary environmental documents (§ 1216.321(d)).

(c) The Associate Administrator for External Relations may modify such lists referred to in paragraph (b) as appropriate to ensure that NASA shall comply, to the fullest extent practicable, with § 1506.6 of the CEQ Regulations and § 2-4(d) of Executive Order 12114.

(d) The decision whether to hold public hearings shall be made by the

Associate Administrator for External Relations in consultation with the General Counsel.

#### § 1216.310 Preparation of final statements.

(a) After conclusion of the review process with other Federal, state, and local agencies and the public, the responsible Headquarters official shall consider all suggestions, revise the statement as appropriate, and forward the proposed final statement to the Associate Administrator for External Relations. The Associate Administrator for External Relations shall submit the approved final statement to the EPA Office of Federal Activities, to all parties who commented, and to other interested parties in accordance with CEQ Regulations.

(b) Each draft and final statement, the supporting documentation, and the record of decision shall be available for public review and copying at the office of the responsible Headquarters official, or at the office of a suitable designee. Copies of draft and final environment impact statements shall also be available at the NASA Information Center, 600 Independence Avenue, SW, Washington, DC 20546; at information centers at appropriate NASA field installations; and at appropriate state and local clearinghouses.

#### § 1216.311 Record of the decision.

At the time of the decision on the proposed action, the originating Headquarters official shall consult with the Associate Administrator for External Relations and prepare a concise public record of the decision. (See § 1505.2 of the CEQ Regulations.)

#### § 1216.312 Timing.

(a) Environmental impact statements are drafted when the Headquarters official has determined that the statement shall be prepared. No decision to proceed to the development/construction (or implementation) phase of the proposed action (the major decision point of § 1216.304(b)) shall be made by NASA until the later of the following dates (§ 1506.10 of the CEQ Regulations):

- (1) Ninety days after publication of an EPA notice of a NASA draft EIS.
- (2) Thirty days after publication of an EPA notice of a NASA final EIS.

(b) When necessary to comply with other specific statutory requirements, NASA shall consult with and obtain from EPA time periods other than those specified by the Council for timing of agency action.

#### § 1216.313 Implementing and monitoring the decision.

(a) Section 1505.3 of the CEQ Regulations provides for agency monitoring to assure that mitigation measures and other commitments associated with the decision and its implementation and described in the EIS are carried out and have the intended effects.

(b) The responsible Headquarters official shall, as necessary, conduct the required monitoring and shall provide periodic reports as required by the Associate Administrator for External Relations.

If the monitoring activity indicates that resulting environmental effects differ from those described in the current documents, the Headquarters official shall reassess the environmental impact and consult with the Associate Administrator for External Relations to determine the need for additional mitigation measures and whether to prepare a supplement to the EIS (see § 1502.9 of the CEQ Regulations).

#### § 1216.314 Tiering.

Actions which are the subject of an environmental impact statement and which represents projects of broad scope may contain within them component actions of narrower scope, perhaps restricted to individual sites of activity or sequential stages of a mission, and which themselves may require environmental assessments and, where necessary, environmental impact statements. The CEQ Regulations provide that agencies may use "Tiering" (§ 1508.28 of the CEQ Regulations) of environmental impact statements to relate such broad and narrow actions. When employing tiering, Headquarters officials shall, by reference, make maximum use of environmental documentation already available, and avoid repetition.

#### § 1216.315 Processing legislative environment impact statements.

(a) Preparation of a legislative environmental impact statement shall conform to the requirements of § 1506.8 of the CEQ Regulations. The responsible Headquarters official, in coordination with the Associate Administrator for External Relations, shall identify those legislative proposals or reports on legislation that would require preparation of environmental impact statements in accordance with criteria set forth in § 1216.305.

(b) For the purposes of this provision, "legislation" not only excludes requests for appropriations (§ 1508.17 of the CEQ Regulations), but also excludes the

annual authorization bill submitted to the Congress.

**§ 1216.316 Cooperating with other agencies and individuals.**

(a) The Associate Administrator for External Relations shall ensure that NASA officials have an opportunity to cooperate with other agencies and individuals. He/she shall keep abreast of the activities of Federal, state, and local agencies, particularly activities in which NASA has expertise or jurisdiction by law (see § 1508.15 of the CEQ Regulations). He/she shall inform the responsible Headquarters official of the need for cooperation as necessary.

(b) At the request of the Associate Administrator for External Relations, Headquarters officials shall initiate discussions with another Federal-agency concerning those activities which may be the subject of that agency's EIS on which NASA proposes to comment.

(c) At the request of the Associate Administrator for External Relations, the responsible Headquarters official shall, in the interest of eliminating duplication, prepare joint analyses, assessments, and statements with state and local agencies. These joint environmental documents shall conform with the requirements of these procedures and overall NASA policy.

(d) Because of the uniqueness of NASA's aerospace activities, it is unlikely that NASA will have the opportunity to "adopt" environmental statements prepared by other agencies (§ 1506.3 of the CEQ Regulations). However, should the responsible NASA official wish to adopt a Federal draft or final environmental impact statement or portion thereof, he/she shall consult with the Associate Administrator for External Relations to determine whether that statement meets NASA requirements.

(e) From time to time, there may be disagreements between NASA and other Federal agencies regarding which agency has primary responsibility to prepare an environmental impact statement in which both parties are involved. The Headquarters official with primary responsibility for the activity in question shall consult with the associate Administrator for External Relations to resolve such questions in accordance with § 1501.5 of the CEQ Regulations.

(f) Responsibility for the environmental analyses and any necessary environmental assessments and environmental impact statements required by permits, leases, easements, etc., proposed for issuance to non-Federal applicants rests with the Headquarters official responsible for

granting of that permit, lease, easement, etc. The responsible Headquarters official shall consult with the Associate Administrator for External Relations for advice on the type of environmental information needed from the applicant and on the extent of the applicant's participation in the necessary environmental studies and their documentation.

**§ 1216.317 Classified information.**

Environmental assessments and impact statements which contain classified information to be withheld from public release in the interest of national security or foreign policy shall be organized so that the classified portions are appendices to the environmental document itself. The classified portion shall not be made available to the public.

**§ 1216.318 Deviations.**

From time to time there will arise good and valid reasons for a deviation from these procedures. These procedures are not intended to be a substitute for sound professional judgment. Accordingly, if and as problems arise which justify a deviation, the proposed deviation and supporting rationale shall be forwarded to the Associate Administrator for External Relations. Unless such documentation is received, it will be assumed that each planning and decisionmaking action is in accordance with these procedures.

**§ 1216.319 Environmental resources document.**

Each Field Installation Director shall ensure that there exists an environmental resources document which describes the current environment at that field installation, including current information on the effects of NASA operations on the local environment. This document shall include information on the same environmental effects as included in an environmental impact statement (See § 1216.307). This document shall be coordinated with the Associate Administrator for External Relations and shall be published in an appropriate NASA report category for use as a reference document in preparing other environmental documents (e.g., environmental impact statements for proposed actions to be located at the NASA field installation in question). The Director of each NASA field installation shall ensure that existing resource documents are reviewed and updated, if necessary, by December 31, 1980, and at appropriate intervals thereafter.

**§ 1216.320 Environmental review and consultation requirements.**

(a) Headquarters officials and Field Installation Directors shall, to the maximum extent possible, conduct environmental analyses, assessments, and any impact statement preparation concurrently with environmental reviews required by the laws and regulations listed below:

(1) Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470(f)) requires identification of National Register properties, eligible properties, or properties which may be eligible for the National Register within the area of the potential impact of a NASA proposed action. Evaluation of the impact of the NASA action on such properties shall be discussed in draft environmental impact statements and transmitted to the Advisory Council on Historic Preservation for comments.

(2) Section 7 of the Endangered Species Act (16 U.S.C. 1531 et seq.) requires identification of and consultation on aspects of the NASA action that may affect listed species or their habitat. A written request for consultation, along with the draft statement, shall be conveyed to the Regional Director of the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate, for the Region where the action will be carried out.

(3) Executive Order 11988 (Floodplains Management) and Executive Order 11990 (Wetlands), as implemented by 14 CFR Subpart 1216.2—Floodplains and Wetlands Management, prescribe procedures to avoid adverse impacts associated with the occupancy and modification of floodplains and wetlands and require identification and evaluation of actions which are proposed for location in or which may affect a floodplain or wetland. A comparative evaluation of such actions shall be discussed in draft environmental impact statements and transmitted to appropriate A-95 clearing-houses for comments.

(b) Other environmental review and consultation requirements peculiar to NASA, if any, shall be identified as a part of a NASA environmental handbook to be prepared.

**§ 1216.321 Environmental effects abroad of major Federal actions.**

(a) In accordance with these procedures and E.O. 12114, "Environmental Effects Abroad of Major Federal Actions" (44 FR 1957), dated January 4, 1979, the Headquarters official shall analyze actions under his/her cognizance with due regard for the

environmental effects abroad of such actions. The Headquarters official shall consider whether such actions involve:

(1) Potential environmental effects on the global commons (i.e., oceans and the upper atmosphere);

(2) Potential environmental effects on a foreign nation not participating with or not otherwise involved in the NASA activity;

(3) The export of products or facilities producing products (or emissions/effluents) which in the U.S. are prohibited or strictly regulated because their effects on the environment create a serious public health risk. The Associate Administrator for External Relations will provide additional guidance regarding the types of chemical, physical, and biological agents involved.

(4) A physical project which, in the U.S., would be prohibited or strictly regulated by Federal law to protect the environment against radioactive substances;

(5) Potential environmental effects on natural and ecological resources of global importance and which the President in the future may designate (or which the Secretary of State designates pursuant to international treaty). A list of any such designations will be available from the Office of the Associate Administrator for External Relations.

(b) Prior to decisions (§ 1216.304) on any action falling into the categories specified in paragraph (a), the Headquarters official shall make a determination whether such action may have a significant environmental effect abroad.

(c) If the Headquarters official determines that the action *will not have* a significant environmental effect abroad, he/she shall prepare a memorandum for the record which states the reasoning behind such a determination. A copy of the memorandum shall be forwarded to the Associate Administrator for External Relations. Note that these procedures do not allow for categorical exclusions (E.O. 12114, section 2-5(d)).

(d) If the Headquarters official determines that an action *may have* a significant environmental effect abroad, he/she shall consult with the Associate Administrator for External Relations and the Director, International Affairs Division. The Associate Administrator for External Relations, in coordination with the Director, International Affairs Division, shall (as specified in E.O. 12114) make a determination whether the subject action requires:

(1) An environmental impact statement (an EIS will be required if

there are significant effects on the global commons);

(2) Bilateral or multilateral environmental studies; or

(3) Concise reviews of environmental issues.

(e) When informed of the determination of the Associate Administrator for External Relations, the Headquarters official shall proceed to take the necessary actions in accordance with these implementing procedures.

(f) The Associate Administrator for External Relations shall, in coordination with the Director, International Affairs Division, determine when an affected nation shall be informed regarding the availability of documents referred to in paragraph (d) and coordinate with the Department of State all NASA communications with foreign governments concerning environmental matters as related to E.O. 12114 (44 FR 1957).

#### PART 1204—ADMINISTRATIVE AUTHORITY AND POLICY

Subpart 1204.11 (§§ 1204.1100-1204.1103) [Reserved]

2. In 14 CFR Chapter V, Subpart 1204.11 is reserved.

[FR Doc. 79-23482 Filed 7-27-79; 8:45 am]

BILLING CODE 7510-01-M

#### DEPARTMENT OF TRANSPORTATION

##### Coast Guard

##### 33 CFR Part 127

[CGD7-79-08]

##### Security Zone—U. S. Territorial Waters and San Juan Harbor, Puerto Rico

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

**SUMMARY:** This amendment to the Coast Guard's Security Zone Regulations establishes an area as a security zone within 100 yards of the Cuban vessel VIET NAM HEROICO while it is in U.S. Territorial Waters of Puerto Rico and San Juan Harbor. This security zone is established to prevent interference with, or sabotage to, the VIET NAM HEROICO.

**DATES:** This amendment is effective on 8:00 A.M., 29 June 1979 and is terminated on 12:00 A.M., 15 July 1979.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant J. A. MCGOUGH or Lieutenant Commander J. R. TOWNLEY, c/o Commanding Officer, U. S. Coast Guard Marine Safety Office, Post Office

Box 3666, Old San Juan, Puerto Rico, 00904, Tel: 809-725-0857,

**SUPPLEMENTARY INFORMATION:** This amendment is issued without publication of a notice of proposed rulemaking and is effective in less than 30 days from the date of publication because this security zone involves protection of a visiting communist flag vessel from anticipated danger. Insufficient advance notice of vessel's approved visit precluded public procedures.

**DRAFTING INFORMATION:** The principal persons involved in the drafting of this rulemaking are LT J. A. MCGOUGH and LCDR J. R. TOWNLEY, USCG Marine Safety Office, San Juan, Post Office Box 3666, Old San Juan, Puerto Rico, 00904, Tel: 809-725-0857. In consideration of the above, Part 127 of Title 33 of the Code of Federal Regulations is amended by adding 127.708, to read as follows:

§ 127.708 Puerto Rico, U. S. Territorial Waters of, and San Juan Harbor.

The area within 100 yards of the Cuban vessel VIET NAM HEROICO while it is in U. S. Territorial Waters of Puerto Rico or San Juan Harbor is a security zone.

(40 STAT. 220, as amended (50 U.S.C. 191), Sect. 1; 63 STAT. 503 (14 U.S.C. 91), Sec. 6(b)(1); 80 STAT. 937 (49 U.S.C. 1655(b)); EO 10173, EO 10277, EO 10352, EO 11249; 3 CFR 1949-1953 Comp. 356, 778, 873; 3 CFR 1964-1965 Comp. 349; 33 CFR Part 6; 49 CFR 1.46(b).)

Dated: 29 June 1979.

J. D. Webb,

Commander, U. S. Coast Guard, Captain of the Port, San Juan, PR.

[FR Doc. 79-23483 Filed 7-27-79; 8:45 am]

BILLING CODE 4910-14-M

##### 33 CFR Part 165

[CGD2-79-04-R]

##### Safety Zone—Ohio River Mile 319.3 to Mile 320.7

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

**SUMMARY:** This amendment to the Coast Guard's Safety Zone Regulations establishes a safety zone on the Ohio River. This safety zone is established for the protection of the facilities in these areas.

**EFFECTIVE DATE:** This amendment is effective from 0900 EDT, 12 July 1979 to 1300 EDT, 12 July 1979.

**FOR FURTHER INFORMATION CONTACT:** LCDR STRASSER, USCG, C/o Marine Safety Office, 6th Avenue & 9th Street,

Huntington, WV 25725 TEL: 304-529-5524.

**SUPPLEMENTARY INFORMATION:** This amendment is issued without publication of a notice of proposed rulemaking and is effective in less than 30 days from the date of publication, because public procedures on this amendment are impractical due to the short amount of time available to establish the safety zone.

**DRAFTING INFORMATION:** The principal person in drafting of this rule is: CDR F. J. GRADY III, Captain of the Port, Huntington, WV 25725 TEL: 304-529-5524. In consideration of the foregoing, Part 165 of Title 33 of the Code of Federal Regulations is amended by adding 165.206 to read as follows:

§ 165.206 Ohio River Mile 319.3 to Mile 320.7.

Pursuant to the authority contained in section 1224 of title 33 of the U.S. Code and Part 165 of title 33 of the Code of Federal Regulations, the Coast Guard Captain of the Port, Huntington, WV, has established a safety zone consisting of all of the waters of the Ohio River in the following area.

(a) Semet Solvay div. of Allied Chemical Corp., Ashland, KY mile 319.3 to Mile 320.7, left descending bank Ohio River, extending 400 feet outward from the Kentucky shoreline.

(b) No vessel may enter into or proceed within the safety zone described in subsection (a) without the express permission of the Captain of the Port, Huntington, WV, 6th Avenue & 9th Street, Huntington, WV 25725 TEL: 304-529-5524.

86 STAT. 427 (33 U.S.C. 1224), as amended by P.L. 95-474, 92 STAT. 1475; 49 CFR 1.46(n)(4).

Dated: July 11, 1979.

F. J. Grady III,

Commander, U.S. Coast Guard, Captain of the Port, Huntington, WV.

[FR Doc. 79-23470 Filed 7-27-79; 8:45 am]

BILLING CODE 4910-14-M

### 33 CFR Part 165

[CGD7-79-07]

#### Safety Zone—Vicinity of the Southwest Corner of the West Indian Dock, Charlotte Amalie, St. Thomas, U.S. Virgin Islands

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment to the Coast Guard's Safety Zone Regulations establishes the area in the vicinity of the Southwest Corner of the West Indian

Dock, Charlotte Amalie, St. Thomas, U.S. Virgin Islands, as a safety zone. This safety zone is established to remove all vessel traffic from the vicinity of the ANGELINA LAURO during the critical stage of refloating salvage operations. Vessels not engaged in the salvage operation are directed to pass no closer than 400 yards to the salvage operation and to proceed at "NO WAKE" speed while in the harbor area.

**DATES:** This amendment is effective from 0800 on 29 June 1979 until 0800, 3 July 1979.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander J. R. TOWNLEY or Lieutenant J. A. MCGOUGH, c/o Commanding Officer, U.S. Coast Guard Marine Safety Office, Post Office Box 3666, Old San Juan, Puerto Rico, 00904. Tel: 809-725-0857.

**SUPPLEMENTARY INFORMATION:** This amendment is issued without publication of a notice of proposed rulemaking and this amendment is effective in less than 30 days from the date of publication, because public procedures on this amendment are impractical due to the nature of the salvage operations which precluded prediction of the date the critical aspect of the operation would occur.

**DRAFTING INFORMATION:** The principal persons involved in the drafting of the rulemaking are Lieutenant Commander J. R. TOWNLEY, Project Officer, and Lieutenant J. A. MCGOUGH, Marine Safety Office San Juan, Post Office Box 3666, Old San Juan, Puerto Rico, 00904. Tel: 809-725-0857.

In consideration of the above, Part 165 of Title 33 of the Code of Federal Regulations is amended by adding 165.707 to read as follows:

§ 165.707 Vicinity, southwest corner, West Indian dock, Charlotte Amalie, St. Thomas, U.S. Virgin Islands.

The Area enclosed by the following boundary is a safety zone—from the westernmost point of the West Indian Dock, 18°19'59.6" N. latitude, 64°55'31.2" W. longitude, a straight line to the northernmost point of Rupert Rock; thence in an arc moving west to north, of 400 yards radius from the westernmost point of the West Indian Dock and continuing to a point at 18°20'05.8" N. latitude, 64°55'20.6" W. longitude; thence in a straight line parallel to the West Indian Dock to the westernmost point of the West Indian Dock.

[92 STAT. 1475 [33 U.S.C. 1225]; 49 CFR 1.46(n)(4).]

Dated: June 27, 1979.

J. D. Webb,

Commander, U.S. Coast Guard, Captain of the Port, San Juan, PR.

[FR Doc. 79-23469 Filed 7-27-79; 8:45 am]

BILLING CODE 4910-14-M

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 36 CFR Part 7

#### Fire Island National Seashore; Seaplane and Amphibious Aircraft Regulations

**AGENCY:** National Park Service.

**ACTION:** Final rule.

**SUMMARY:** On August 8, 1978, the National Park Service published in the Federal Register (43 FR 35070) a proposal to regulate the use of seaplanes and amphibious aircraft. The regulations are needed to control seaplane and amphibious aircraft operations within Fire Island National Seashore. Unregulated use of surface waters by seaplanes and amphibious aircraft has resulted in aircraft accidents, near collisions with small boats, complaints of extremely low overflights and trespassing. It is the objective of these regulations to promote public safety, minimize the conflicts among the various users and to protect the resources of the seashore.

**EFFECTIVE DATE:** July 30, 1979.

**FOR FURTHER INFORMATION CONTACT:** Richard W. Marks, Superintendent, Fire Island National Seashore, Telephone: (516) 289-4810.

#### SUPPLEMENTARY INFORMATION:

##### Background

These regulations are being promulgated by the National Park Service in response to public concern for safety and protection of property and resources within Fire Island National Seashore. Complaints concerning seaplanes and amphibious aircraft operation have been received from homeowners and recreational boaters. These complaints involve aircraft taxiing, docking, take-offs, landings, extremely low overflights and trespassing.

Since boating has been and will continue to be the predominant means of access to the Seashore, it was deemed impractical to restrict boating at this time. Seaplanes and amphibious aircraft represent a valid means of transportation and a total restriction on their use is an overly severe measure.

This regulation would reduce conflicting uses by requiring aircraft to land and take off at least 1,000 feet from shore and require that all aircraft taxiing be accomplished with due regard for public safety and only perpendicular to the shoreline at legal docking sites.

On August 8, 1978, the National Park Service published in the Federal Register (43 FR 35070) a proposal to regulate the use of seaplanes and amphibious aircraft. The 30 day public review and comment period began on August 8, 1978 and was scheduled to end on September 7, 1978. This public comment period was extended an additional 30 days, until October 8, 1978, because of the public interest generated by the proposed regulations.

During the 60 day public review and comment period, the National Park Service received a total of 23 written comments. Thirteen of the comments supported the regulations as written. An additional nine comments supported the regulations if modified to remove specific reference to certain exempted communities. One comment was received that opposed the regulations.

As originally proposed, the regulations designated six communities where aircraft could legally taxi to and from docking facilities. These six communities were specified by name, latitude and longitude. At a meeting with representatives of the "exempted communities" on Fire Island, several people opposed the listing of a community in conjunction with a reference in the body of the rule to latitude and longitude. However, they were in favor of continued seaplane access. In the interest of providing adequate public notice of permitted or prohibited activities and with a view toward clarity of regulations, the National Park Service has concluded that the exempted communities desiring continued seaplane access should be specifically listed. Therefore, the regulations have been modified to designate specific exempted communities as locations where aircraft may taxi perpendicular to the shore to reach or leave legal docking sites.

The term "exempted community" is derived from the legislation establishing Fire Island National Seashore. This legislation provided for the continued existence of 17 separate and distinct communities within the authorized boundaries of the Seashore. These communities are designated on an official map numbered OGP-000-04 which is available for public inspection at the Office of the Superintendent, 120 Laurel Street, Patchogue, New York 11772.

Interested airmen may obtain the exact locations of the areas defined within the regulations by writing or telephoning the Superintendent. In addition, this rulemaking will be published in the Federal Aviation Administration's "Notice to Airmen" (NOTAM), which updates air regulations for all commercial and noncommercial air traffic users. In view of the fact that the summer travel season has already begun and there have already been several aircraft incidents that have jeopardized public safety, the National Park Service has determined that immediate implementation of these regulations is necessary. Therefore, it is deemed both unnecessary and contrary to the public interest to delay the effective date for 30 days after this publication.

#### Drafting Information

The following persons participated in the writing of this regulation: Richard W. Marks and William Schenk, Fire Island National Seashore; and Michael Finley, National Park Service, Washington, D.C.

#### Impact Analysis

The National Park Service has determined that this document is not a significant rule requiring preparation of a regulatory analysis under Executive Order 12044 and Part 14 of Title 43 of the Code of Federal Regulations; nor is it a major Federal Action significantly affecting the quality of the human environment, which would require preparation of an Environmental Impact Statement.

(Section 3 of the Act of August 25, 1916, (39 Stat. 535, as amended, 16 U.S.C. 3); 245 DM 1 (42 FR 12931); and National Park Service Order 77 (38 FR 7478), as amended)

Daniel J. Tobin, Jr.,

*Associate Director, Management and Operations.*

In consideration of the foregoing, § 7.20 of Title 36 of the Code of Federal Regulations is amended by the addition of a new paragraph (b) as follows:

#### § 7.20 Fire Island National Seashore.

\* \* \* \* \*

##### (b) Operation of Seaplane and Amphibious Aircraft

(1) Aircraft may be operated on the waters of the Great South Bay and the Atlantic Ocean within the boundaries of Fire Island National Seashore, except as restricted in § 2.2(a) of this chapter and by the provisions of paragraph (b)(2) of this section.

(2) Except as provided in paragraph (b)(3) of this section, the waters of the Great South Bay and the Atlantic Ocean

within the boundaries of Fire Island National Seashore are closed to take-offs, landings, beachings, approaches or other aircraft operations at the following locations:

(i) Within 1000 feet of any shoreline, including islands.

(ii) Within 1000 feet of lands within the boundaries of the incorporated villages of Ocean Beach and Saltaire and the village of Seaview.

(3) Aircraft may taxi on routes perpendicular to the shoreline to and from docking facilities at the following locations:

(i) *Kismet*—Located at approximate longitude 73°12½' and approximate latitude 40°38½'.

(ii) *Dunewood*—Located at approximate longitude 73°11½' and approximate latitude 40°38½'.

(iii) *Fair Harbor*—Located at approximate longitude 73°11' and approximate latitude 40°38½'.

(iv) *Lonelyville*—Located at approximate longitude 73°11' and approximate latitude 40°38½'.

(v) *Atlantique*—Located at approximate longitude 73°10½' and approximate latitude 40°38½'.

(vi) *Robin's Rest*—Located at approximate longitude 73°10' and approximate latitude 40°38½'.

(vii) *Ocean Bay Park*—Located at approximate longitude 73°09' and approximate latitude 40°39'.

(viii) *Point-O-Woods*—Located at approximate longitude 73°08½' and approximate latitude 40°39'.

(ix) *Cherry Grove*—Located at approximate longitude 73°05½' and approximate latitude 40°39½'.

(x) *Fire Island Pines*—Located at approximate longitude 73°04½' and approximate latitude 40°40'.

(ix) *Water Island*—Located at approximate longitude 73°02' and approximate latitude 40°40½'.

(xii) *Davis Park*—Located at approximate longitude 73°00½' and approximate latitude 40°41'.

(4) Aircraft operation in the vicinity of marinas, boats, boat docks, floats, piers, ramps, bird nesting areas, or bathing beaches must be performed with due caution and regard for persons and property and in accordance with any posted signs or uniform waterway markers.

(5) Aircraft are prohibited from landing or taking off from any land surfaces, any estuary, lagoon, marsh, pond, tidal flat, paved surface, or any waters temporarily covering a beach; except with prior authorization of the Superintendent. Permission shall be based on the need for emergency

service, resource protection, resource management or law enforcement.

(6) Aircraft operations shall comply with all Federal, State and county ordinances and rules for operations as may be indicated in available navigation charts or other aids to aviation which are available for the Fire Island area.

[FR Doc. 79-23352 Filed 7-27-79; 8:45 am]  
BILLING CODE 4310-70-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[FRL 1285-5]

#### Approval of Plan Revision for South Dakota

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final Rulemaking.

**SUMMARY:** The purpose of this notice is to approve, in part, the State Implementation Plan (SIP) revision for South Dakota which was received by EPA on January 3, 1979. This plan revision was prepared by the State to meet the requirements of Part D (Plan requirements for nonattainment areas) of the Clean Air Act, as amended in 1977. On April 13, 1979 (44 FR 22126), EPA published a notice of proposed rulemaking which described the nature of the SIP revision, discussed certain provisions which in EPA's judgement did not comply with the requirements of the Act, and requested public comment. No public comments were received. On June 18, 1979, EPA received clarification from the State on most of the issues raised in the April 13, 1979, notice. However, the deficiency raised with respect to the new source review process was not resolved. This notice describes the State's response to those issues and approves the Part D SIP revision except with respect to new source review.

**EFFECTIVE DATE:** July 30, 1979.

**ADDRESSES:** Copies of the SIP revision, EPA's evaluation report, and the supplemental submission received on June 18, 1979, are available at the following addresses for inspection:

Environmental Protection Agency, Region VIII, Air Programs Branch, 1860 Lincoln Street, Denver, Colorado 80295.  
Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert R. DeSpain, Chief, Air

Programs Branch, Region VIII, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295, telephone: 303-837-3471.

**SUPPLEMENTARY INFORMATION:** On March 3, 1978 (43 FR 8962), and on September 11, 1978 (43 FR 40412), pursuant to the requirements of Section 107 of the Clean Air Act, as amended in 1977, EPA designated areas in each state as nonattainment with respect to the criteria air pollutants. In Pennington County, South Dakota, the Rapid City area was designated nonattainment with respect to total suspended particulates (TSP).

Part D of the Amendments requires each state to revise its SIP to meet specific requirements in the areas designated as nonattainment. These SIP revisions, which were due on January 1, 1979, must demonstrate attainment of the national ambient air quality standards, as expeditiously as practicable, but no later than December 31, 1982. On January 3, 1979, EPA received the revised SIP for the State of South Dakota which addressed the Part D requirements for a nonattainment SIP.

On January 25, 1979 (44 FR 5159), EPA published an advanced notice of availability of the South Dakota SIP revision and invited the public to comment on its approvability. In addition, on April 13, 1979 (44 FR 22126), EPA published a notice of proposed rulemaking which described the nature of the nonattainment SIP and the results of EPA's review with respect to the requirements for an approvable nonattainment SIP provided in a Federal Register notice published on April 4, 1979 (44 FR 20372); and requested public comment. No comments were received.

The April 13, 1979, notice raised several issues which in EPA's judgment, required either clarification by the State or additional revisions to the SIP. On June 18, 1979, EPA received supplementary information from the State which addressed those issues.

The following discussion describes the nature of the SIP revision, the deficiencies found by EPA's review, the State's response to those issues, and EPA's final determination.

The SIP contained an analysis of the Rapid City ambient air quality for 1978, as well as for 1982 after consideration for growth. These analyses, which were performed through the use of an EPA approved air quality model and 1978 ambient air quality data, showed three general air quality problems in 1978 all of which are related to emissions of fugitive dust. These problems are discussed as follows:

(1) Ambient air quality violations have been measured in the central business district in recent years. The analysis showed that they were caused by fugitive dust resulting from the use of unpaved parking lots. Further analysis showed that a paving program implemented in the spring and summer of 1978 corrected this problem.

(2) Ambient air quality violations were predicted in the vicinity of a major construction activity underway in 1978. While this construction activity will be completed prior to 1982, similar future projects would have the potential to cause air quality violations.

(3) Severe ambient air quality violations were predicted and have been measured in the vicinity of several quarrying operations in the western portion of the nonattainment area. The 1982 analysis predicted that if no corrective action were taken, this problem would continue.

As a result of the analyses discussed above, the Pennington County Commission adopted a county ordinance requiring the use of various reasonably available measures for controlling fugitive dust emissions during certain operations. The applicable operations include land clearing, construction, excavating, and processing materials. For enforcement purposes, the ordinance also established an Air Quality Review Board. Although the SIP did not contain an analysis of the air quality benefits of the proposed strategy, an independent analysis by EPA has indicated that implementation of the County ordinance, in conjunction with existing SIP measures for stationary sources will provide for attainment of the national standards for TSP in the Rapid City nonattainment area.

EPA's preliminary review revealed several deficiencies in the SIP revision which needed correction. These deficiencies and the State's response are outlined below.

(1) Annual Reporting—Section 172(b)(4) requires that the State revise its emissions inventory as frequently as necessary to assure that reasonable further progress is obtained. EPA guidance on the development of approvable SIP's issued on February 24, 1978, requires that the SIP contain a provision for annual reporting on the progress of the State in meeting the commitments in the SIP. The South Dakota SIP did not contain any such provision. However, the June 18, 1979, supplemental information contained the appropriate commitments, thus eliminating this deficiency.

(2) Permit Requirements—Section 172(b)(6) requires that permits for construction or modification of any major stationary sources affecting a nonattainment area be issued in accordance with Section 173 of the Act. Compliance with this provision would require an amendment to the permit regulations which would allow for a permit to be issued only after a determination that (a) the source will comply with the lowest achievable emission rate, (b) all other facilities in the State owned by the applicant are in compliance with the SIP, and (c) the source's emissions would not prevent achieving reasonable further progress towards attainment. The State permit regulation does not contain these requirements. The June 18, 1979, supplemental information contains a commitment to make the necessary changes. However, in the interim, the State cannot issue valid new source permits in the Rapid City nonattainment area and the SIP must be disapproved with respect to this provision.

(3) State Boards—Sections 128 and 110(a)(2)(F)(vi) of the Clean Air Act requires that the majority of a body issuing permits or enforcement orders under the Clean Air Act represent the public interest and not derive a significant portion of their incomes from persons subject to such permits or orders. The new Pennington County fugitive dust regulation establishes an Air Quality Review Board which does not comply with those requirements. The make-up of that Board as well as the South Dakota Board of Environmental Protection should be amended. The June 18, 1979, supplemental information from the State contained a commitment that both the State and the County were making efforts to correct this deficiency. Until the composition of the Boards meet the requirements of Section 110 of the Act, this portion of the SIP cannot be approved. However, final action on this and other non-Part D requirements will be taken in a separate notice, and this deficiency will not affect EPA's action on the SIP regarding Part D of the Clean Air Act. Though the improper make-up of the Boards does not result in disapproval of the nonattainment SIP, this may jeopardize the authority of these Boards to issue permits and enforcement orders until the provisions of Section 128 are met.

As a result of the corrective action taken by the State of South Dakota, the

Part D revision to the SIP is approved herein with the single exception discussed above.

For each nonattainment area where a revised plan provides for attainment by the deadlines under section 172(a) of the Act, the new deadlines are added to the chart of attainment dates in 40 CFR Part 52, and the corresponding earlier deadlines for attainment under section 110(a)(2)(A) of the Act are deleted. However, the earlier deadlines under section 110(a)(2)(A) retain legal significance despite deletion of the deadlines from the CFR.

For a compliance schedule designed to provide for attainment by the deadline for attainment under section 110(a)(2)(A), EPA lacks authority to approve an extension or variance beyond that deadline except in rare circumstances. The reason is that no extension or variance may be approved if it will cause the plan to fail to comply with the requirements of section 110(a)(2). An extension beyond the deadline under section 110(a)(2)(A) will ordinarily result in the plan not providing for attainment of the standard by that deadline.<sup>1</sup> Therefore, EPA may not approve a compliance date variance or any other extension of compliance requirement beyond the deadline under section 110(a)(2)(A) merely because a plan revision providing for attainment by the later deadline under section 172(a) has been approved.<sup>2</sup> Extensions or variances beyond the deadline under section 110(a)(2)(A) are permitted only in exceptional circumstances such as where (1) the extension or variance would not authorize emissions contributing to a violation of an ambient standard or a PSD increment, or (2) new, more stringent emission limits are imposed that are incompatible with the controls required to meet the earlier deadline, and the State has made a case-by-case determination that a limited extension is therefore necessary.<sup>3</sup>

Reference should be made to the 1978 edition of the CFR to determine the applicable deadlines for attainment under section 110(a)(2)(A) of the Act.

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 as "specialized". I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This rulemaking action is issued under the authority of Section 110 of the Clean Air Act, as amended.

Dated: July 13, 1979.

Douglas M. Costle,  
Administrator.

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

1. In § 52.2170, paragraph (c)(5) is added as follows:

§ 52.2170 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(5) Provisions to meet the requirements of Part D of the Clean Air Act, as amended in 1977 were submitted on January 3, 1979.

2. Section 52.2172 is revised to read as follows:

§ 52.2172 Approval status.

With the exceptions set forth in this subpart, the Administrator approves South Dakota's plan as meeting the requirements of Section 110 of the Clean Air Act, as amended in 1977. Furthermore, the Administrator finds that the plan satisfies all requirements of Part D of the Clean Air Act, as amended in 1977, except as noted below.

3. Section 52.2175 is revised as follows:

§ 52.2175 Review of new sources and modifications.

(a) *Part D Disapproval*—The requirements of Sections 172(b)(6) and 173 of the Clean Air Act are not met, since the plan does not contain specific provisions of the review of major new sources and modifications affecting the Rapid City TSP nonattainment area (40 CFR 81.342).

4. In Section 52.2174 is revised to read as follows:

§ 52.2174 Attainment dates for national standards.

The following table presents the latest dates by which the national standards are to be attained. These dates reflect the information presented in South Dakota's plan.

<sup>1</sup> See *Train v. NRDC*, 421 U.S. 60, 70 (1975).

<sup>2</sup> This interpretation is confirmed by legislative history, 123 Cong. Rec. H 11958 (daily ed., November 1, 1977).

<sup>3</sup> See General Preamble on Proposed Rulemaking, 44 FR 20373-74 (April 4, 1979).

Air quality control region and nonattainment area	Pollutant						
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide	Ozone
	Primary	Secondary	Primary	Secondary			
Metropolitan Sioux City Interstate.....	c	c	c	c	c	c	c
Metropolitan Sioux Falls Interstate.....	b	a	c	c	c	c	c
Black Hills-Rapid City Intrastate:							
a. Rapid City nonattainment area.....	d	d	c	c	c	c	c
b. Remainder of AQCR.....	c	c	c	c	c	c	c
South Dakota.....	c	c	c	c	c	c	c

a. July 1975

b. Air quality levels presently below primary standards.

c. Air quality levels presently below secondary standards.

d. December 31, 1982.

[FR Doc. 79-23458 Filed 7-27-79; 8:45 am]

BILLING CODE 6560-01-M

**40 CFR Part 52**

[FRL 1277-3]

**Approval and Revision of Delaware State Implementation Plan****AGENCY:** Environmental Protection Agency.**ACTION:** Final rule.

**SUMMARY:** This notice announces the Administrator's approval of a revision of the Delaware State Implementation Plan (SIP). The revision consists of: (1) Court of Chancery injunction for the Phoenix Steel Corporation's (Phoenix) plant located in Claymont, Delaware; (2) amendments to Delaware Regulations No. V, XIV, and XVII as they apply to emissions from electric arc furnaces; and (3) a newly adopted Regulation No. XXIII entitled "Standards of Performance for Steel Plants: Electric Arc Furnaces." The injunction replaces a one-year variance granted by the State on December 2, 1977, for charging and tapping operations of the electric arc furnaces at the Company's plant in Claymont, Delaware. The injunction requires Phoenix to comply on or before December 5, 1980 with regulations promulgated by Delaware's Department of Natural Resources and Environmental Control ("the Department") which apply to electric arc furnaces. Prior to achieving final compliance, Phoenix Steel Corporation shall not exceed the emission rates identified in the dispersion modeling analysis in support of the revision.

**EFFECTIVE DATE:** July 30, 1979.

**ADDRESSES:** Copies of the revision and the accompanying support documents are available for inspection during normal business hours at the following offices:

U.S. Environmental Protection Agency, Air Programs Branch, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, Attn.: Patricia Sheridan.  
State of Delaware, Department of Natural Resources, Division of Environmental

Control—Air Resources, P.O. Box 1401, Lockerman Street and Legislative Avenue, Dover, Delaware 19901, Attn.: Robert R. French.

Public Information Reference Unit, Room 2922—EPA Library, U.S. Environmental Protection Agency, 401 M Street, S.W., Waterside Mall, Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Bernard E. Turlinski, Regional Energy Coordinator (3AH13), U.S.

Environmental Protection Agency, Region III, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, telephone number (215) 597-9944.

**SUPPLEMENTARY INFORMATION:****Background**

The Secretary of the Department of Natural Resources and Environmental Control applied to the Court of Chancery of the State of Delaware for a permanent injunction against Phoenix Steel Corporation concerning compliance issues related to applicable provisions of Regulation No. V, Section 4 (Particulate Emissions from Industrial Process Operations) and Regulation XIV, Section 2 (Visible Emissions). The Department was issued said injunction by the Court on January 5, 1977. The injunction provided 57 months for compliance. These regulations are part of Delaware's Implementation Plan pursuant to Section 110 of the Clean Air Act, as amended, 42 U.S.C. 7401.

On June 1, 1977, Phoenix Steel Corporation requested a variance from the provisions of Regulation V, Section 4 and Regulation XIV, Section 2 of the Department's Regulations Governing the Control of Air Pollution with respect to particulate and visible emissions during charging and tapping operations of the electric arc furnaces at its plant in Claymont, Delaware. A public hearing on the variance request was held on September 20 and continued on September 26 and 27, 1977. By order of the Secretary, the Department of Natural Resources and Environmental Control granted Phoenix Steel Corporation a one-year variance from the provisions of Regulation XIV, Section 2 and denied

the request for variance from Regulation V, Section 4.

On December 2, 1977, the Secretary submitted the visible emissions variance to the Environmental Protection Agency (EPA) for consideration as a revision of the Delaware SIP. On the same date the Department adopted amendments to Regulations No. V and XIV and a new Regulation No. XXIII "Standards of Performance for Steel Plants: Electric Arc Furnaces" and submitted the amendments and the new regulation to EPA as a proposed revision of the SIP.

In parallel with the activities involving the above variance request, the parties to the original injunction also requested that the Court issue a superseding injunction reducing the time for Compliance from the Order under the prior injunction. The amended injunction now requires compliance with the provisions of Regulation No. XXIII on or before December 5, 1980.

A public hearing was held on July 6, 1978, in accordance with 40 CFR 51.4, to consider the amended injunction as a revision of the Delaware SIP.

The amended injunction was adopted by the Department on September 26, 1978, and submitted to the EPA for approval on October 5, 1978. In the transmittal letter, the Secretary requested that the one-year variance granted by the Department to Phoenix Steel Corporation and submitted as a revision to the SIP on December 2, 1977, be withdrawn in favor of the Court of Chancery amended injunction. The Secretary further requested that the EPA continue consideration of the amendments to Regulations No. V and XIV and the new Regulation No. XXIII.

**Description of Revision**

In the succeeding paragraphs the key provisions of this revision are summarized.

A. Court of Chancery injunction—the purpose of the injunction is to resolve alleged violations by Phoenix of the provisions of Regulation V, Section 4 and Regulation XIV, Section 2, by requiring that Phoenix select and install air pollution abatement equipment according to the following schedule:

1. On or before April 5, 1978, Phoenix shall select the type of system to be used to control charging and tapping emissions from its electric arc furnaces. (Completed)

2. On or before April 15, 1978, Phoenix shall complete the design and general specifications for the system. (Completed)

3. On or before May 15, 1978, Phoenix shall phase the order for equipment of the system applicable to the first place of the design. (Completed)

4. On or before May 15, 1978, Phoenix shall transmit to the Secretary the date on which Phoenix will place the order for equipment of the system applicable to the second phase of the design. (Completed)

5. On or before November 5, 1980, Phoenix shall complete installation of the balance of the system.

6. On or before December 5, 1980, Phoenix shall operate the system in compliance with the Department's regulations applicable to electric arc furnaces.

The entire injunction is hereby referenced. Any terms or conditions appearing in the injunction and not contained herein does not excuse compliance by Phoenix Steel Corporation.

B. The interim emission levels applicable to Phoenix Steel Corporation prior to achieving final compliance are as follows:

1. Charging and Tapping Operations=3 lbs. of particulate matter per ton of steel produced.

2. Electric Arc Furnaces (baghouse)=0.05 lbs of particulate matter per ton of steel produced.

3. Argon Lancing=0.2 lbs of particulate matter per ton of steel produced.

4. Production Rate=70 tons of steel per hour.

C. Regulations No. V, & XIV and Regulation No. XVII (Source Monitoring, Record Keeping and Reporting). The revision exempts from compliance with these provisions electric arc furnaces, and their associated dust handling equipment, with a capacity of more than 100 tons.

D. Regulation No. XXIII—This is a new regulation created expressly for electric arc furnaces with a capacity of over 100 tons. The regulation establishes emission rates for particulate matter, capacity limits during charging and tapping operations, monitoring operations, and describes test methods and procedures.

#### Public Comments and Decision

The amendments, as described above, were proposed in the Federal Register on February 13, 1979 (44 FR 9404 [1979]), as a revision of the Delaware SIP. During the ensuing 60-day public comment period provided, no public comments were received.

The Administrator has determined that the revision as submitted on October 5, 1978 does not interfere with attainment or maintenance of the ambient air quality standards for particulate matter. Therefore, the Administrator approves the

amendments submitted by the Department on October 5, 1978, as a revision of the Delaware State Implementation Plan. In addition, this revision is being made effective immediately since no purpose would be served by delaying its effective date. Concurrently, the Administrator amends 40 CFR 52.420 (Identification of Plan) of Subpart I (Delaware) to incorporate this plan revision into the Delaware SIP.

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." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(42 U.S.C. §§ 7401-7642)

Dated: July 24, 1979.

Douglas M. Costle,  
Administrator.

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

#### Subpart I—Delaware

1. In § 52.420 subparagraph (c)(ii) is added as set forth below.

§ 52.420 Identification of plan.

\* \* \* \* \*

(c) The plan revisions listed below were submitted on the dates specified.

\* \* \* \* \*

(11) Amendments to Regulations No. V, XIV, XVII, and a newly adopted Regulation No. XXIII (Standards of Performance for Steel Plants: Electric Arc Furnaces); and a Court of Chancery injunction to control charging and tapping emissions for the Phoenix Steel Corporation's plant in Claymont, Delaware submitted on December 2, 1977 and October 5, 1978, respectively, by the Department of Natural Resources and Environmental Control.

[FR Doc. 79-23465 Filed 7-27-79; 8:45 am]

BILLING CODE 6560-01-M

#### 40 CFR Part 52

[FKL 1277-7]

#### Approval and Promulgation of Implementation Plan Approval of Requests for Extensions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today approving requests by the Idaho State Department of Health and Welfare, the Oregon Department of Environmental Quality and the Washington Department of Ecology for an 18-month extension in the submittal of appropriate plans for the control of total suspended particulate (TSP) matter for certain non-attainment areas.

DATE: July 30, 1979.

ADDRESS: Environmental Protection Agency, Region 10, M/S 629, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Clark L. Gaulding, Chief, Air Programs Branch M/S 629, Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, WA 98101, Telephone No. (206) 442-1230 (FTS) 399-1230.

SUPPLEMENTAL INFORMATION: On May 21, 1979, EPA published a Notice of Proposed Rulemaking (44 FR 29499) announcing its intention to approve 18-month extensions requested by the States of Idaho, Oregon and Washington for secondary standards for TSP. Pursuant to Section 110(b) of the Clean Air Act and 40 CFR 51.31, a state may request such an extension provided that attainment of the standard will require emission reductions exceeding those which can be achieved through application of Reasonably Available Control Technology. (RACT).

Under the provisions in 40 CFR 51.31, EPA Region 10 has received the following requests for the extension of secondary standards for TSP:

1. The Idaho Department of Health and Welfare (IDHW). By a letter dated February 16, 1979, the IDHW requested an extension for all secondary TSP non-attainment areas in the State of Idaho.

2. The Oregon Department of Environmental Quality (DEQ). By letters dated March 2, 1979 and April 6, 1979, the DEQ requested extensions for the following secondary TSP non-attainment areas in the State of Oregon: Portland, Eugene-Springfield, and Medford-Ashland.

3. The Washington Department of Ecology (DOE). By its letter of April 4, 1979, the DOE requested an extension for all secondary TSP non-attainment areas in Washington.

These extensions will provide the states with adequate time to conduct necessary studies and develop control strategies for the attainment of secondary standards for TSP. In each case the state indicated that RACT was either being implemented to meet the primary TSP standard, or that RACT would be included in the 1979 revisions

to the State Implementation Plan to meet the primary TSP standard.

Only two comments were received in response to the proposed extensions. Both were from private citizen groups in Idaho which were in favor of the proposed rulemaking.

EPA is therefore today approving the states' requests for 18-month extensions.

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

1. Section 52.672 is amended by adding paragraph (d) as follows:

**§ 52.672 Extensions.**

(d) The Regional Administrator hereby extends to July 1, 1980, the statutory timetable for submission of Idaho's plan for the attainment and maintenance of the secondary standards for total suspended particulate in all non-attainment areas in Idaho.

2. Section 52.1981 is amended by adding paragraph (d) as follows:

**§ 52.1981 Extensions.**

(d) The Regional Administrator hereby extends to July 1, 1989, the statutory timetable for submission of Oregon's plan for the attainment and maintenance of the secondary standards for total suspended particulate matter in Portland, Springfield-Eugene, and Medford-Ashland non-attainment areas in Oregon.

3. Section 52.2472 Extensions, is amended by adding paragraph (b) as follows:

**§ 52.2472 Extensions.**

(b) The Regional Administrator hereby extends to July 1, 1980 the statutory timetable for submission of Washington's plan for the attainment and maintenance of the secondary standards for total suspended particulate matter in all non-attainment areas in Washington.

(Section 110(b) Clean Air Act (42 U.S.C. 7410(b).)

Dated: July 23, 1979.

Douglas M. Costle,  
Administrator.

[FR Doc. 79-23463 Filed 7-27-79; 8:45 am]

BILLING CODE 6560-01-M

**40 CFR Part 52**

[FRL 1271-4]

**Approval and Promulgation of Implementation Plans; Connecticut Revision**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a revision to the Connecticut State Implementation Plan which grants a variance to Regulation 19-508-19(a)(2)(i) "Control of Sulfur Compound Emissions". The variance was granted to Northeast Utilities on behalf of United Technologies, to purchase, store and burn Arabian light crude oil which would not exceed 2.9% sulfur content by weight, a non-conforming fuel, until April 1, 1981, in order that United Technologies may test a jet engine using this fuel.

**EFFECTIVE DATE:** July 30, 1979.

**FOR FURTHER INFORMATION CONTACT:** Sarah Simon, Air Branch, Region I, JFK Federal Building, Boston, Massachusetts 02203, (617) 223-5609.

**SUPPLEMENTARY INFORMATION:** On April 16, 1979 the Commissioner of the Connecticut Department of Environmental Protection (the Department) submitted a revision to the State Implementation Plan (SIP) for a variance to Regulation 19-508-19(a)(2)(i) "Control of Sulfur Compound Emissions". The variance would allow Northeast Utilities, on behalf of United Technologies, to purchase, store and burn non-conforming fuel until April 1, 1981, in order that United Technologies may test an engine using Arabian light crude oil. The engine was built by United Technologies, and is currently owned and operated by Northeast Utilities at its South Meadow Station, Hartford, Connecticut. The effective state regulation limits sulfur-in-fuel oil content to one-half percent (0.5%) by weight, while the crude oil to be used in testing of the engine may contain up to 2.9% sulfur. An increase of SO<sub>2</sub> only is expected of the pollutants emitted from fuel burning.

An application for a variance to Regulation 19-508-19(a)(2)(i) was submitted to the Department in August 1978. The Department, after public hearing, issued State Order Number 716 on April 3, 1979 granting the variance. The State order terminates on April 1, 1981, limits sulfur content to 2.9%, and also requires the following: reports on fuel analyses and quantities, a daily log of operation and fuel consumption,

testing limits of 2500 hours in a twelve month period and 5000 hours in two years, a maximum firing rate of 1900 gallons/hour, suspension of testing during air pollution advisories, a limit of 20% opacity for emissions, and an emission test for SO<sub>2</sub>, NO<sub>x</sub>, and particulates. Testing is to be conducted using only Unit 11 of the South Meadow Station.

The Regional Administrator published a notice in the Federal Register on May 24, 1979 (44 FR 30122) proposing to approve the revision. Technical support submitted by the Department showed that emissions from this testing program would not result in violation of the National Ambient Quality Standards for SO<sub>2</sub> or of the Prevention of Significant Deterioration (PSD) increment. The results of the modeling performed by United Technologies and the analysis by the Department were described in the proposed rulemaking notice. EPA's review of the modeling results indicates that impacts from the engine testing will be well under the standards and allowable increments. Since this revision expires April 1, 1981, the PSD increment consumption will be restored.

No letters of comment were received during the 30-day public comment period.

After evaluation of the State's submittal, the Administrator has determined that the Connecticut revision meets the requirements of the Clean Air Act and 40 CFR Part 51. Accordingly, this revision to the Connecticut SIP is approved.

This action is being made effective immediately in order that United Technologies may proceed with its test program within the time period allowed by this variance.

(Sec. 110(a) and 301 of the Clean Air Act, as amended, (42 U.S.C. 7401 and 7601).)

Dated: July 18, 1979.  
Douglas M. Costle,  
Administrator.

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

1. In § 52.370, paragraph (c)(10) is added to read as follows:

**Subpart H—Connecticut**

**§ 52.370 Identification of plan.**

(c) \* \* \*

(10) A revision to Regulation 19-508-19(a)(2)(i) submitted by the Commissioner of the Connecticut Department of Environmental Protection on April 16, 1979, granting a variance until April 1, 1981 to Northeast Utilities.

[FR Doc. 79-23466 Filed 7-27-79; 8:45 am]  
BILLING CODE 6560-01-M

[FRL 1277-8]

40 CFR Part 52

California Plan Revision: San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

**SUMMARY:** The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, take no action on changes to the San Diego County Air Pollution Control District (APCD) portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

**EFFECTIVE DATE:** August 29, 1979.

**FOR FURTHER INFORMATION CONTACT:** Louise Giersch, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105, Attn: Douglas Grano (415) 556-2938.

**SUPPLEMENTARY INFORMATION:** On September 8, 1978 (43 FR 40040), EPA published a Notice of Proposed Rulemaking for revisions to the San Diego County APCD's rules and regulations submitted on June 22, 1978 and July 13, 1978 by the California Air Resources Board (ARB) for inclusion in the California SIP.

The changes contained in this submittal and being acted upon by this notice include the following: addition of new regulations pertaining to architectural coatings, deletion of the previous architectural coatings coverage, additions to the hearing board fee collection procedures, changes in the procedure for requesting hearings, and the addition of emergency variance provisions.

These rules were revised to correct deficiencies, add clarity and make needed additions. All of the rule revisions were evaluated as to their consistency with the Clean Air Act, 40 CFR Part 51 and EPA policy.

A list of the rules being considered by this action was published as part of the

Notice of Proposed Rulemaking. The Notice provided a 30-day public comment period. Comments were received from the San Diego County APCD concerning Rule 67, *Architectural Coatings*, Rule 97, *Emergency Variance*, and Rule 98, *Breakdown Conditions: Emergency Variance*. These comments are addressed below.

The District explained that new Rule 67 references a previously approved rule to insure uninterrupted coverage of solvent emissions. EPA concurs with the District's analysis and is approving Rule 67 without retaining the previously approved architectural coating coverage of Rule 66 (l), (m), and (n), submitted July 22, 1975.

The District also noted that Rule 97, which contains procedures to grant emergency variances, is necessary to give "temporary relief in a real-time frame." EPA is approving Rule 97 as a procedure for the granting of variances. However, it should be noted that each variance must also satisfy the requirements of section 110 of the Clean Air Act and 40 CFR Part 51 in order to be approved by EPA as a revision to the SIP.

With respect to Rule 98, which concerns upset/breakdown conditions, the District enclosed an amended version of the rule containing a number of improvements. The District indicated that they had adopted this rule and submitted it to the ARB. On May 23, 1979, the ARB submitted Rule 98 to EPA as an SIP revision. Thus, EPA is taking no action on Rule 98, submitted July 13, 1978, since it has been superseded.

Under section 110 of the Clean Air Act as amended and 40 CFR Part 51, the Administrator is required to approve or disapprove regulations submitted as SIP revisions. It is the purpose of this Notice to approve all of the rules listed in the Notice of Proposed Rulemaking and to incorporate them into the California SIP, with the exception of Rule 61.2, *Transfer of Volatile Organic Compounds into Mobile Transport Tanks*, Rule 61.3, *Transfer of Volatile Organic Compounds into Stationary Storage Tanks*, and Rule 98, *Breakdown Conditions: Emergency Variance*.

Rule 61.2 has been superseded by a May 23, 1979 submittal, and thus, action is reserved for a future Federal Register notice. Action on Rule 61.3 is also reserved for the future notice since related District rules, such as Rule 61.2, are not yet part of the SIP, and Rule 61.3 cannot be approved independent of them.

Furthermore, EPA is taking no action on Rule 98 since it has been superseded

by the May 23, 1979 submittal, as discussed above.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

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 regulations being acted upon in this notice and determined that they are specialized regulations not subject to the procedural requirements of Executive Order 12044.

(Secs. 110 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7410 and 7601(a)).

Dated: July 23, 1979.  
Douglas M. Costle,  
Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart F of Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220 is amended by adding paragraphs (c)(44)(vi) and (c)(45)(iii) as follows:

§ 52.220 Identification of plan.

- (c) \* \* \*
- (44) \* \* \*
- (vi) San Diego County APCD.
- (A) New or amended Rules 66, 67.0, and 67.1.
- \* \* \* \* \*
- (45) \* \* \*
- (iii) San Diego County APCD.
- (A) New or amended Rules 42, 76, and 97.
- \* \* \* \* \*

[FR Doc. 79-23467 Filed 7-27-79; 8:45 am]  
BILLING CODE 6560-01-M

40 CFR Part 65

[FRL 1275-6]

Delayed Compliance Order for Central Soya Company, Inc.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

**SUMMARY:** By this rule, the Administrator of U.S. EPA approves a Delayed Compliance Order to Central Soya Company, Inc. (Central Soya). The

Order requires the Company to bring air emissions from its two-coal fired boilers at Marion, Ohio into compliance with certain regulations contained in the federally approved Ohio State Implementation Plan (SIP). Central Soya's compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act (Act) for violations of the SIP regulations covered in the Order.

**DATES:** This rule takes effect July 30, 1979.

**FOR FURTHER INFORMATION CONTACT:** Cynthia Colantoni, United States Environmental Protection Agency, Region V, 230 South Dearborn St., Chicago, Illinois 60604. Telephone (312) 353-2082.

**SUPPLEMENTARY INFORMATION:** On May 8, 1979 the Regional Administrator of U.S. EPA's Region V Office published in the Federal Register (44 FR 26940) a notice setting out the provisions of a proposed State Delayed Compliance Order for Central Soya. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order. No public comments and no request for a public hearing were received in response to the notice.

Therefore, a Delayed Compliance Order effective this date is approved to Central Soya by the Administrator of U.S. EPA pursuant to the authority of Section 113(d)(2) of the Act, 42 U.S.C. 7413(d)(2). The Order places Central Soya on a schedule to bring its two coal-fired boilers at Marion, Ohio into compliance as expeditiously as practicable with Regulations OAC 3745-17-07 and OAC 3745-17-10, a part of the federally approved Ohio State Implementation Plan. Central Soya is unable to immediately comply with these regulations. The Order also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the Order are met, it will permit Central Soya to delay compliance with the SIP regulation covered by the Order until April 15, 1980.

Compliance with the Order by Central Soya will preclude Federal enforcement action under Section 113 of the Act for violations of the SIP regulation covered by the Order. Citizen suits under Section 304 of the Act to enforce against the source are similarly precluded. Enforcement may be initiated, however, for violations of the terms of the Order, and for violations of the regulation covered by the Order which occurred

before the Order was issued by U.S. EPA or after the Order is terminated. If the Administrator determines that Central Soya is in violation of a requirement contained in the Order, one or more of the actions required by Section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under Section 307(b) of the Act.

U.S. EPA has determined that the Order shall be effective July 30, 1979 because of the need to immediately place Central Soya on a schedule for compliance with the Ohio State Implementation Plan.

(42 U.S.C. 7413(d), 7601)

Dated: July 18, 1979.  
Douglas M. Costle,  
Administrator.

In consideration of the foregoing, Chapter I of the Title 40 of the Code of Federal Regulations is amended as follows:

**PART 65—DELAYED COMPLIANCE ORDERS**

By adding the following entry to the table in Section 65.401:

§ 65.401 U.S. EPA approval of State delayed compliance orders issued to major stationary sources.

The State Order identified below has been approved by the Administrator in accordance with Section 113(d)(2) of the Act and with this Part. With regard to this Order, the Administrator has made all the determinations and findings which are necessary for approval of the Order under Section 113(d) of the Act.

Source	Location	Order No.	Date of FR proposal	SIP regulation involved	Final compliance date
Central Soya Co., Inc.	Marion, Ohio	None	May 8, 1979	OAC 3745-17-07; OAC 3745-17-10.	April 15, 1980

[FR Doc. 79-23460 Filed 7-27-79; 8:45 am]  
BILLING CODE 6560-01-M

**40 CFR Part 65**

[FRL 1274-3]

**Delayed Compliance Order for Factory Power Co.**

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** By this rule, the Administrator of U.S. EPA issues a Delayed Compliance Order to Factory Power Company. The Order requires the company to bring air emissions from two of its four coal-fired boilers at Cincinnati, Ohio, into compliance with certain regulations contained in the federally approved Ohio State Implementation Plan (SIP). Factory Power Company's compliance with the Order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act (Act) for violations of the SIP regulations covered in the Order.

**DATE:** This rule takes effect July 30, 1979.

**FOR FURTHER INFORMATION CONTACT:** Louise Gross, Attorney, United States Environmental Protection Agency, Region V, 230 S. Dearborn Street, Chicago, Illinois 60604, Telephone (312) 353-2082.

**SUPPLEMENTARY INFORMATION:** On May 8, 1979, the Regional Administrator of U.S. EPA's Region V Office published in the Federal Register (44 FR 26943) a notice setting out the provisions of a proposed Federal Delayed Compliance Order for Factory Power Company. The notice asked for public comments and offered the opportunity to request a public hearing on the proposed Order. No public comments and no request for a public hearing were received in response to the notice.

Therefore, a Delayed Compliance Order effective this date is issued to Factory Power Company by the Administrator of U.S. EPA pursuant to the authority of Section 113(d)(1) of the Act, 42 U.S.C. 7413(d)(1). The Order places Factory Power Company on a schedule to bring two of its four coal-fired boilers at Cincinnati, Ohio, into compliance as expeditiously as practicable with Regulation AP-3-11, a part of the federally approved Ohio

State Implementation Plan. Factory Power Company is unable to immediately comply with this regulation. The Order also imposes interim requirements which meet Sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the Order are met; it will permit Factory Power Company to delay compliance with the SIP regulation covered by the Order until March 30, 1980.

Compliance with the Order by Factory Power Company will preclude Federal enforcement action under Section 113 of the Act for violations of the SIP regulation covered by the Order. Citizen suits under Section 304 of the Act to enforce against the source are similarly precluded. Enforcement may be initiated, however, for violations of the terms of the Order, and for violations of the regulation covered by the Order which occurred before the Order was issued by U.S. EPA or after the Order is terminated. If the Administrator determines that Factory Power Company is in violation of a requirement contained in the Order, one or more of the actions required by

Section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under Section 307(b) of the Act.

U.S. EPA has determined that the Order shall be effective upon publication of this notice because of the need to immediately place Factory Power Company on a schedule for compliance with the Ohio State Implementation Plan.

(42 U.S.C. 7413(d), 7601)

Dated: July 19, 1979.

Douglas M. Costle,  
Administrator.

In consideration of the foregoing, Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

**PART 65—DELAYED COMPLIANCE ORDERS**

By adding the following entry to the table in § 65.400:

§ 65.400 Federal delayed compliance orders issued under section 113(d)(1), (3), and (4) of the Act.

Source	Location	Order No	Date of FR proposal	SIP regulation involved	Final compliance date
Factory Power Co.	Cincinnati, Ohio	EPA-5-79-A-42	May 8, 1979	AP-3-11	March 30, 1980

[FR Doc. 79-23461 Filed 7-27-79; 8:45 am]  
BILLING CODE 6560-01-M

**40 CFR Part 401**

[FRL 1260-5]

**Identification of Conventional Pollutants**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final Rule.

**SUMMARY:** EPA is issuing a final rule establishing oil and grease as a conventional pollutant. EPA is withdrawing its proposal to designate chemical oxygen demand (COD) and phosphorus as conventional pollutants. Additionally, EPA is establishing two new sections in 40 C.F.R. Part 401 which will contain the list of conventional pollutants and the previously published list of toxic pollutants.

**DATE:** This rule becomes effective July 30, 1979.

**FOR FURTHER INFORMATION CONTACT:** Kenneth M. Mackenthun, Director, Criteria and Standards Division (WH-585), Office of Water Planning and Standards, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Telephone 202/755-0100.

**SUPPLEMENTARY INFORMATION:** Section 304(a)(4) of the Clean Water Act requires that:

The Administrator shall, within 90 days after the date of enactment of the Clean Water Act of 1977 and from time to time thereafter, publish and revise as appropriate information identifying conventional pollutants, including but not limited to, pollutants classified as biological oxygen demanding, suspended solids, fecal coliform, and pH. The thermal component of any discharge shall not be identified as a conventional pollutant under this paragraph.

On July 28, 1978 the Agency published a Federal Register notice designating biochemical oxygen demand (BOD), pH,

fecal coliform bacteria, and total suspended solids (TSS) as conventional pollutants (43 FR 32857). The Agency also proposed three pollutants for addition to the list. Public comments were solicited on the addition of chemical oxygen demand (COD), oil and grease and phosphorus. In this notice the Agency identified two criteria for selection of conventional pollutants. First, conventional pollutants are generally those pollutants which are naturally occurring, biodegradable, oxygen demanding materials, and solids and which have characteristics similar to naturally occurring biodegradable substances. Second, conventional pollutants include those classes of pollutants which traditionally have been the primary focus of wastewater control. Based on these criteria, EPA concluded that conventional pollutants may include suspended solids, oxygen demanding substances and nutrients. The Agency also stated that conventional pollutants may, in some cases, be used as indicators of toxic pollutants.

EPA is today establishing oil and grease as a conventional pollutant and withdrawing its proposal to add COD and phosphorus to the conventional pollutant list. The Agency is confirming the use of the selection criteria and pollutant classes for any future identification of conventional pollutants.

Additionally, in order to aid the public in determining the classification of a pollutant, the Agency is establishing two new sections in 40 CFR Part 401. Section 401.16 will contain the list of designated conventional pollutants. Section 401.15 will contain the list of toxic pollutants, designated pursuant to section 307(a)(1) of the Clean Water Act, which was previously published on January 31, 1978 (43 FR 4108).

**Background**

Under the Clean Water Act, there are now effectively three classes of pollutants for purposes of effluent limitations guidelines. Toxic pollutants are established pursuant to section 307(a)(1) of the Act, and conventional pollutants are designated under the authority of section 304(b)(4). All other pollutants are "non-toxic, non-conventional" pollutants. Both toxic and "non-toxic, non-conventional" pollutants are subject to effluent limitations representing "best available technology economically achievable" (BAT). However, the modifications to BAT limits provided by sections 301(c)

and 301(g) are not available for BAT limitations on toxic pollutants.

Pursuant to section 304(b)(4)(B) of the Clean Water Act, conventional pollutants are now subject to effluent limitations representing "best conventional pollutant control technology" (BCT). As specified by the Act, BCT limitations are subject to a "cost reasonableness" assessment, and on August 23, 1978, EPA proposed a methodology to be employed in determining these limitations (43 FR 37570). This methodology requires the comparison of the costs and level of reduction from an industrial category with those of a publicly owned treatment work (POTW). In some cases, this assessment will result in BCT limitations less stringent than those based upon BAT. In no case, however, shall BCT limitations be less stringent than those representing "best practicable control technology currently achievable" (BPT).

The act and its legislative history state that the economic and water quality modifications provided in sections 301(c) and 301(g) will not be available for BCT limitations. It should be stressed that loss of these modifications by addition of a pollutant to the conventional pollutant list will result in limitation of the Agency's authority to provide a permittee with effluent limitations less stringent than BCT based on a case-by-case evaluation of economic or water quality concerns.

Pollutants from any of the three classes may be used as "indicators" of toxic pollutants. In such cases, limitations will be set at BAT levels and no modifications will be available.

#### Response to Public Comments

##### Selection Criteria

Virtually all commenters supported the selection criteria and resulting pollutant classes identified by the Agency.

##### Oil and Grease

Most commenters supported the additional of oil and grease to the conventional pollutant list. Several commenters expressed concern that the Agency does not distinguish between oils and greases from animal and vegetable origin and those associated with petroleum sources. While recent advances in analytical techniques have provided a method for separating groups of oil and grease with similar characteristics, it is the entire class of oil and grease which has traditionally been of concern in wastewater control. Both groups are treated by similar

equipment and both groups exhibit many of the same environmental effects.

However, several commenters noted that oil and grease from petroleum sources may contain toxic fractions. Where toxic substances are associated with oil and grease, the Agency may require control at BAT levels. This will be done either by identification of oil and grease as an indicator pollutant or by establishing BAT limitations for the specific toxic pollutant. This is the same approach which EPA will follow when toxic fractions are contained in other pollutant parameters such as total suspended solids (TSS).

##### Chemical Oxygen Demand

The majority of commenters objected to the designation of COD as a conventional pollutant. The main objection raised by these commenters is that COD does not measure biodegradable substances and does not reflect the oxygen demanding characteristics of a waste stream. Additional objections concerned alleged difficulties with the methodology for measuring COD and the necessity of using advanced treatment methods for removing fractions of COD. Those who supported the addition of COD to the conventional pollutant list noted that this pollution parameter was the best measure of waste streams containing certain types of oxidizable materials.

The Agency has concluded that COD should not be designated as a conventional pollutant at this time. Based on its assessment of the Clean Water Act and its legislative history, EPA concluded that conventional pollutants include substances which, among other things, may be biodegradable or oxygen demanding. The Agency believes that this reflects Congress' concern for the traditional problem of degradation of water bodies through depletion of the dissolved oxygen available to the biota. COD is a parameter which measures a range of substances that are oxygen demanding. Although certain fractions of the materials measured by COD do deplete oxygen available to aquatic organisms, other fractions, identifiable as oxygen demanding under certain conditions of temperature and pH, do not as a practical matter deplete oxygen which would otherwise be available to organisms. Therefore, the Agency does not believe that it would be appropriate to identify it as a conventional pollutant at this time. When regulated in permits, COD will be treated as a "non-conventional, non-toxic" pollutant, unless it is designated as a toxics indicator.

##### Phosphorus

Numerous commenters urged EPA to remove phosphorus from consideration as a conventional pollutant. Some noted that the discharge of phosphorus from industrial point sources was insignificant compared to the amount entering receiving waters from non-point sources. Others noted that phosphorus is responsible for environmental degradation in only a limited number of water bodies. Finally, some commenters argued that phosphorus could not be a conventional pollutant because it was not specifically controlled by secondary treatment at publicly owned treatment works (POTWs). Those who supported the designation of phosphorus as a conventional pollutant pointed out that, as a nutrient, it may directly contribute to eutrophication.

The Agency recognizes the relationship of phosphorus to problems of water quality degradation and believes that nutrients, such as phosphorus, may be proper candidates for inclusion in the list of conventional pollutants. Nonetheless, phosphorus is not being added at this time. The primary reason for this decision is that phosphorus is an environmental problem only in limited geographical areas. Although phosphorus is not commonly treated by POTWs employing secondary treatment, the Agency believes that this factor is not relevant in designating conventional pollutants.

##### Indicators

Several commenters objected to the Agency's statement that conventional pollutants may in some cases be used as indicators of toxic pollutants. Although the Agency does intend to use conventional pollutants as toxics indicators in some industries, the issue of the use of indicators is not directly relevant to the question of which pollutants may be identified as conventional. All classes of pollutants, conventional, non-conventional and toxic, may contain substances which can be used as indicators and commenters should reserve objections to their use for those regulations in which such an approach is employed.

Dated: July 17, 1979.

Douglas M. Costle,  
Administrator.

40 CFR Subchapter N, Part 401 is amended by the addition of the following two sections:

#### § 401.15 Toxic pollutants.

The following comprise the list of toxic pollutants designated pursuant to section 307(a)(1) of the Act:

1. Acenaphthene
2. Acrolein
3. Acrylonitrile
4. Aldrin/Dieldrin\*
5. Antimony and compounds<sup>1</sup>
6. Arsenic and compounds
7. Asbestos
8. Benzene
9. Benzidine\*
10. Beryllium and compounds
11. Cadmium and compounds
12. Carbon tetrachloride
13. Chlordane (technical mixture and metabolites)
14. Chlorinated benzenes (other than dichlorobenzenes)
15. Chlorinated ethanes (including 1,2-dichloroethane, 1,1,1-trichloroethane, and hexachloroethane)
16. Chloroalkyl ethers (chloromethyl, chloroethyl, and mixed ethers)
17. Chlorinated naphthalene
18. Chlorinated phenols (other than those listed elsewhere; includes trichlorophenols and chlorinated cresols)
19. Chloroform
20. 2-chlorophenol
21. Chromium and compounds
22. Copper and compounds
23. Cyanides
24. DDT and metabolites\*
25. Dichlorobenzenes (1,2-, 1,3-, and 1,4-dichlorobenzenes)
26. Dichlorobenzidine
27. Dichloroethylenes (1,1-, and 1,2-dichloroethylene)
28. 2,4-dichlorophenol
29. Dichloropropane and dichloropropene
30. 2,4-dimethylphenol
31. Dinitrotoluene
32. Diphenylhydrazine
33. Endosulfan and metabolites
34. Endrin and metabolites\*
35. Ethylbenzene
36. Fluoranthene
37. Haloethers (other than those listed elsewhere; includes chlorophenylphenyl ethers, bromophenylphenyl-ether, bis(dichloroisopropyl) ether, bis-(chloroethoxy) methane and polychlorinated diphenyl ethers)
38. Halomethanes (other than those listed elsewhere; includes methylene chloride, methylchloride, methylbromide, bromoform, dichlorobromomethane, trichlorofluoromethane, dichlorodifluoromethane)
39. Heptachlor and metabolites
40. Hexachlorobutadiene
41. Hexachlorocyclohexane
42. Hexachlorocyclopentadiene
43. Isophorone
44. Lead and compounds
45. Mercury and compounds
46. Naphthalene
47. Nickel and compounds
48. Nitrobenzene
49. Nitrophenols (including 2,4-dinitrophenol, dinitrocresol)
50. Nitrosamines
51. Pentachlorophenol
52. Phenol

53. Phthalate esters
54. Polychlorinated biphenyls (PCBs)\*
55. Polynuclear aromatic hydrocarbons (including benzantracenes, benzopyrenes, benzofluoranthene, chrysenes, dibenzanthracenes, and indenopyrenes)
56. Selenium and compounds
57. Silver and compounds
58. 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)
59. Tetrachloroethylene
60. Thallium and compounds
61. Toluene
62. Toxaphene\*
63. Trichloroethylene
64. Vinyl chloride
65. Zinc and compounds

#### § 401.16 Conventional pollutants.

The following comprise the list of conventional pollutants designated pursuant to section 304(a)(4) of the Act:

1. Biological oxygen demand (BOD)
2. Total suspended solids (nonfilterable) (TSS)
3. pH
4. Fecal coliform
5. Oil and grease

[FR Doc. 79-23464 Filed 7-27-79; 8:43 am]

BILLING CODE 6550-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

#### 43 CFR Public Land Order 5673

[I-12551]

#### Idaho; Withdrawal for Administrative Site

AGENCY: Bureau of Land Management (Interior).

ACTION: Final rule.

**SUMMARY:** This order withdraws 19.09 acres of public land for the development of an office and warehouse complex for the Bureau of Land Management's Burley, Idaho, District Office.

**EFFECTIVE DATE:** July 30, 1979.

**FOR FURTHER INFORMATION CONTACT:** Louis B. Bellesi—(202) 343-8731. By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2751, 43 U.S.C. 1714), it is hereby ordered as follows:

1. Subject to valid existing rights, the following described land is hereby withdrawn from settlement, sale, location, or entry, under the general land laws, including the mining laws, 30 U.S.C., Ch.2, and reserved for the development of an office and warehouse complex for the Bureau of Land

#### Management's Burley, Idaho, District Office:

Boise Meridian

#### Burley District Office Administrative Site

A parcel of land lying in the east half of the southwest quarter (E½SW¼) of section 32, T. 10 S., R. 23 E., the said parcel being more particularly described as follows:

Beginning at a point 1500.4 feet north and 33.0 feet west of the quarter section corner common to section 32, Township 10 South, Range 23 East and Section 5, Township 11 South, Range 23 East, Boise Meridian; said point being on the west right-of-way line of State Highway No. 27; thence N. 0°22'03" E. along the highway right-of-way a distance of 515.12 feet; thence N. 89°27'57" W. a distance 1184.19 feet to the centerline of the U.S.R.S. "H" Canal; thence S. 35°17'24" W. along the canal centerline a distance of 80.64 feet; thence S. 21°20'41" W. along the canal centerline a distance of 89.13 feet; thence S. 11°08'55" W. along the canal centerline a distance of 221.23 feet to the west quarter section boundary of said section 23; thence S. 0°18'27" E. along the quarter section boundary 501.81 feet; thence S. 89°26'03" E. a distance of 496.15 feet; thence N. 0°36'56" E. a distance of 355.45 feet; thence S. 89°21'29" E. a distance of 800 feet to the point of beginning.

The area described aggregates 19.09 acres, more or less, in Cassia County.

2. The withdrawal made by this order does not alter the applicability of the public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetable resources other than under the mining laws.

3. This withdrawal shall remain in effect for a period of 20 years from the date of this order.

Guy R. Martin,

*Assistant Secretary of the Interior.*

July 23, 1979.

[FR Doc. 79-23311 Filed 7-27-79; 8:43 am]

BILLING CODE 4310-04-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

[Docket No. FI-5070]

#### Final Flood Elevation Determinations for the Borough of Westville, Gloucester County, N.J.; Cancellation

AGENCY: Office of Federal Insurance and Hazard Mitigation, FEMA.

ACTION: Cancellation of final rule.

**SUMMARY:** The Office of Federal Insurance and Hazard Mitigation has erroneously published at 44 FR 6934 on February 5, 1979, the final flood elevation determination for the Borough

\*Effluent standard promulgated (40 CFR Part 129).

<sup>1</sup>The term "compounds" shall include organic and inorganic compounds.

of Westville, New Jersey. This notice will serve as a cancellation of that publication. A new notice of final flood elevation determination will be published in the near future.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Krimm, National Flood Insurance Program, (202) 755-5581 or Toll Free Line (800) 424-8872, (In Alaska and Hawaii Call Toll Free Line (800) 424-9080), Room 5270, 451 Seventh Street SW., Washington, D.C. 20410.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1968 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to Federal Insurance Administrator 44 FR 20963.)

Issued: July 16, 1979.

Gloria M. Jimenez,  
Federal Insurance Administrator.

[FR Doc. 79-23331 Filed 7-27-79; 9:45 am]  
BILLING CODE 4210-01-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1033

[Service Order 1388]

#### Kent, Barry, Eaton Connecting Railway Co., Inc. Authorized to Operate Over Tracks Formerly Operated by Consolidated Rail Corp.

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Service Order No. 1388

**SUMMARY:** Service Order No. 1388 authorizes the Kent, Barry, Eaton Connecting Railway Company, Incorporated to operate over tracks formerly operated by Consolidated Rail Corporation between Vermontville, Michigan, and Grand Rapids, Michigan. **EFFECTIVE DATE:** 11:59 p.m., July 24, 1979, until further order of this Commission.

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

Decided: July 23, 1979.

The State of Michigan has designated Kent, Barry, Eaton Connecting Railway Company, Incorporated (KBE) to operate over the line between Vermontville, Michigan, and Grand Rapids, Michigan, which was formerly operated by Consolidated Rail Corporation (CR). KBE is willing to operate this line of railroad in order to provide essential rail service to shippers on this line.

An application seeking authority to operate as the designated operator of this line has been filed by KBE. 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, § 1033.1388 Kent, Barry, Eaton Connecting Railway Company, Incorporated authorized to operate over tracks formerly operated by Consolidated Rail Corporation.*

(a) The Kent, Barry, Eaton Connecting Railway Company, Incorporated (KBE) is authorized to operate over tracks formerly operated by Consolidated Rail Corporation (CR) between Vermontville, Michigan, former CR milepost 46.4, and Grand Rapids, Michigan, former CR milepost 88.1, a distance of approximately 41.7 miles.

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

(c) *Rates applicable.* Inasmuch as this operation by KBE over tracks previously operated by CR is deemed to be due to CR being replaced as the designated operator, the rates applicable to traffic moved over these lines shall be the rates applicable to traffic routed to, from, or via these lines which were formerly in effect on such traffic when routed via CR until tariffs naming rates and routes specifically applicable via KBE become effective.

(d) In transporting traffic over these lines KBE and all other common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(e) Nothing herein shall be considered as a prejudgment of the application of KBE seeking authority to operate over these tracks.

(f) *Effective date.* This order shall become effective at 11:59 p.m., July 24, 1979.

(g) *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. Trukington and John R. Michael.

Agatha L. Mergenovich,  
Secretary.

[FR Doc. 79-23400 Filed 7-27-79; 9:45 am]  
BILLING CODE 7035-01-M

# Proposed Rules

Federal Register

Vol. 44, No. 147

Monday, July 30, 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.

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

[7 CFR Part 401 and 423]

#### Proposed Flax Crop Insurance Regulations

**AGENCY:** Federal Crop Insurance Corporation.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule prescribes procedures for insuring flax crops effective with the 1980 crop year. This rule combines provisions from previous regulations for insuring flax in a shorter, clearer, and more simplified document which will make the program more effective administratively. This rule is promulgated under the authority contained in the Federal Crop Insurance Act, as amended.

**DATE:** Written comments, data, and opinions must be submitted not later than September 28, 1979 to be assured of consideration.

**ADDRESS:** Written comments on this proposed rule should be sent to James D. Deal, Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-3325.

**SUPPLEMENTARY INFORMATION:** Under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), it is proposed that there be established a new Part 423 of Chapter IV in Title 7 of the Code of Federal Regulations to be known as 7 CFR Part 423, Flax Crop Insurance.

This part prescribes procedures for insuring flax crops effective with the 1980 crop year.

All previous regulations applicable to insuring flax crops as found in 7 CFR 401.101-401.111, and 401.128, will not be

applicable to 1980 and succeeding flax crops but will remain in effect for Federal Crop Insurance Corporation (FCIC) flax insurance policies issued for the crop years prior to 1980.

It has been determined that combining all previous regulations for insuring flax crops into one shortened, simplified, and clearer regulation would be more effective administratively.

In addition, proposed 7 CFR Part 423 provides (1) for a Premium Adjustment Table which replaces the current premium discount provisions and includes a maximum 50 percent premium reduction for good insurance experience, as well as premium increases for unfavorable experience, on an individual contract basis, (2) that the production guarantee will now be shown on a harvested basis with a reduction of the lesser of 1.5 bushels or 20 percent of the guarantee for any unharvested acreage, (3) that any premium not paid by the termination date will be increased by a 9 percent service fee with a 9 percent simple interest charge applying to any unpaid balances at the end of each subsequent 12-month period thereafter, (4) that the time period for submitting a notice of loss be extended from 15 days to 30 days, (5) that the 60-day time period for filing a claim be eliminated, (6) that three coverage level options be offered in each county, (7) that the Actuarial Table shall provide the level which will be applicable to a contract unless a different level is selected by the insured and the conversion level will be the one closest to the present percent level offered in each county, and (8) for an increase in the limitation from \$5,000 to \$20,000 in those cases involving good faith reliance on misrepresentation, as found in 7 CFR Part 420.5 of these proposed regulations, wherein the Manager of the Corporation is authorized to take action to grant relief.

The proposed Flax Crop Insurance regulations provide a December 31 cancellation date for most flax producing counties. Flax producing counties in Texas have a June 30 cancellation date effective 1980.

These regulations, and any amendments thereto, must be placed on file in the Corporation's office for the county in which the insurance is available not later than 15 days prior to the earlier of the two cancellation dates,

December 31, 1979, in order to afford farmers an opportunity to examine them before the earlier cancellation date of December 31, 1979, before they become effective for the 1980 crop year.

All written submissions made pursuant to this notice will be available for public inspection at the office of the Manager during regular business hours, 8:15 a.m. to 4:45 p.m., Monday through Friday.

#### Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to delete and reserve 7 CFR 401.128, but these provisions shall remain in effect for FCIC flax insurance policies issued for crop years prior to 1980. The Corporation also proposes to issue a new Part 423 in Chapter IV of Title 7 of the Code of Federal Regulations effective with the 1980 and subsequent crops of flax, which shall remain in effect until amended or superseded, to read as follows:

#### Part 401—Federal Crop Insurance

##### § 401.128 [Reserved]

1. Section 401.128 is deleted and reserved.
2. Part 423 is added as follows.

#### PART 423—FLAX CROP INSURANCE

##### Subpart—Regulations for the 1980 and Succeeding Crop Years

###### Sec.

- 423.1 Availability of Flax Insurance.
- 423.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
- 423.3 Public notice of indemnities paid.
- 423.4 Creditors.
- 423.5 Good faith reliance on misrepresentation.
- 423.6 The contract.
- 423.7 The application and policy.

Authority: Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended (7 U.S.C. 1506, 1510)

##### Subpart—Regulations for the 1980 and Succeeding Crop Years

###### § 423.1 Availability of Flax Insurance.

Insurance shall be offered under the provisions of this subpart on flax in counties within limits prescribed by and in accordance with the provisions of the

Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there shall be published by appendix to this chapter the names of the counties in which flax insurance will be offered.

§ 423.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for flax which shall be shown on the county actuarial table on file in the office for the county and may be changed from year to year.

(b) At the time the application for insurance is made, the applicant shall elect a coverage level and price at which indemnities shall be computed from among those levels and prices shown on the actuarial table for the crop year.

§ 423.3 Public notice of indemnities paid.

The Corporation shall provide for posting annually in each county at each county courthouse a listing of the indemnities paid in the county.

§ 423.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, or an involuntary transfer shall not entitle the holder of the interest to any benefit under the contract except as provided in the policy.

§ 423.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the flax insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation, (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than \$20,000,

finds (1) that an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith, and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

§ 423.6 The contract.

(a) The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. Such acceptance shall be effective upon the date the notice of acceptance is mailed to the applicant. The contract shall cover the flax crop as provided in the policy. The contract shall consist of the application, the policy, the attached appendix, and the provisions of the county actuarial table. Any changes made in the contract shall not affect the continuity from year to year. Copies of forms referred to in the contract are available at the office for the county.

§ 423.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's insurable share in the flax crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the office for the county on or before the applicable closing date on file in the office for the county.

(b) The Corporation reserves the right to discontinue the acceptance of applications in any county upon its determination that the insurance risk involved is excessive, and also, for the same reason, to reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications or contract changes in any county, by placing the extended date on file in the office for the

county and publishing a notice in the Federal Register upon the Manager's determination that no adverse selectivity will result during the period of such extension: *Provided, however,* That if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1969 and succeeding crop years, a contract in the form provided for under this subpart will come into effect as a continuation of a flax contract issued under such prior regulations, without the filing of a new application.

(d) The provisions of the application and Flax Insurance Policy for the 1980 and succeeding crop years, and the Appendix to the Flax Insurance Policy are as follows:

U.S. Department of Agriculture, Federal Crop Insurance Corporation

*Application for 19— and Succeeding Crop Years—Flax—Crop Insurance Contract*

(Contract Number) \_\_\_\_\_  
 (Identification Number) \_\_\_\_\_  
 (Name and Address) (Zip Code) \_\_\_\_\_  
 (County) (State) \_\_\_\_\_  
 Type of Entity \_\_\_\_\_  
 Applicant is Over 18 Yes—No—

A. The applicant, subject to the provisions of the regulations of the Federal Crop Insurance Corporation (herein called "Corporation"), hereby applies to the Corporation for insurance on the applicant's share in the flax seeded on insurable acreage as shown on the county actuarial table for the above-stated county. The applicant elects from the actuarial table the coverage level and price at which indemnities shall be computed. **THE PREMIUM RATES AND PRODUCTION GUARANTEES SHALL BE THOSE SHOWN ON THE APPLICABLE COUNTY ACTUARIAL TABLE FILED IN THE OFFICE FOR THE COUNTY FOR EACH CROP YEAR.**

Level Election \_\_\_\_\_ Price Election \_\_\_\_\_

Example: For the 19— Crop Year Only (100 percent Share)

Location/ Farm No.	Guarantee Per Acre*	Premium Per Acre**	Practice

\*Your guarantee will be based on the unit (acres X per acre guarantee)

\*\*Your premium is subject to adjustment in accordance with section 5(c) of the policy.

**B. WHEN NOTICE OF ACCEPTANCE OF THIS APPLICATION IS MAILED TO THE APPLICANT BY THE CORPORATION,** the contract shall be in effect for the crop year specified above, unless the time for submitting applications has passed at the time this application is filed, **AND SHALL CONTINUE FOR EACH SUCCEEDING CROP YEAR UNTIL CANCELED OR TERMINATED** as provided in the contract. This accepted application, the following flax insurance policy, the attached appendix, and the provisions of the county actuarial table showing the production guarantees, coverage levels, premium rates, prices for computing indemnities, insurable and uninsurable acreage, and applicable dates, shall constitute the contract. Additional information regarding contract provisions can be found in the county regulations folder on file in the office for the county. No term or condition of the contract shall be waived or changed except in writing by the Corporation.

(Code No./Witness to Signature)

(Signature of Applicant)

(DATE) \_\_\_\_\_, 19—

Address of Office for County: \_\_\_\_\_

Phone \_\_\_\_\_

Location of Farm Headquarters: \_\_\_\_\_

Phone \_\_\_\_\_

#### Flax Crop Insurance Policy

##### Terms and Conditions

Subject to the provisions in the attached appendix:

1. Causes of Loss. (a) Causes of loss insured against. The insurance provided is against unavoidable loss of production resulting from adverse weather conditions, insects, plant disease, wildlife, earthquake or fire occurring within the insurance period, subject to any exceptions, exclusions or limitations with respect to causes of loss shown on the actuarial table.

(b) Causes of loss not insured against. The contract shall not cover any loss of production, as determined by the Corporation, due to (1) the neglect or malfeasance of the insured, any member of the insured's household, the insured's tenants or employees, (2) failure to follow recognized good farming practices, (3) damage resulting from the backing up of water by any governmental or public utilities dam or reservoir project, or (4) any cause not specified as an insured cause in this policy as limited by the actuarial table.

2. Crop and Acreage Insured. (a) The crop insured shall be flaxseed (herein called "flax") which is seeded for harvest as seed and which is grown on insured acreage and for which the actuarial table shows a guarantee and premium rate per acre.

(b) The acreage insured for each crop year shall be that acreage seeded to flax on insurable acreage as shown on the actuarial table, and the insured's share therein as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect: *Provided*, That insurance shall not attach or be considered to have attached, as determined by the Corporation, to any acreage (1) seeded with any other crop except perennial grasses or legumes other than vetch, (2) where premium rates are established by farming practices on the actuarial table, and the farming practices carried out on any acreage are not among those for which a premium rate has been established, (3) not reported for insurance as provided in section 3 if such acreage is irrigated and an irrigated practice is not provided for such acreage on the actuarial table, (4) which is destroyed and after such destruction it was practical to reseed to flax and such acreage was not reseeded, (5) initially seeded after the date on file in the office for the county which has been established by the Corporation as being too late to initially seed and expect a normal crop to be produced, (6) of volunteer flax, or (7) seeded to a type or variety of flax not established as adapted to the area or shown as noninsurable on the actuarial table.

(c) Insurance may attach only by written agreement with the Corporation on acreage which is seeded for the development or production of hybrid seed or for experimental purposes.

3. Responsibility of Insured to Report Acreage and Share. The insured shall submit to the Corporation on a form prescribed by the Corporation, a report showing (a) all acreage of flax seeded in the county (including a designation of any acreage to which insurance does not attach) in which the insured has a share and (b) the insured's share therein at the time of seeding. Such report shall be submitted each year not later than the acreage reporting date on file in the office for the county.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities. (a) For each crop year of the contract, the production guarantees, coverage levels, and prices at which indemnities shall be computed shall be those shown on the actuarial table.

(b) The production guarantee per acre shall be reduced by the lesser of 15 bushels or 20 percent for any unharvested acreage.

5. Annual Premium. (a) The annual premium is earned and payable at the time of seeding and shall be determined by multiplying the insured acreage times the applicable premium per acre, times the insured's share at the time of seeding, times the applicable premium adjustment percentage in subsection (c) of this section.

(b) For premium adjustment purposes, only the years during which premiums were earned shall be considered.

(c) The premium shall be adjusted as shown in the following table:

BILLING CODE 3410-08-M

<b>% ADJUSTMENTS FOR FAVORABLE CONTINUOUS INSURANCE EXPERIENCE</b>																
	<b>Numbers of Years Continuous Experience Through Previous Year</b>															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
<b>Loss Ratio <u>1/</u> Through Previous Crop Year</b>	<b>Percentage Adjustment Factor For Current Crop Year</b>															
.00 - .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 - .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 - .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 - .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 - 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100
<b>% ADJUSTMENTS FOR UNFAVORABLE INSURANCE EXPERIENCE</b>																
	<b>Number of Loss Years Through Previous Year <u>2/</u></b>															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
<b>Loss Ratio <u>1/</u> Through Previous Crop Year</b>	<b>Percentage Adjustment Factor For Current Crop Year</b>															
1.10 - 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 - 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 - 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 - 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 - 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 - 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 - 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 - 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 - 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 - Up	100	100	120	136	158	180	202	224	246	268	290	300	300	300	300	300

1/ Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.

2/ Only the most recent 15 crop years will be used to determine the number of "Loss Years" (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year).

(d) Any amount of premium for an insured crop which is unpaid on the day following the termination date for indebtedness for such crop shall be increased by a 9 percent service fee, which increased amount shall be the premium balance, and thereafter, at the end of each 12-month period, 9 percent simple interest shall attach to any amount of the premium balance which is unpaid: *Provided*, When notice of loss has been timely filed by the insured as provided in section 7 of this policy, the service fee will not be charged and the contract will remain in force if the premium is paid in full within 30 days after the date of approval or denial of the claim for indemnity; *however*, if any premium remains unpaid after such date, the contract will terminate and the amount of premium outstanding shall be increased by a 9 percent service fee, which increased amount shall be the premium balance. If such premium balance is not paid within 12 months immediately following the termination date, 9 percent simple interest shall apply from the termination date and each year thereafter to any unpaid premium balance.

(e) Any unpaid amount due the Corporation may be deducted from any indemnity payable to the insured by the Corporation or from any loan or payment to the insured under any Act of Congress or program administered by the U.S. Department of Agriculture, when not prohibited by law.

6. Insurance Period. Insurance on insured acreage shall attach at the time the flax is seeded and shall cease upon the earliest of (a) final adjustment of loss, (b) combining, threshing, or removal of the flax from the field; (c) October 31 of the calendar year in which flax is normally harvested, or (d) destruction of the insured flax crop.

7. Notice of damage or loss. (a) Any notice of damage or loss shall be given promptly in writing by the insured to the Corporation at the office for the county.

(b) Notice shall be given promptly if, during the period before harvest, the flax on any unit is damaged to the extent that the insured does not expect to further care for the crop or harvest any part of it, or if the insured wants the consent of the Corporation to put the acreage to another use. No insured acreage shall be put to another use until the Corporation has made an appraisal of the potential production of such acreage and consents in writing to such other use. Such consent shall not be given until it is too late or impractical to reseed to flax. Notice shall also be given when such acreage has been put to another use.

(c) In addition to the notices required in subsection (b) of this section, if an indemnity is to be claimed on any unit, the insured shall give written notice thereof to the Corporation at the office for the county not later than 30 DAYS after the earliest of (1) the date harvest is completed on the unit, (2) October 31 of the crop year, or (3) the date the entire flax crop on the unit is destroyed, as determined by the Corporation. The Corporation reserves the right to provide additional time if it determines there are extenuating circumstances.

(d) Any insured acreage which is not to be harvested and upon which an indemnity is to be claimed shall be left intact until inspected by the Corporation.

(e) The Corporation may reject any claim for indemnity if any of the requirements of this section are not met.

8. Claim for Indemnity. (a) It shall be a condition precedent to the payment of any indemnity that the insured (1) establish the total production of flax on the unit and that any loss of production was directly caused by one or more of the insured causes during the insurance period for the crop year for which the indemnity is claimed and (2) furnish any other information regarding the manner and extent of loss as may be required by the Corporation. (b) Indemnities shall be determined separately for each unit. The amount of indemnity for any unit shall be determined by (1) multiplying the insured acreage of flax on the unit by the applicable production guarantee per acre, which product shall be the production guarantee for the unit, (2) subtracting therefrom the total production of flax to be counted for the unit, (3) multiplying the remainder by the applicable price for computing indemnities, and (4) multiplying the result obtained in step (3) by the insured share: *Provided*, That if the premium computed on the insured acreage and share is more than the premium computed on the reported acreage and share, the amount of indemnity shall be computed on the insured acreage and share and then reduced proportionately.

(c) The total production to be counted for a unit shall be determined by the Corporation and shall include all harvested and appraised production.

(1) If, due to insurable causes, any flax does not grade No. 2 or better in accordance with the Official U.S. Grain Standards, the production shall be adjusted by (i) dividing the value per bushel of the damaged flax (as determined by the Corporation) by the price per bushel of U.S. No. 2 flax and (ii) multiplying the result by the number of bushels of such flax. The applicable price for U.S. No. 2 flax shall be the local market price on the earlier of the day the loss is adjusted or the day the damaged flax was sold.

(2) Appraised production to be counted shall include: (i) the greater of the appraised production or 50 percent of the applicable guarantee for any acreage which, with the consent of the Corporation, is seeded before flax harvest becomes general in the current crop year to any other crop insurable on such acreage (excluding any crop(s) maturing for harvest in the following calendar year), (ii) any appraisals by the Corporation for potential production on harvested acreage and for uninsured causes and poor farming practices, (iii) not less than the applicable guarantee for any acreage which is abandoned or put to another use without prior written consent of the Corporation or damaged solely by an uninsured cause, and (iv) only the appraisal in excess of the lesser of 15 bushels or 20 percent of the production guarantee for all other unharvested acreage.

(d) The appraised potential production for acreage for which consent has been given to be put to another use shall be counted as

production in determining the amount of loss under the contract. *However*, if consent is given to put acreage to another use and the Corporation determines that any such acreage (1) is not put to another use before harvest of flax becomes general in the county, (2) is harvested, or (3) is further damaged by an insured cause before the acreage is put to another use, the indemnity for the unit shall be determined without regard to such appraisal and consent.

9. Misrepresentation and fraud. The Corporation may void the contract without affecting the insured's liability for premiums or waiving any right, including the right to collect any unpaid premiums if, at any time, the insured has concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

10. Transfer of Insured Share. If the insured transfers any part of the insured share during the crop year, protection will continue to be provided according to the provisions of the contract to the transferee for such crop year on the transferred share, and the transferee shall have the same rights and responsibilities under the contract as the original insured for the current crop year. Any transfer shall be made on an approved form.

11. Records and Access to Farm. The insured shall keep or cause to be kept for two years after the time of loss, records of the harvesting, storage, shipments, sale or other disposition of all flax produced on each unit including separate records showing the same information for production from any uninsured acreage. Any persons designated by the Corporation shall have access to such records and the farm for purposes related to the contract.

12. Life of Contract; Cancellation and Termination. (a) The contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, either party may cancel insurance for any crop year by giving a signed notice to the other on or before the cancellation date preceding such crop year.

(b) Except as provided in section 5(d) of this policy, the contract will terminate as to any crop year if any amount due the Corporation under this contract is not paid on or before the termination date for indebtedness preceding such crop year: *Provided*, That the date of payment for premium (1) if deducted from an indemnity claim shall be the date the insured signs such claim or (2) if deducted from payment under another program administered by the U.S. Department of Agriculture shall be the date such payment was approved.

(c) Following are the cancellation and termination dates:

States	Cancellation date	Termination date for indebtedness
Texas	June 30	Sept. 15
All other States	Dec. 31	Mar. 31

(d) In the absence of a notice from the insured to cancel, and subject to the

provisions of subsections (a), (b), and (c) of this section, and section 7 of the Appendix, the contract shall continue in force for each succeeding crop year.

#### Appendix (additional terms and conditions)

1. Meaning of Terms. For the purposes of flax crop insurance:

(a) "Actuarial table" means the forms and related material for the crop year approved by the Corporation which are on file for public inspection in the office for the county, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, insurable and uninsurable acreage, and related information regarding flax insurance in the county.

(b) "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown on the actuarial table.

(c) "Crop year" means the period within which the flax crop is normally grown and shall be designated by the calendar year in which the flax crop is normally harvested.

(d) "Harvest" means the severance of mature flax from the land for combining or threshing.

(e) "Insurable acreage" means the land classified as insurable by the Corporation and shown as such on the county actuarial table.

(f) "Insured" means the person who submitted the applications accepted by the Corporation.

(g) "office for the county" means the Corporation's office serving the county shown on the application for insurance or such office as may be designated by the Corporation.

(h) "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

(i) "Share" means the interest of the insured as landlord, owner-operator, or tenant in the insured flax crop at the time of seeding as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect, and no other share shall be deemed to be insured: *Provided*, That for the purpose of determining the amount of indemnity, the insured share shall not exceed the insured's share at the earliest of (1) the date of beginning of harvest on the unit, (2) October 31 of the crop year, or (3) the date the entire crop on the unit is destroyed, as determined by the Corporation.

(j) "Tenant" means a person who rents land from another person for a share of the flax crop or proceeds therefrom.

(k) "Unit" means all insurable acreage of flax in the county on the date of seeding for the crop year (1) in which the insured has a 100 percent share, or (2) which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the flax crop on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable

guidelines on file in the office for the county or by written agreement between the Corporation and the insured. The Corporation shall determine units as herein defined when adjusting a loss, notwithstanding what is shown on the acreage report, and has the right to consider any acreage and share reported by or for the insured's spouse or child or any member of the insured's household to be the bona fide share of the insured or any other person having the bona fide share.

2. Acreage-Insured. (a) The Corporation reserves the right to limit the insured acreage of flax to any acreage limitations established under any Act of Congress, provided the insured is so notified in writing prior to the seeding of flax.

(b) If the insured does not submit an acreage report on or before the acreage reporting date on file in the office for the county, the Corporation may elect to determine by units the insured acreage and share or declare the insured acreage on any unit(s) to be "zero." If the insured does not have a share in any insured acreage in the county for any year, the insured shall submit a report so indicating. Any acreage report submitted by the insured may be revised only upon approval of the Corporation.

3. Irrigated Acreage. (a) Where the actuarial table provides for insurance on an irrigated practice, the insured shall report as irrigated only the acreage for which the insured has adequate facilities and water to carry out a good irrigation practice at the time of seeding.

(b) Where irrigated acreage is insurable, any loss of production caused by failure to carry out a good irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of seeding, shall be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities shall not be considered as a failure of the water supply from an unavoidable cause.

4. Annual Premium. (a) If there is no break in the continuity of participation, any premium adjustment applicable under section 5 of the policy shall be transferred to (1) the contract of the insured's estate or surviving spouse in case of death of the insured, (2) the contract of the person who succeeds the insured if such person had previously participated in the farming operation, or (3) the contract of the same insured who stops farming in one county and starts farming in another county.

(b) If there is a break in the continuity of participation, any reduction in premium earned under section 5 of the policy shall not thereafter apply; *however*, any previous unfavorable insurance experience shall be considered in premium computation following a break in continuity.

5. Claim for and Payment of Indemnity. (a) Any claim for indemnity on a unit shall be submitted to the Corporation on a form prescribed by the Corporation.

(b) In determining the total production to be counted for each unit, production from units on which the production has been

commingled will be allocated to such units in proportion to the liability on each unit.

(c) There shall be no abandonment to the Corporation of any insured flax acreage.

(d) In the event that any claim for indemnity under the provisions of the contract is denied by the Corporation, an action on such claim may be brought against the Corporation under the provisions of 7 U.S.C. 1508(c): *Provided*, That the same is brought within one year after the date notice of denial of the claim is mailed to and received by the insured.

(e) Any indemnity will be payable within 30 days after a claim for indemnity is approved by the Corporation. *However*, in no event shall the Corporation be liable for interest or damages in connection with any claim for indemnity whether such claim be approved or disapproved by the Corporation.

(f) If the insured is an individual who dies, disappears, or is judicially declared incompetent, or the insured is an entity other than an individual and such entity is dissolved after the flax is seeded for any crop year, any indemnity will be paid to the person(s) the Corporation determines to be beneficially entitled thereto.

(g) The Corporation reserves the right to reject any claim for indemnity if any of the requirements of this section or section 8 of the policy are not met and the Corporation determines that the amount of loss cannot be satisfactorily determined.

6. Subrogation. The insured (including any assignee or transferee) assigns to the Corporation all rights of recovery against any person for loss or damage to the extent that payment hereunder is made by the Corporation. The Corporation thereafter shall execute all papers required and take appropriate action as may be necessary to secure such rights.

7. Termination of the Contract. (a) The contract shall terminate if no premium is earned for five consecutive years.

(b) If the insured is an individual who dies or is judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution; *however*, if such event occurs after insurance attaches for any crop year, the contract shall continue in force through such crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

8. Coverage Level and Price Election. (a) If the insured has not elected on the application a coverage level and price at which indemnities shall be computed from among those shown on the actuarial table, the coverage level and price election which shall be applicable under the contract, and which the insured shall be deemed to have elected, shall be as provided on the actuarial table for such purposes.

(b) The insured may, with the consent of the Corporation, change the coverage level and price election for any crop year on or

before the closing date for submitting applications for that crop year.

9. Assignment of Indemnity. Upon approval of a form prescribed by the Corporation, the insured may assign to another party the right to an indemnity for the crop year and such assignee shall have the right to submit the loss notices and forms as required by the contract.

10. Contract Changes. The Corporation reserves the right to change any terms and provisions of the contract from year to year. Any changes shall be mailed to the insured or placed on file and made available for public inspection in the office for the county at least 15 days prior to the cancellation date preceding the crop year for which the changes are to become effective, and such mailing or filing shall constitute notice to the insured. Acceptance of any changes will be conclusively presumed in the absence of any notice from the insured to cancel the contract as provided in section 12 of the policy.

This proposal has been reviewed under the USDA criteria established to implement Executive Order No. 12044, "Improving Government Regulations." A determination has been made that this action should not be classified "significant" under those criteria. A Draft Impact Analysis has been prepared and is available from Peter F. Cole, Secretary, Federal Crop Insurance Corporation, Room 4088, South Building, U.S. Department of Agriculture, Washington, D.C., 20250.

Note.—The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942, and OMB Circular No. A-40.

Approved by the Board of Directors on July 24, 1979.

Peter F. Cole,  
Secretary, Federal Crop Insurance Corporation.

[FR Doc. 79-23310 Filed 7-27-79; 8:45 am]  
BILLING CODE 3410-08-M

## [7 CFR Parts 401 and 424]

### Proposed Rice Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation.

ACTION: Proposed rule.

**SUMMARY:** This proposed rule prescribes procedures for insuring rice crops effective with the 1980 crop year. This rule combines provisions from previous regulations for insuring rice in a shorter, clearer, and more simplified document which will make the program more effective administratively. This rule is promulgated under the authority contained in the Federal Crop Insurance Act, as amended.

**DATE:** Written comments, data, and opinions must be submitted not later than September 28, 1979, to be assured of consideration.

**ADDRESS:** Written comments on this proposed rule should be sent to James D. Deal, Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-3325.

**SUPPLEMENTARY INFORMATION:** Under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), it is proposed that there be established a new Part 424 of Chapter IV in Title 7 of the Code of Federal Regulations to be known as 7 CFR Part 424, Rice Crop Insurance.

This part prescribes procedures for insuring rice crops effective with the 1980 crop year.

All previous regulations applicable to insuring rice crops as found in 7 CFR 401.101-401.111, and 401.132, will not be applicable to 1980 and succeeding rice crops but will remain in effect for Federal Crop Insurance Corporation (FCIC) rice insurance policies issued for the crop years prior to 1980.

It has been determined that combining all previous regulations for insuring rice crops into one shortened, simplified, and clearer regulation would be more effective administratively.

In addition, proposed 7 CFR Part 424 provides (1) for a Premium Adjustment Table which replaces the current premium discount provisions and includes a maximum 50 percent premium reduction for good insuring experience, as well as premium increases for unfavorable experience, on an individual contract basis, (2) for the consolidation of termination for indebtedness dates to March 31 in all counties, (3) that any premium not paid by the termination date will be increased by a 9 percent service fee with a 9 percent simple interest charge applying to any unpaid balances at the end of each subsequent 12-month period thereafter, (4) that the time period for submitting a notice of loss be extended from 15 days to 30 days, (5) that the 60-day time period for filing a claim be eliminated, (6) that three coverage level options be offered in each county, (7) that the Actuarial Table shall provide the level which will be applicable to a contract unless a different level is selected by the insured and the conversion level will be the one closest

to the present percent level offered in each county, (8) for an increase in the limitation from \$5,000 to \$20,000 in those cases involving good faith reliance on misrepresentation, as found in 7 CFR Part 424.5 of these proposed regulations, wherein the Manager of the Corporation is authorized to take action to grant relief, and (9) that the production guarantee will now be shown on a harvested basis with a reduction of the lesser of 5 cwt. or 20 percent of the guarantee for any unharvested acreage.

The proposed Rice Crop Insurance regulations provide a December 31 cancellation date for all rice producing counties. These regulations, and any amendments thereto, must be placed on file in the Corporation's office for the county in which the insurance is available not later than 15 days prior to the cancellation date, to afford farmers an opportunity to examine them before the cancellation date of December 31, 1979, before they become effective for the 1980 crop year.

All written submissions made pursuant to this notice will be available for public inspection at the office of the Manager during regular business hours, 8:15 a.m. to 4:45 p.m., Monday through Friday.

### Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to delete and reserve 7 CFR 401.132, but these provisions shall remain in effect for FCIC rice insurance policies issued for crop years prior to 1980. The Corporation also proposes to issue a new Part 424 in Chapter IV of Title 7 of the Code of Federal Regulations effective with the 1980 and subsequent crops of rice, which shall remain in effect until amended or superseded, to read as follows:

### PART 401—FEDERAL CROP INSURANCE

#### § 401.132 [Reserved]

1. Section 401.132 is deleted and reserved.

2. Part 423 is added as follows:

### PART 424—RICE CROP INSURANCE

#### Subpart—Regulations for the 1980 and Succeeding Crop Years

##### Sec.

- 424.1 Availability of Rice Insurance.
- 424.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
- 424.3 Public notice of indemnities paid.
- 424.4 Creditors.

## Sec.

424.5 Good faith reliance on misrepresentation.

424.6 The contract.

424.7 The application and policy.

Authority: Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended (7 U.S.C. 1506, 1516).

### Subpart—Regulations for the 1980 and Succeeding Crop Years

#### § 424.1 Availability of Rice Insurance.

Insurance shall be offered under the provisions of this subpart on rice in counties within limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. Before insurance is offered in any county, there shall be published by appendix to this chapter the names of the counties in which rice insurance will be offered.

§ 424.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for rice which shall be shown on the county actuarial table on file in the office for the county and may be changed from year to year.

(b) At the time the application for insurance is made, the applicant shall elect a coverage level and price at which indemnities shall be computed from among those levels and prices shown on the actuarial table for the crop year.

#### § 424.3 Public notice of indemnities paid.

The Corporation shall provide for posting annually in each county at each county courthouse a listing of the indemnities paid in the county.

#### § 424.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, or an involuntary transfer shall not entitle the holder of the interest to any benefit under the contract except as provided in the policy.

#### § 424.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the rice insurance contract, whenever (a) an insured person under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation, (1) is

indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured person is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than \$20,000, finds (1) that an agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice, (2) that said insured person relied thereon in good faith, and (3) that to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured person shall be granted relief the same as if otherwise entitled thereto.

#### § 424.6 The contract.

(a) The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. Such acceptance shall be effective upon the date the notice of acceptance is mailed to the applicant. The contract shall cover the rice crop as provided in the policy. The contract shall consist of the application, the policy, the attached appendix, and the provisions of the county actuarial table. Any changes made in the contract shall not affect the continuity from year to year. Copies of forms referred to in the contract are available at the office for the county.

#### § 424.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's insurable share in the rice crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the office for the county on or before the applicable closing date on file in the office for the county.

(b) The Corporation reserves the right to discontinue the acceptance of applications in any county upon its determination that the insurance risk involved is excessive, and also, for the same reason, to reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications or contract changes in any county, by placing the extended date on file in the office for the

county and publishing a notice in the Federal Register upon the Manager's determination that no adverse selectivity will result during the period of such extension: *Provided, however*, That if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1969 and succeeding crop years, a contract in the form provided for under this subpart will come into effect as a continuation of a rice contract issued under such prior regulations, without the filing of a new application.

(d) The provisions of the application and Rice Insurance Policy for the 1980 and succeeding crop years, and the Appendix to the Rice Insurance Policy are as follows:

### UNITED STATES DEPARTMENT OF AGRICULTURE

Application for 19— and Succeeding Crop Years

Rice

Crop Insurance Contract

(Contract Number)

(Identification Number)

(Name and Address) (ZIP Code)

(County) (State)

Type of Entity

Applicant is Over 18 Yes— No—

A. The applicant, subject to the provisions of the regulations of the Federal Crop Insurance Corporation (herein called "Corporation"), hereby applies to the Corporation for insurance on the applicant's share in the rice seeded on insurable acreage as shown on the county actuarial table for the above-stated county. The applicant elects from the actuarial table the coverage level and price at which indemnities shall be computed. THE PREMIUM RATES AND PRODUCTION GUARANTEES SHALL BE THOSE SHOWN ON THE APPLICABLE COUNTY ACTUARIAL TABLE FILED IN THE OFFICE FOR THE COUNTY FOR EACH CROP YEAR.

Level Election ——— Price Election ———

B. WHEN NOTICE OF ACCEPTANCE OF THIS APPLICATION IS MAILED TO THE APPLICANT BY THE CORPORATION, the contract shall be in effect for the crop year specified above, unless the time for submitting applications has passed at the time this application is filed, AND SHALL CONTINUE FOR EACH SUCCEEDING CROP YEAR UNTIL CANCELLED OR

Example: For the 19— Crop Year Only (100 Percent Share)

Location/ Farm No.	Guarantee Per Acre*	Premium Per Acre**	Practice

\*Your guarantee will be on a unit basis (acres x per acre guarantee x share).  
 \*\*Your premium is subject to adjustment in accordance with section 5(c) of the policy.

TERMINATED as provided in the contract. This accepted application, the following rice insurance policy, the attached appendix, and the provisions of the county actuarial table showing the production guarantees, coverage levels, premium rates, prices for computing indemnities, insurable and uninsurable acreage shall constitute the contract. Additional information regarding contract provisions can be found in the county regulations folder on file in the office for the county. No term or condition of the contract shall be waived or changed except in writing by the Corporation.

(Code No./Witness to Signature)

(Signature of Applicant)

(Date) \_\_\_\_\_, 19—

Address of Office for County: \_\_\_\_\_

Phone \_\_\_\_\_

Location of Farm Headquarters: \_\_\_\_\_

Phone \_\_\_\_\_

**Rice Crop Insurance Policy**

**Terms and Conditions**

Subject to the provisions in the attached appendix:

1. Causes of Loss. (a) Causes of loss insured against. The insurance provided is against unavoidable loss of production resulting from adverse weather conditions (excluding drought), insects, plant disease, wildlife, earthquake or fire occurring within the insurance period, subject to any exceptions, exclusions or limitations with respect to causes of loss shown on the actuarial table.

(b) Causes of loss not insured against. The contract shall not cover any loss of production, as determined by the Corporation, due to (1) application of saline water, (2) the neglect or malfeasance of the insured, any member of the insured's household, the insured's tenants or employees, (3) failure to follow recognized good farming practices, (4) damage resulting from the backing up of water by any governmental or public utilities dam or reservoir project, or (5) any cause not specified as an insured cause in this policy as limited by the actuarial table.

2. Crops and Acreage Insured. (a) The crop insured shall be rice which is seeded for harvest as grain and which is grown on insured acreage and for which the actuarial table shows a guarantee and premium rate per acre.

(b) The acreage insured for each crop year shall be that acreage seeded to rice on

insurable acreage as shown on the actuarial table, and the insured's share therein as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect: *Provided*, That insurance shall not attach or be considered to have attached, as determined by the Corporation, to any acreage (1) on which the rice was destroyed for the purpose of conforming with any other program administered by the United States Department of Agriculture, (2) seeded to rice for the two preceding crop years, (3) which is destroyed and after such destruction it was practical to reseed to rice and such acreage was not reseeded, (4) initially seeded after the date on file in the office for the county which has been established by the Corporation as being too late to initially seed and expect a normal crop to be produced, (5) of a second crop following a rice crop harvested in the same calendar year, or (6) seeded to a type or variety of rice not established as adapted to the area or shown as noninsurable on the actuarial table.

(c) Insurance may attach only by written agreement with the Corporation on acreage which is seeded for the development or production of hybrid seed or for experimental purposes.

3. Responsibility of insured to report acreage and share. The insured shall submit to the Corporation on a form prescribed by the Corporation, a report showing (a) all acreage of rice seeded in the county (including a designation of any acreage to which insurance does not attach) in which the insured has a share and (b) the insured's share therein at the time of seeding. Such report shall be submitted each year not later than the acreage reporting date on file in the office for the county.

4. Production Guarantees, Coverage Levels and Prices for Computing Indemnities. (a) For each crop year of the contract, the production guarantees, coverage levels, and prices at which indemnities shall be computed shall be those shown on the actuarial table.

(b) The production guarantee per acre shall be reduced by the lesser of 5 cwt. or 20 percent for any unharvested acreage.

5. Annual Premium. (a) The annual premium is earned and payable at the time of seeding and the amount thereof shall be determined by multiplying the insured acreage times the applicable premium per acre, times the insured's share at the time of seeding, times the premium adjustment percentage in subsection (c) of this section.

(b) For premium adjustment purposes, only the years during which premiums were earned shall be considered.

(c) The premium shall be adjusted as shown in the following table:

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% ADJUSTMENTS FOR FAVORABLE CONTINUOUS INSURANCE EXPERIENCE																
	Numbers of Years Continuous Experience Through Previous Year															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15 or more
Loss Ratio <u>1/</u> Through Previous Crop Year	Percentage Adjustment Factor For Current Crop Year															
.00 - .20	100	95	95	90	90	85	80	75	70	70	65	65	60	60	55	50
.21 - .40	100	100	95	95	90	90	90	85	80	80	75	75	70	70	65	60
.41 - .60	100	100	95	95	95	95	95	90	90	90	85	85	80	80	75	70
.61 - .80	100	100	95	95	95	95	95	95	90	90	90	90	85	85	85	80
.81 - 1.09	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

### % ADJUSTMENTS FOR UNFAVORABLE INSURANCE EXPERIENCE

	Number of Loss Years Through Previous Year <u>2/</u>															
	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Loss Ratio <u>1/</u> Through Previous Crop Year	Percentage Adjustment Factor For Current Crop Year															
1.10 - 1.19	100	100	100	102	104	106	108	110	112	114	116	118	120	122	124	126
1.20 - 1.39	100	100	100	104	108	112	116	120	124	128	132	136	140	144	148	152
1.40 - 1.69	100	100	100	108	116	124	132	140	148	156	164	172	180	188	196	204
1.70 - 1.99	100	100	100	112	122	132	142	152	162	172	182	192	202	212	222	232
2.00 - 2.49	100	100	100	116	128	140	152	164	176	188	200	212	224	236	248	260
2.50 - 3.24	100	100	100	120	134	148	162	176	190	204	218	232	246	260	274	288
3.25 - 3.99	100	100	105	124	140	156	172	188	204	220	236	252	268	284	300	300
4.00 - 4.99	100	100	110	128	146	164	182	200	218	236	254	272	290	300	300	300
5.00 - 5.99	100	100	115	132	152	172	192	212	232	252	272	292	300	300	300	300
6.00 - Up	100	100	120	136	158	180	202	224	246	268	290	300	300	300	300	300

1/ Loss Ratio means the ratio of indemnity(ies) paid to premium(s) earned.

2/ Only the most recent 15 crop years will be used to determine the number of "Loss Years" (A crop year is determined to be a "Loss Year" when the amount of indemnity for the year exceeds the premium for the year).

(d) Any amount of premium for an insured crop which is unpaid on the day following the termination date for indebtedness for such crop shall be increased by a 9 percent service fee, which increased amount shall be the premium balance, and thereafter, at the end of each 12-month period, 9 percent simple interest shall attach to any amount of the premium balance which is unpaid: *Provided*, When notice of loss has been timely filed by the insured as provided in section 7 of this policy, the service fee will not be charged and the contract will remain in force if the premium is paid in full within 30 days after the date of approval or denial of the claim for indemnity; *however*, if any premium remains unpaid after such date, the contract will terminate and the amount of premium outstanding shall be increased by a 9 percent service fee, which increased amount shall be the premium balance. If such premium balance is not paid within 12 months immediately following the termination date, 9 percent simple interest shall apply from the termination date and each year thereafter to any unpaid premium balance.

(e) Any unpaid amount due the Corporation may be deducted from any indemnity payable to the insured by the Corporation or from any loan or payment to the insured under any Act of Congress or program administered by the U.S. Department of Agriculture, when not prohibited by law.

6. Insurance Period. Insurance on insured acreage shall attach at the time the rice is seeded and shall cease upon the earliest of (a) final adjustment of a loss, (b) combining, threshing, or removal of the rice from the field, (c) October 31 of the calendar year in which rice is normally harvested, or (d) total destruction of the insured rice crop.

7. Notice of Damage or Loss. (a) Any notice of damage or loss shall be given promptly in writing by the insured to the Corporation at the office for the county.

(b) Notice shall be given promptly if, during the period before harvest, the rice on any unit is damaged to the extent that the insured does not expect to further care for the crop or harvest any part of it, or if the insured wants the consent of the Corporation to put the acreage to another use. No insured acreage shall be put to another use until the Corporation has made an appraisal of the potential production of such acreage and consents in writing to such other use. Such consent shall not be given until it is too late or impractical to reseed to rice. Notice shall also be given when such acreage has been put to another use.

(c) In addition to the notices required in subsection (b) of this section, if an indemnity is to be claimed on any unit, the insured shall give written notice thereof to the Corporation at the office for the county not later than 30 days after the earliest of (1) the date harvest is completed on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire rice crop on the unit is destroyed, as determined by the Corporation. The Corporation reserves the right to provide additional time if it determines there are extenuating circumstances.

(d) Any insured acreage which is not to be harvested and upon which an indemnity is to be claimed shall be left intact until inspected by the Corporation.

(e) The Corporation may reject any claim for indemnity if any of the requirements of this section are not met.

8. Claim for Indemnity. (a) It shall be a condition precedent to the payment of any indemnity that the insured (1) establish the total production of rice on the unit and that any loss of production was directly caused by one or more of the insured causes during the insurance period for the crop year for which the indemnity is claimed and (2) furnish any other information regarding the manner and extent of loss as may be required by the Corporation.

(b) Indemnities shall be determined separately for each unit. The amount of indemnity for any unit shall be determined by (1) multiplying the insured acreage of rice on the unit by the applicable production guarantee per acre, which product shall be the production guarantee for the unit, (2) subtracting therefrom the total production of rice to be counted for the unit, (3) multiplying the remainder by the applicable price for computing indemnities, and (4) multiplying the result obtained in step (3) by the insured share: *Provided*, That if the premium computed on the insured acreage and share is more than the premium computed on the reported acreage and share, the amount of indemnity shall be computed on the insured acreage and share and then reduced proportionately.

(c) The total production to be counted for a unit shall be determined by the Corporation and shall include all harvested and appraised production.

(1) Mature production which grades No. 3 or better shall be reduced .12 percent for each .1 percentage point of moisture in excess of 14.0 percent; and if, due to insurable causes, the rough rice does not grade U.S. No. 3 or better (determined in accordance with Official Grain Standards of the United States) with a milling yield per cwt. of 55 pounds of heads for the short and medium grain varieties and 48 pounds of heads for long grain varieties (whole kernels) and 68 pounds total milling yield (heads, second heads, screenings and brewers), the number of pounds of such rice to be counted shall be adjusted by (i) dividing the value per pound of the damaged rice (as determined by the Corporation) by the market price per pound at the nearest mill center for the same variety of rough rice grading U.S. No. 3 with the milling yields as stated above, and (ii) multiplying the result thus obtained by the number of pounds of production of such damaged rice. The applicable price for No. 3 rice shall be the nearest mill center price on the earlier of: the day the loss is adjusted or the day the damaged rice was sold.

(2) Any production from volunteer rice growing with the seeded rice crop shall be counted as rice on a weight basis.

(3) Appraised production to be counted shall include: (i) any appraisals by the Corporation for potential production on harvested acreage and for uninsured causes and for poor farming practices, (ii) not less

than the applicable guarantee for any acreage which is abandoned or put to another use without prior written consent of the Corporation or damaged solely by an uninsured cause, and (iii) only the appraisal in excess of the lesser of 5 cwt. or 20 percent of the production guarantee for all other unharvested acreage.

(d) The appraised potential production for acreage for which consent has been given to be put to another use shall be counted as production in determining the amount of loss under the contract. *However*, if consent is given to put acreage to another use and the Corporation determines that any such acreage (1) is harvested, or (2) is further damaged by an insured cause before the acreage is put to another use, the indemnity for the unit shall be determined without regard to such appraisal and consent.

9. Misrepresentation and Fraud. The Corporation may void the contract without affecting the insured's liability for premiums or waiving any right, including the right to collect any unpaid premiums if, at any time, the insured has concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

10. Transfer of Insured Share. If the insured transfers any part of the insured share during the crop year, protection will continue to be provided according to the provisions of the contract to the transferee for such crop year on the transferred share, and the transferee shall have the same rights and responsibilities under the contract as the original insured for the current crop year. Any transfer shall be made on an approved form.

11. Records and Access to Farm. The insured shall keep or cause to be kept for two years after the time of loss, records of the harvesting, storage, shipments, sale or other disposition of all rice produced on each unit including separate records showing the same information for production from any uninsured acreage. Any persons designated by the Corporation shall have access to such records and the farm for purposes related to the contract.

12. Life of Contract: Cancellation and Termination. (a) The contract shall be in effect for the crop year specified on the application and may not be canceled for such crop year. Thereafter, either party may cancel the insurance for any crop year by giving a signed notice to the other on or before the cancellation date preceding such crop year.

(b) Except as provided in section 5(d) of this policy, the contract will terminate as to any crop year if any amount due the Corporation under this contract is not paid on or before the termination date for indebtedness preceding such crop year: *Provided*, That date of payment for premium (1) if deducted from an indemnity claim shall be the date the insured signs such claims or (2) if deducted from payment under another program administered by the U.S. Department of Agriculture shall be the date such payment was approved.

(c) Following are the cancellation and termination dates:

Counties	Cancellation date	Termination date for indebtedness
All counties	Dec. 31	Mar. 31

(d) In the absence of a notice from the insured to cancel, and subject to the provisions of subsections (a), (b), and (c) of this section, and section 7 of the Appendix, the contract shall continue in force for each succeeding crop year.

#### Appendix (additional terms and conditions)

##### 1. Meaning of Terms. For the purposes of rice crop insurance:

(a) "Actuarial table" means the forms and related material for the crop year approved by the Corporation which are on file for public inspection in the office for the county, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, insurable and uninsurable acreage, and related information regarding rice insurance in the county.

(b) "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown on the actuarial table.

(c) "Crop year" means the period within which the rice crop is normally grown and shall be designated by the calendar year in which the rice crop is normally harvested.

(d) "Harvest" means the severance of mature rice from the land for combining of threshing.

(e) "Insurable acreage" means the land classified as insurable by the Corporation and shown as such on the county actuarial table.

(f) "Insured" means the person who submitted the application accepted by the Corporation.

(g) "Mill center" means any location in which two or more mills are engaged in milling rough rice.

(h) "Office for the county" means the Corporation's office serving the county shown on the application for insurance or such office as may be designated by the Corporation.

(i) "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

(j) "Share" means the interest of the insured as landlord, owner-operator, or tenant in the insured rice crop at the time of seeding as reported by the insured or as determined by the Corporation, whichever the Corporation shall elect, and no other share be deemed to be insured: *Provided*, That for the purpose of determining the amount of indemnity, the insured share shall not exceed the insured's share at the earliest of (1) the date of beginning of harvest on the unit, (2) the calendar date for the end of the insurance period, or (3) the date the entire crop on the unit is destroyed, as determined by the Corporation.

(k) "Tenant" means a person who rents land from another person for a share of the rice crop or proceeds therefrom.

(l) "Unit" means all insurable acreage of rice in the county on the date of seeding for the crop year (1) in which the insured has a 100 percent share, or (2) which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the rice crop on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in the office for the county or by written agreement between the Corporation and the insured. The Corporation shall determine units as herein defined when adjusting a loss, notwithstanding what is shown on the acreage report, and has the right to consider any acreage and share reported by or for the insured's spouse or child or any member of the insured's household to be the bona fide share of the insured or any other person having the bona fide share.

2. Acreage Insured. (a) The Corporation reserves the right to limit the insured acreage of rice to any acreage limitations established under any Act of Congress, provided the insured is so notified in writing prior to the seeding of rice.

(b) If the insured does not submit an acreage report on or before the acreage reporting date on file in the office for the county, the Corporation may elect to determine by units the insured acreage and share or declare the insured acreage on any unit(s) to be "zero". If the insured does not have a share in any insured acreage in the county for any year, the insured shall submit a report indicating. Any acreage report submitted by the insured may be revised only upon approval of the Corporation.

3. Annual Premium. (a) If there is no break in the continuity of participation, any premium adjustment applicable under section 5 of the policy shall be transferred to (1) the contract of the insured's estate or surviving spouse in case of death of the insured, (2) the contract of the person who succeeds the insured if such person had previously participated in the farming operation, or (3) the contract of the same insured who stops farming in one county and starts farming in another county.

(b) If there is a break in the continuity of participation, any reduction in premium earned under section 5 of the policy shall not thereafter apply; *however*, any previous unfavorable insurance experience shall be considered in premium computation following a break in continuity.

4. Claim for and Payment of Indemnity. (a) Any claim for indemnity on a unit shall be submitted to the Corporation on a form prescribed by the Corporation.

(b) In determining the total production to be counted for each unit, production from units on which the production has been commingled will be allocated to such units in proportion to the liability on each unit.

(c) There shall be no abandonment to the Corporation of any insured rice acreage.

(d) In the event that any claim for indemnity under the provisions of the contract is denied by the Corporation, an action on such claim may be brought against the Corporation under the provisions of 7 U.S.C. 1508(c); *Provided*, That the same is brought within one year after the date notice of denial of the claim is mailed to and received by the insured.

(e) Any indemnity will be payable within 30 days after a claim for indemnity is approved by the Corporation. *However*, in no event shall the Corporation be liable for interest or damages in connection with any claim for indemnity whether such claim be approved or disapproved by the Corporation.

(f) If the insured is an individual who dies, disappears, or is judicially declared incompetent, or the insured is an entity other than an individual and such entity is dissolved after the rice is seeded for any crop year, any indemnity will be paid to the person(s) the Corporation determines to be beneficially entitled thereto.

(g) The Corporation reserves the right to reject any claim for indemnity if any of the requirements of this section or section 8 of the policy are not met and the Corporation determines that the amount of loss cannot be satisfactorily determined.

5. Subrogation. The insured (including any assignee or transferee) assigns to the Corporation all rights of recovery against any person for loss or damage to the extent that payment hereunder is made by the Corporation. The Corporation thereafter shall execute all papers required and take appropriate action as may be necessary to secure such rights.

6. Termination of the Contract. (a) The contract shall terminate if no premium is earned for five consecutive years.

(b) If the insured is an individual who dies or is judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract shall terminate as of the date of death, judicial declaration, or dissolution; *however*, if such event occurs after insurance attaches for any crop year, the contract shall continue in force through such crop year and terminate at the end thereof. Death of a partner in a partnership shall dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons shall dissolve the joint entity.

7. Coverage Level and Price Election. (a) If the insured has not elected on the application a coverage level and price election at which indemnities shall be computed from among those shown on the actuarial table, the coverage level and price election which shall be applicable under the contract, and which the insured shall be deemed to have elected, shall be as provided on the actuarial table for such purposes.

(b) The insured may, with the consent of the Corporation, change the coverage level and price election for any crop year on or before the closing date for submitting applications for that crop year.

8. Assignment of Indemnity. Upon approval of a form prescribed by the Corporation, the insured may assign to another party the right

to an indemnity for the crop year and such assignee shall have the right to submit the loss notices and forms as required by the contract.

9. **Contract Changes.** The Corporation reserves the right to change any terms and provisions of the contract from year to year. Any changes shall be mailed to the insured or placed on file and made available for public inspection in the office for the county at least 15 days prior to the cancellation date, preceding the crop year for which the changes are to become effective, and such mailing or filing shall constitute notice to the insured. Acceptance of any changes will be conclusively presumed in the absence of any notice from the insured to cancel the contract as provided in section 12 of the policy.

This proposal has been reviewed under the USDA criteria established to implement Executive Order No. 12044, "Improving Government Regulations." A determination has been made that this action should not be classified "significant" under those criteria. A Draft Impact Analysis has been prepared and is available from Peter F. Cole, Secretary, Federal Crop Insurance Corporation, Room 4088, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

**Note.**—The reporting requirements contained herein have been approved by the Bureau of the Budget in accordance with the Federal Reports Act of 1942, and OMB Circular No. A-40.

Approved by the Board of Directors on July 24, 1979.

Peter F. Cole,  
Secretary, Federal Crop Insurance Corporation.

[FR Doc. 79-23309 Filed 7-27-79; 8:45 am]

BILLING CODE 3410-09-M

## Agricultural Marketing Service

[7 CFR Part 1064]

[Docket No. AO-23-A52]

### Milk in the Greater Kansas City Marketing Area; Recommended Decision and Opportunity to File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This decision recommends changes in the present order provisions based on industry proposals considered at a public hearing held October 30, 1978. The recommended amendments would permit the Director of the Dairy

Division to change temporarily the pooling standards for supply plants. Also, supply plant operators would be permitted to divert producer milk directly from farms to nonpool plants for manufacturing. The proposed changes are necessary to reflect current marketing conditions and to insure orderly marketing in the regulated area.

**DATE:** Comments are due on or before August 20, 1979.

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

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

**SUPPLEMENTAL INFORMATION:** Prior document in this proceeding: Notice of Hearing—Issued September 29, 1978, published October 6, 1978 (43 FR 46305).

#### Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Greater Kansas City marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C., 20250, on or before August 20, 1979. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing conducted at Kansas City, Missouri, on October 30, 1978. Notice of such hearing was issued September 29, 1978 (43 FR 46305).

The material issues on the record of the hearing relate to:

1. Pooling standards for a supply plant.
2. Diversion of producer milk.

At the hearing, no testimony was presented concerning a hearing notice proposal (Proposal No. 4) to amend § 1064.45(d), *Market Administrator's reports and announcements concerning classification*. Accordingly, no further consideration is given to the proposal in this proceeding.

#### Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Pooling standards for a supply plant.* No change should be made on the basis of this record in the supply plant shipping requirements. Instead, the Director of the Dairy Division (Agricultural Marketing Service, U.S. Department of Agriculture) should be authorized to temporarily increase or decrease the supply plant shipping percentages by up to 20 percentage points if it is determined that additional shipments are needed or that excessive shipments are expected to be made.

The order currently provides pool status to a supply plant from which transfers to pool distributing plants and/or Class I milk disposed of on routes in the marketing area amount to not less than 50 percent of its monthly receipts of Grade A milk from dairy farmers. A plant which is pooled as a supply plant in each of the months of September through January acquires automatic pooling status in the subsequent months of February through August unless nonpool plant status is requested.

The order also provides that a supply plant operated by a cooperative association may qualify as a pool plant on the basis of the cooperative's total milk movements to pool distributing plants either by transfer from a supply plant or directly from member producers' farms. This provision is not at issue in the proceeding. However, for the purpose of this discussion, such a pool supply plant shall be referred to as a "cooperative balancing plant".

Several proposals concerning supply plant performance standards were considered at the hearing. Mid-America Dairymen, Inc. (Mid-Am), a cooperative association of producers supplying a major portion of the fluid milk market, proposed that a supply plant no longer be provided automatic pooling status during the February-August period but instead be required to ship milk to distributing plants each month to qualify for pooling. As proposed, a supply plant that met the present 50 percent shipping requirement during each of the months of September through January could continue to be a pool plant during the

subsequent February through August period by shipping a minimum of 30 percent of its receipts in each of the latter months. Under the proposal, if the shipping requirement of 50 percent was not met during each of the months of September through January, then the plant would have to meet the 50 percent shipping requirements each month to qualify for pooling that month.

Additionally, Mid-Am proposed that the market administrator be authorized to increase or decrease these shipping requirements on a temporary basis by up to 20 percentage points if he finds such revision is necessary to obtain needed milk shipments or to prevent uneconomic shipments.

Fairmont Foods Co., a proprietary handler operating two distributing plants in the market, also proposed that supply plants be required to ship every month of the year. Specifically, it proposed that shipping requirements be equal to about 80 to 90 percent of the projected market's Class I utilization for the month and that such shipping requirements be announced by the market administrator on the 5th day of each month. Fairmont also proposed that qualifying shipments by a supply plant should include milk delivered directly from farms to distributing plants by the supply plant operator.

At the hearing, Associated Milk Producers, Inc. (AMPI) also supported the adoption of year-round shipping requirements provided that such performance requirements were minimal during the months of heavy production. Specifically, under its proposal, a pool supply plant would have to ship at least 50 percent of its receipts from producers to distributing plants during the months of September through November and 25 percent during all other months. However, as a condition to its year-round shipping proposal, AMPI further proposed (1) that a supply plant which has maintained pool status for three consecutive months be granted pool plant status for the first subsequent month in which it fails to qualify as a pool plant on the basis of shipments; and (2) that a supply plant be allowed to include as qualifying shipments milk delivered directly from producers' farms to pool distributing plants.

In support of its proposal, Mid-Am contended that there is need for year-round shipping requirements because distributing plants have become more dependent during each month of the year on supply plant milk to fulfill their total plant requirements. The spokesman for Mid-Am testified that this greater dependence on supply plant milk has resulted from changes in

bottling schedules of distributing plants and a demand by such plants for skim milk. In his opinion, year-round shipping requirements would assure distributing plants of a continuing, adequate milk supply from supply plants when needed.

Mid-Am indicated that its proposal for year-round shipping requirements was prompted by the growing trend, particularly in other markets, in the number of manufacturing plants that have qualified as pool supply plants under an order.<sup>1</sup> This trend, according to the spokesman for Mid-Am, stems from the gradual conversion from Grade B to Grade A production, which he claimed was happening in the procurement area for the Kansas City market. The witness indicated that this prompts manufacturing plants to qualify as pool supply plants in order that they may use pool proceeds from the fluid market to pay a competitive price to their dairy farmers and thus insure a supply of milk at their plants. Although admitting that this has not been a problem under the Kansas City order, the witness for Mid-Am maintained that the present automatic pooling provision provides an opportunity for a manufacturing plant operator to pool a supply of milk without assuming any responsibility to supply the fluid market on a continuing basis throughout the year. He held that this consideration suggests the need to incorporate year-round shipping requirements.

A spokesman for Fairmont also testified in support of the elimination of the automatic pooling provision, claiming that the present pooling standards do not encourage adequate milk shipments. He expressed the belief that all pool supply plants should be required to supply a proportionate "fair share" of the market's fluid needs each month of the year. The Fairmont witness complained that relatively low shipping standards contribute significantly to a supply organization's ability to collect unreasonably high over-order premiums and/or service charges from handlers.

In further support of its position, the witness for Fairmont testified that in the late summer of 1978 his firm was notified by Mid-Am, which was Fairmont's regular supplier, that beginning in September 1978 Mid-Am would hold back some of its pooled milk from Order 64 distributing plants so that it would have a sufficient volume of milk at its manufacturing operations to maintain a profitable operating level. The witness indicated that after trying

<sup>1</sup> At the time of the hearing there was only one manufacturing plant qualified as a pool supply plant under the order (exclusive of cooperative balancing plants.)

to secure alternative supplemental supplies of milk, the distributing plant operators, through negotiations with Mid-Am, were able to obtain adequate supplies. However, according to the witness, this was accomplished by paying a higher price (an additional 12 cents per hundredweight) on all milk purchased from Mid-Am. In this regard, a spokesman for Mid-Am testified that in September 1978 about 1,000,000 pounds of milk were moved to distributing plants from other markets to accommodate the requests of the distributors for milk.

While obviously disturbed about the 12-cents per hundredweight additional charge for all milk purchased from Mid-Am, the spokesman for Fairmont acknowledged an understanding of Mid-Am's position in this regard—in particular, the need to overcome losses in its manufacturing operation because of inadequate volumes so as to be competitive with other cooperatives and proprietary handlers who are competing for producers. However, it was his belief that distributing plant operators should not have to pay this additional charge to obtain adequate supplies while at the same time other suppliers are engaged principally in manufacturing operation. In his opinion, requiring a supply plant to ship on a year-round basis, as he proposed, would make additional milk available to his and other distributing plants and thus eliminate the need to import milk from other markets.

Although supporting year-round shipping requirements for supply plants, the spokesman for AMPI indicated that he was unaware of any problem that distributing plant operators were experiencing in obtaining adequate supplies during the months (February–August) when qualified pool supply plants are not required to make shipments. It was his contention that supply plants associated with the market are making adequate milk supplies available to distributing plants when the milk is needed. In his view, however, requiring some minimal level of shipments during each month of the year would assure the pooling of only those supply plant operations whose major interest is supplying the fluid requirements of distributing plants. He contended that the automatic pooling feature tends to encourage manufacturing plants to associate with the market in order to maintain a supply of milk for manufacturing purposes without regard to supplying the fluid market.

While the three proponents of year-round shipping standards differed as to the levels at which a supply plant

should perform to acquire pool status, they were in agreement that the automatic pooling feature should be eliminated. This change, they argued, was necessary to reduce the incentive for supply plants primarily engaged in manufacturing to obtain pool plant status by shipping only during the fall months, as is presently required by the order. Moreover, they maintained that year-round shipping requirements would assure a more equitable sharing among all supply plant handlers of the responsibility of supplying the Class I needs of the market. They contended that year-round shipping requirements would provide additional assurance to pool distributing plants that fluid milk supplies would be available from supply plants when needed.

Only three of the six pool supply plants on the market at the time of the hearing would be directly affected by the proposed changes. One of the three is a pool plant located at Jessup, Iowa, that is operated by AMPI. The plant's primary activity is supplying skim milk to pool distributing plants. Another of the three pool supply plants, the Bit O'Gold Cheese Company, is located at Wamego, Kansas. The third is the National Farmers Organization plant at Jefferson City, Missouri. The three remaining pool supply plants on the market are operated by Mid-Am and are located at Ottawa, Kansas, Sabetha, Kansas, and at Chillicothe, Missouri. These three plants, however, are pooled under the cooperative balancing plant provisions of the order which are not at issue in this proceeding.

The purpose of pooling standards for supply plants is to distinguish between those plants substantially engaged in serving the fluid needs of the regulated market and those plants that do not serve the market to a degree that warrants their sharing, through pooling, in the market's Class I returns. The standards also must assure that supply plants associated with the market will make milk available to distributing plants at the times and in the quantities needed. However, supply plants regularly serving the market should not be required to ship substantial quantities of milk when the milk is not needed.

As noted previously, the order now permits a supply plant that has met the minimum shipping requirements during the months of September through January to qualify as a pool plant during the other months without having to meet any specified shipments to distributing plants. This automatic pooling feature has been an integral part of the order's pooling provision for supply plants for

many years. It recognizes that the demand for supply plant milk is usually less in the months of seasonably high production than in other months. Requiring no shipments during the heavy production months from those supply plants with an established association with the market avoids unnecessary, as well as uneconomical, shipments to pool distributing plants for the sole purpose of maintaining pool status for the supply plants. Moreover, the automatic pooling feature permits those producers who have established their association with the fluid market through deliveries to a pool supply plant to share in the market's Class I sales when supply plant milk may not be needed by distributing plants.

The adoption of year-round shipping requirements should be based on an indication that distributing plants are experiencing difficulty in obtaining adequate milk supplies for fluid uses from pool supply plants. There is no basis on this record from which it might be concluded that this is the case. This is so even at a time when operators of distributing plants have become increasingly dependent on supply plant milk because of changes in their bottling patterns and their desire, in some cases, to be supplied with milk of a standardized butterfat test.

The fact that Mid-Am started in September 1978 to retain milk for its manufacturing operations which was formerly available to distributing plants, in itself, provides no basis for adopting year-round shipping requirements. There was no demonstration that this action of Mid-Am caused an actual or potential shortage of milk at distributing plants. Moreover, the record provides no evidence that any of the market's 10 distributing plants have had or expect to have any difficulty in obtaining adequate supplies of milk to meet their fluid requirements. In fact, except for Fairmont, none of the other 8 distributing plant operators testified at the hearing.

What appears to be evident in this regard is that any supply problem arising from Mid-Am's decision was not related to the order's supply plant shipping requirements but was due to a business decision of Mid-Am to retain producer milk in its plants for manufacturing that normally went directly from farms to distributors. Historically, Mid-Am has been the principal supplier for this market, supplying about 75 percent of the market's fluid milk needs. A large proportion of such supply is moved directly from member producers' farms to pool distributing plants. The

remainder is supplied the fluid market from its three plants that are pooled under the cooperative balancing plant provisions of the order. To qualify these supply plants as pool plants, at least 50 percent of the cooperative's members' milk must be received at pool distributing plants during the current month, or during the immediately preceding 12-month period, either by transfer or directly from member producers' farms. Such cooperative balancing plant performance standard is applicable to each month of the year and no automatic pooling is allowed as is the case with the supply plant pooling provisions here at issue.

Now, in an apparent effort to retain a certain volume of its member milk for its manufacturing plants, Mid-Am has expressed its intent to make available to distributing plants milk supplies from nearby markets to meet the total fluid demands of the Kansas City market. It was Mid-Am's position that the reduction in the availability of its local producer milk should be offset by forcing other suppliers on the market to supply greater quantities of milk to distributing plants.

This argument, however, does not provide any foundation for adopting year-round shipping requirements. By implication, the cooperative's position in this regard suggests that the supply plants currently pooled under the order are meeting only the minimum shipping requirements during the qualifying period and then failing to make needed shipments to distributing plants during the period in which shipments are not required by the order. The record provides no evidence that this is the case. Instead, it appears that supply plants are making milk supplies available to distributing plants when the milk is needed.

One of the goals of the proponents for eliminating the automatic pooling feature for supply plants was to prevent the possible pooling of milk not previously associated with the market and not reasonably needed to supply the fluid requirements of the market. The record does not indicate that this is a problem in the market now or that there is any impending attachment of substantial milk supplies to the market that might be a disruptive factor for producers.

The record in this proceeding does not provide a compelling basis for concluding that year-round shipping requirement provisions for supply plants are essential to assure adequate supplies of milk at distributing plants for fluid use in this market. Accordingly, such provisions are denied.

The order should be amended to provide, however, for a temporary upward or downward adjustment of the shipping percentages for supply plants if the Director of the Dairy Division determines that additional supplies are needed at distributing plants or that fewer shipments to such plants are needed. The adjustment should be limited to 20 percentage points.

Under such an arrangement, the Director would investigate the need for revision, either on his own initiative or at the request of interested persons. If the investigation showed that a revision might be appropriate, the Director would issue a notice stating that a temporary revision of the shipping requirements is being considered and inviting views of interested persons with respect to the proposed revision. After evaluating such views, the Director should then decide whether a temporary revision is warranted.

The evidence developed regarding the supply plant pooling issue suggests the possibility that significant changes affecting the market's supply-demand situation could develop for a short time which warrants an immediate adjustment (up or down) in the shipping percentages. Under the current order provisions, a change in the shipping requirement for supply plants can be accomplished only through a time-consuming amendment proceeding or by suspension. Such changes that could be accomplished through suspension, however, are limited, because of procedural requirements, to relaxing rather than increasing the shipping requirements. Inclusion of a provision to adjust temporarily supply plant shipping percentages will enhance the ability of the order to deal with short-run emergency situations on a timely basis.

Any such temporary revision of shipping percentages is intended only to meet an emergency situation and, therefore, should be of short duration. Also, the implementation of this provision is not intended to assure distributing plant operators of a supply of milk for their total plant operations. Some plant operators manufacture "soft" products (Class II items) in conjunction with their fluid milk operations and their need for milk extends to these items also. This provision is intended to encourage the movement of milk supplies to distributing plants for Class I use only on those occasions when the relationship of supplies to sales changes in such a way as to warrant a temporary increase in shipping percentages. Similarly, action might be needed to reduce the shipping percentages

temporarily to prevent uneconomic shipments solely for pooling. The adoption of provisions for a temporary adjustment of the shipping percentages will add a degree of flexibility to the supply plant pooling provisions that is not now available in the case of emergency situations.

AMPI opposed the adoption of this provision to provide for temporary changes in shipping percentages. The spokesman for the cooperative was concerned that it would have little practical effect on making additional supplies available to distributing plants because of the relatively small quantities of supply plant milk pooled. He also stressed that the procedures that would have to be followed in implementing a temporary adjustment would be lengthy and would place an undue burden of responsibility on the Director of the Dairy Division. He believed such a temporary revision could interfere with the normal supply arrangements that a distributing plant operator enters into with a supplier. He concluded that any need to adjust shipping standards to meet an emergency supply situation could be accomplished equally or more efficiently through an emergency amendment proceeding.

These are valid concerns. However, a provision similar to the one proposed herein has been in the Chicago Regional order since 1969. Experience with this provision indicates that it can be used effectively during an emergency, either to increase or decrease supply plant shipping requirements. The extent to which the provision would make additional supplies available to distributing plants would depend, of course, on the proportion of the market's supply associated with supply plants and the already existing level of shipments by such plants at the time.

There is no basis to conclude that a provision for a temporary change in the shipping percentage would interfere with the normal supply arrangements that a distributing plant operator enters into with a supplier. As noted, a temporary change in the shipping percentage would be invoked only after it was determined that an emergency situation of short duration existed affecting the supply-demand relationship of milk for fluid purposes in the market. We cannot see that this provision would cause a distributing plant operator not to arrange in advance for a regular supply of milk through normal channels, as the spokesman for AMPI contended.

We agree that the hearing process is the preferable method of dealing with

the need to adjust shipping requirements. This is the method that is followed in considering any amendment to a Federal milk order. It provides a satisfactory means of obtaining public participation in considering what the provisions of a milk order should be. Nevertheless, some flexibility in adjusting supply plant shipping percentages is desirable to deal with possible emergency situations that cannot be resolved on a timely basis through the hearing process or by suspension procedures.

Finally, we cannot agree that the provision for adjusting shipping percentages on a temporary basis would place an undue burden of responsibility on the Director of the Dairy Division. Temporary adjustments would not be made without a careful review of the marketing conditions involved. Additionally, industry views would be sought and carefully reviewed. These procedures should provide a reasonable basis for determining whether or not there is a need to temporarily revise shipping percentages.

For these reasons, the points raised by AMPI in opposition to the provision for a temporary revision of the supply plant shipping percentages are not compelling and provide no basis to conclude that such a provision should not be adopted.

The provision adopted herein for temporary changes in the pooling standards provides that any such upward adjustment for the months of February through August should apply only to supply plants that have qualified for automatic pooling on the basis of shipments in the preceding September-January period. A supply plant that becomes associated with the market in the February-August period and was not a pool supply plant in each of the preceding months of September-January should have to meet only the regular 50 percent shipping requirement now provided in the order if it is to qualify for pool status. Also, if a plant which would not otherwise qualify for pooling would become a pool plant as a result of a temporary reduction in the shipping percentage by the Director during the September-January period, the operator of such plant should be permitted to retain nonpool status for such plant. This may be accomplished if the operator of such plant files a written request for nonpool status with the market administrator at the time the report is filed for such plant pursuant to § 1064.30.

As part of its proposal to revise pooling standards for supply plants, Mid-Am proposed that only the net amount of milk shipped during the

month to a pool distributing plant from a supply plant be counted as qualifying shipments for pooling the supply plant. The purpose of the proposal, as stated by the proponent, is to remove the incentive for manufacturing plants to gain entry to the market pool by means of having a distributing plant receive the necessary qualifying shipments of milk and then shipping the milk back to the manufacturing plant. As proposed, only that quantity of the supply plant's shipments not offset by return shipments would count toward meeting the minimum shipping requirement for the supply plant.

This proposal should not be adopted. The spokesman for the cooperative did not present any specific testimony on this issue other than merely offering the proposal. Moreover, the record provides no evidence of marketing problems that would warrant the implementation of a safeguard against such exploitation of the pool.

At the hearing, AMPI proposed that a supply plant operated by a cooperative association be allowed to move milk directly from member producers' farms to pool distributing plants and have such deliveries count as though they were shipments from the supply plant for purposes of meeting the supply plant shipping requirements. A similar proposal was made at the hearing by Fairmont, differing only to the extent that such deliveries would count as qualifying shipments for both proprietary and cooperative operated supply plants.

Current order provisions provide that only that milk which is physically received at a supply plant and then moved to a pool distributing plant count toward meeting the supply plant shipping requirements.

Both proponents indicated that their proposals were designed to facilitate the efficient handling of milk of producers who are associated with a supply plant. Fairmont's representative testified that if producers associated with a supply plant are located closer to a distributing plant that is purchasing milk from such supply plant, the milk should be permitted to move directly from such producers' farms to the distributing plant. The witness indicated that this would eliminate the costs involved in first receiving such milk at the supply plant and then reloading and shipping the milk to distributing plants.

AMPI's spokesman testified that his association, through its North Central Region, operates a pool supply plant at Jesup, Iowa, which is located about 300 miles from the Kansas City metropolitan area. The witness stated that producers

associated with this plant are all located in the general vicinity of the plant. In addition, he said that AMPI's Southern Region supplies some pool distributing plants directly from producer members' farms located nearer fluid outlets than the Jesup plant. AMPI's witness stated that presently the association qualifies its Jesup plant primarily on the basis of supplying distributing plants in the Kansas city area with bulk skim milk. He testified that the intent of the proposal was to have the milk being moved from farms directly to distributing plants by the Southern Region count toward the qualification of the Jesup plant as a pool plant under the order.

It is true, as proponents point out, that there are situations where moving milk directly from producers' farms to distributing plants is an efficient way to handle producer milk associated with a supply plant. Under such circumstances, it would be appropriate to allow the supply plant operator to divert some of his producer milk to distributing plants and receive a credit towards meeting the shipping requirements for a pool supply plant. This type of situation, however, was not demonstrated on the record.

The efficient handling of milk that AMPI desired to achieve through its proposal was not related to milk that normally is physically associated with its Jesup supply plant. Instead, the cooperative's proposal was designed to assure continued pool status for its supply plant primarily on the basis of milk moved directly from members' farms to distributing plants by AMPI's Southern Region rather than milk located in the proximity of the Jesup plant. In this case, there is little similarity to the usual operation of a supply plant where milk of producers associated with such plant is physically received at the plant for assembly into larger units for transshipment to pool distributing plants. In fact, the basis upon which AMPI desires to pool its Jesup plant is similar to a cooperative that qualifies one or more of its balancing plants on the basis of the cooperative's total milk movements to distributing plants either by transfer or directly from member producers' farms. Since the order already provides for this type of pooling arrangement for a cooperative association, there is no further need to extend it to the pooling of a supply plant as proposed by AMPI.

Moreover, the actual operational experience of the Jesup plant that was testified to by AMPI's spokesman suggests the possibility that none of the producer supply of the plant is so situated that it could move to

distributing plants directly from farms. Additionally, and as noted previously, the Jesup plant obtains pool status under the order primarily on the basis of skim milk transfers from the plant to pool distributing plants. Obviously, direct shipments cannot be used to replace such transfers when producer milk first must be separated at the plant to obtain skim milk. Under these existing marketing situations, AMPI's proposal to allow a supply plant to count deliveries from farms to distributing plants as qualifying shipments for pooling would have no practical application to its Jesup operation.

As noted, there are two other supply plants that are qualified as pool plants under the order. The record, however, does not provide any information regarding these plants' marketing and procurement practices insofar as determining whether proponents' desired pooling standards is appropriate for these plants.

Accordingly, the record provides no evidence of marketing problems that would warrant allowing a supply plant to meet its qualifying shipments to distributing plants either by transfers from the supply plant or deliveries directly from producers' farms.

The order now provides that route disposition in the marketing area from a supply plant may count as a qualifying shipment for pooling purposes. In conjunction with its proposal to change the pooling standards for a supply plant, Mid-Am proposed that route disposition in the marketing area no longer count as a qualifying shipment. It claimed that this provision was unnecessary since none of the pool supply plants associated with the market have any route disposition.

No useful purpose is served by continuing to include route disposition in the marketing area as a qualifying shipment for supply plants. Such plants customarily do not engage in the distribution of packaged fluid milk products on routes, and the provision is no longer needed to accommodate any particular plant operation in the market. This change would have no impact on any of the supply plants now pooled under the order.

No action is taken on AMPI's proposal that a supply plant which fails to qualify as a pool plant in any one month nevertheless be permitted to remain pooled for such month if it was a pool supply plant in each of the three immediately preceding months. This suggested change was necessary, according to AMPI's spokesman, only in the event that year-round shipping requirements are adopted. Since it is

concluded herein that year-round shipping requirements for supply plants are not needed, this removes the basis for any further consideration of proponent's proposal for the implementation of such a "depooling" safeguard.

At the hearing, Fairmont proposed that a "unit system" of pooling supply plants be provided. This should not be adopted. The spokesman for the handler did not present any specific testimony on this matter other than merely offering the proposal. There was no other testimony regarding this issue.

2. *Diversion of producer milk.* The rules concerning the diversion of producer milk from pool plants should be revised to permit a pool supply plant to divert producer milk to nonpool plants.

AMPI proposed that diversions be permitted from any pool plant and not just from pool distributing plants. The spokesman for AMPI testified that the purpose of the proposal is to enable the cooperative to move their members' milk not needed for fluid use directly from farms to manufacturing plants and thus remove the need to receive such milk first at its supply plant for further movement to nonpool plants solely for the purpose of maintaining producer milk status for such milk under the order.

AMPI operates a pool supply plant at Jesup, Iowa. Its spokesman indicated that although it supplies pool distributing plants on a regular basis, these plants, however, do not require delivery of milk each day. He indicated that since the present order does not permit a supply plant to divert milk, it is necessary that such reserve milk supplies be physically received at the Jesup plant and reloaded for transfer to an Arlington, Iowa, nonpool plant for manufacturing. Only through this procedure, according to the witness, can all of the milk associated with the Jesup plant maintain producer milk status under the present order. The spokesman pointed out that this entails a substantial amount of uneconomic hauling and handling of the plant's reserve milk supplies. In AMPI's view, its proposal would provide a more economical method for supplying milk to pool plants and in disposing of reserve milk supplies.

The proposal was supported by Fairmont and Mid-Am. The Mid-Am witness testified that it also could effectuate savings in its marketing operation if such a proposal were adopted.

The order should promote the most efficient handling of milk. To this end,

the operator of a pool supply plant should be permitted to divert producer milk to a nonpool plant and still have such milk pooled and priced under the order. Without allowing for this (which is the situation under the present order), the operator of a pool supply plant wishing to retain his regular producers on his plant's payroll for the entire month would have to physically receive the milk at his plant, then pump it back into a truck for transshipment to the nonpool plant. In such case, the milk involved would be considered producer milk under the order with the transferring handler (the operator of the pool supply plant) accounting to the pool for the milk and paying the producers as well.

Obviously, this practice is uneconomic, resulting in unnecessary and costly handling of milk not needed for the fluid market. In addition, the extra handling and pumping of the milk may damage its quality. Permitting a pool supply plant to divert to nonpool plants will promote efficient handling and disposition of reserve milk supplies.

As provided herein, milk diverted from a supply plant would be included in the plant's receipts for purposes of determining whether or not the plant meets the pooling standards. This conforming change recognizes that the milk of producers diverted from a supply plant is part of the supply of such plant. Moreover, without this change, the current 50 percent minimum shipping requirement for a pool supply plant could be effectively reduced depending on the extent of such plant's total diversions.

#### Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

#### General Findings

The following findings and determinations supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed.

except where they conflict with those set forth below.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act:

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

#### Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions of it would be the same as those contained in the order that is proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Greater Kansas City marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

1. In § 1064.7, paragraph (d)(6) is revised by revoking the phrase "direct marketing area route disposition, except filled milk, and", and paragraph (b) is revised to read as follows:

#### § 1064.7 Pool plant.

(b) A supply plant from which during the month 50 percent or more of the Grade A milk received at such plant from dairy farmers and handlers described in § 1064.9(c) (including milk diverted from such plant pursuant to § 1064.13(c) but excluding milk diverted to such plant pursuant to § 1064.13(c)) is shipped from such plant as fluid milk products, except filled milk, to and received at pool distributing plants, subject to the following conditions:

(1) A supply plant which is a pool plant under this paragraph during each

month of September through January shall be pooled for the following months of February through August if the required percentage pursuant to this paragraph is not met, unless the plant operator files a written request with the market administrator that such plant not be a pool plant, such nonpool status to be effective the first month following such request and thereafter until the plant qualifies as a pool plant on the basis of shipments.

(2) The shipping percentage specified in this paragraph may be increased or decreased temporarily for any of the months of September through January up to 20 percentage points by the Director of the Dairy Division if the Director finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. For any of the months of February through August, a minimum shipping percentage of up to 20 percent may be established by the Director for all pool supply plants that are qualified as a pool plant pursuant to paragraph (b)(1) of this section. Before making such a finding, the Director shall investigate the need for revision, either at the Director's initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that revision is being considered and inviting data, views, and arguments. If a plant which would not otherwise qualify as a pool plant during the month qualifies as a pool plant because of a reduction in shipping requirements pursuant to this subparagraph, such plant shall be a nonpool plant for such month if the operator of the plant files a written request for nonpool plant status with the market administrator at the time the report is filed for such plant pursuant to § 1064.30.

\* \* \* \* \*

2. In § 1064.13, paragraph (c) is revised to read as follows:

**§ 1064.13 Producer milk.**

\* \* \* \* \*

(c) Diverted, subject to the following conditions, from a pool distributing plant to a pool supply plant or from a pool plant to a nonpool plant that is not a producer-handler plant. "Diverted milk" is milk normally received at a pool plant but which is moved directly from a dairy farm to a nonpool plant as specified in this paragraph or from a pool distributing plant to a pool supply plant for the account of a handler operating the pool distributing plant or a handler described in § 1064.9(b). Such milk shall be deemed to have been received by the diverting handler at the

location of the pool plant from which diverted except that milk diverted to a plant located more than 125 miles by the shortest highway distance as determined by the market administrator from the nearest of the City Halls of Kansas City, Missouri, or Topeka, Kansas, shall be deemed to have been received at the location of the plant to which diverted in applying §§ 1064.52 and § 1064.75:

(1) A handler described in § 1064.9(b) may divert for its account the milk of any member producer whose milk is received at a pool plant for at least 1 day's delivery during the month, without limit during the other days of the month. The total quantity of milk so diverted may not exceed the larger of the following amounts:

(i) The total quantity of its member producer milk received at all pool plants during the current month, or

(ii) The average daily quantity of its member producer milk received at pool plants during the previous month, multiplied by the number of days in the current month.

(2) A handler operating a pool plant may divert for his account the milk of any producer, other than a member of a cooperative association which has diverted milk pursuant to paragraph (c)(1) of this section, whose milk is received at the handler's pool plant for at least 1 day's delivery during the month, without limit during the other days of the month. However, the total quantity of milk so diverted may not exceed the larger of the following amounts:

(i) The total quantity of milk received at such plant during the current month from producers who are not members of a cooperative association that has diverted milk pursuant to paragraph (c)(1) of this section; or

(ii) The average daily quantity of milk received at such plant during the previous month from producers who are not members of a cooperative association that has diverted milk in the current month pursuant to paragraph (c)(1) of this section, multiplied by the number of days in the current month.

(3) Diversions in excess of the applicable percentages pursuant to paragraph (c)(1) and (2) of this section shall first be assigned to diversions to nonpool plants and any excess quantity assigned to nonpool plants shall not be producer milk and shall not be deemed to have been received by the diverting handler. The diverting handler shall specify the dairy farmers whose milk shall not be included as producer milk pursuant to this subparagraph. Excess diversions to a pool supply plant shall

be producer milk at the supply plant in applying §§ 1064.7, 1064.52 and 1064.75.

(This recommended decision constitutes the Department's Draft Impact Analysis Statement for this proceeding.)

Signed at Washington, D.C., on: July 24, 1979

Irving W. Thomas,  
Acting Deputy Administrator, Marketing  
Program Operations.

[FR Doc. 79-23350 Filed 7-27-79; 8:45 am]

BILLING CODE 3410-02-M

[7 CFR Part 1065]

Docket No. AO-86-A39I

**Milk in the Nebraska-Western Iowa Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and To Order**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

**SUMMARY:** This decision recommends certain changes in the order provisions pertaining to location adjustments for pricing producer milk and pool plant qualification standards for supply plants. It also recommends adoption of a charge for late payments by handlers to the market administrator. The decision is based on industry proposals considered at a public hearing held October 24-27, 1978. The recommended changes are necessary to reflect current marketing conditions and to assure orderly marketing in the area.

**DATE:** Comments are due August 20, 1979.

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

**FOR FURTHER INFORMATION CONTACT:** Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-7183.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding:

Notice of Hearing: Issued September 29, 1978; published October 4, 1978 (43 FR 45881).

Extension of time for filing briefs: Issued January 15, 1979; published January 19, 1979 (44 FR 3988).

**Preliminary Statement**

Notice is hereby given of the filing with the Hearing Clerk of this

recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Nebraska-Western Iowa marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, United States Department of Agriculture, Washington, D.C., 20250, by August 20, 1979. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Omaha, Nebraska, on October 24-27, 1978. Notice of such hearing was issued September 29, 1978 (43 FR 45881).

The material issues on the record of the hearing relate to:

- 1) Pooling standards for supply plants.
- 2) Diversion of producer milk.
- 3) Class I price zones and location adjustments.
- 4) Payments to producers and cooperative associations.
- 5) Charges on overdue accounts.
- 6) Market administrator's reports and announcements concerning classification.

#### Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

##### 1. Pooling standards for supply plants.

Several modifications should be made in the pooling standards for supply plants.

*First*, the period during which a supply plant must ship milk to a pool distributing plant to be eligible for automatic pooling status in a later period should be changed from September through December to September through March. Correspondingly, the months of automatic pooling should be changed from January through August to April through August.

*Second*, producer milk that is delivered by the operator of a supply plant directly from producers' farms to pool distributing plants should count as qualifying shipments from the supply plant for purposes of determining the

supply plant's pooling status. However, the quantity of direct deliveries that may count as qualifying shipments should be limited to 50 percent of the total shipments required for pooling.

*Third*, the Director of the Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, should be given authority to increase or decrease supply plant shipping requirements by 20 percentage points if additional shipments are needed or to prevent uneconomic shipments to distributing plants.

Presently, a supply plant must transfer 40 percent of its receipts of milk to pool distributing plants during the month to qualify as a pool plant. However, if the supply plant qualifies as a pool plant during each of the months of September through December, it automatically qualifies as a pool plant during the following months of January through August without having to meet any minimum shipping requirement.

The order also provides that a supply plant operated by a cooperative association may qualify as a pool plant on the basis of the cooperative's total milk movements to distributing plants either by transfer or directly from member producers' farms. Under this provision, a plant operated by a cooperative qualifies as a pool plant if at least 51 percent of the cooperative's milk pooled each month is delivered to pool distributing plants of other handlers. For the purpose of this discussion, such a plant shall be referred to as a "cooperative balancing plant."

Several proposals dealing with supply plant performance standards were considered at the hearing. Mid-America Dairymen, Inc. (Mid-Am), proposed that shipping requirements be increased to 50 percent of Grade A receipts during each of the months of September through December and 30 percent during each of the months of January through August. It also proposed that the market administrator be given the authority to increase or decrease these shipping requirements by 20 percentage points if he finds such revision is necessary to obtain needed milk shipments or to prevent uneconomic shipments.

A proposal by Wells Dairy, Inc., would increase the supply plant shipping requirements to 60 percent each month, except that if a supply plant qualified as a pool plant during each of the months of August through December, it would have to ship only 40 percent of its receipts during the following months of January through July.

A proposal by Roberts Dairy Company would have increased

shipping requirements for supply plants to 50 percent each month of the year. At the hearing, however, proponent withdrew its proposal and said it would instead support either Mid-Am's proposal or the proposal of Wells Dairy. The proposal of Roberts Dairy was not supported by any other interested party.

Fairmont Foods Company also proposed that supply plants be required to ship every month of the year. Fairmont proposed that shipping requirements be equal to about 90 percent of the projected Class I utilization for the month and that such shipping requirement be announced on the 5th day of the month. In further elaboration of its proposal, a spokesman for Fairmont indicated that supply plant operators should be allowed to include deliveries directly from producers' farms to pool distributing plants as part of their qualifying shipments.

Associated Milk Producers, Inc., also proposed a modification of the present supply plant pooling standards. AMPI proposed that the present 40 percent shipping requirement be maintained but that a cooperative association that operates a supply plant be allowed to include as qualifying shipments from the plant milk that is delivered directly from producers' farms to pool distributing plants.

A proposal by Kraft, Inc., provides for two options under which a supply plant could qualify for pool plant status. The first option would modify the present supply plant provision by allowing supply plant operators to include, as qualifying shipments, milk delivered directly from producers' farms to pool distributing plants.

The second option proposed by Kraft would provide for what may be called a "reserve supply plant" provision. Under this provision, which would be restricted to supply plants in the marketing area or within 100 miles of the nearest edge of the marketing area, a handler would notify the market administrator of his estimated receipts for the month, and the market administrator would call on the handler to ship milk when and where it was needed that month. The market administrator would have to give the handler 24 hours' notice for such shipments and could not require the handler to ship more than 90 percent of the milk received by the handler on any given day. For the entire month, a handler could not be required to ship a percentage of its supply that is higher than the Class I utilization for the same month of the preceding year.

Basically, two views emerged at the hearing regarding pooling standards for

supply plants. One view held that higher supply plant shipping standards are needed to offset a shortage of milk at distributing plants caused by Mid-Am's recent decision to hold back pooled milk for its manufacturing operations. This view formed the basis for the several proposals that would require significantly higher shipping requirements for supply plants.

A second view presented at the hearing was that there is no shortage of milk for the fluid market; that any so-called shortage was a contrived shortage; that higher shipments were not needed; and that more milk could be made available to pool distributing plants if the order would permit supply plant operators to ship milk to distributing plants directly from producers' farms.

A representative for Mid-Am, which is the market's major supplier of raw milk, testified that his organization has been shipping an ever-increasing percentage of its milk to pool distributing plants, thereby resulting in a decreasing volume of milk available for processing at its manufacturing plants. He claimed that at the same time other suppliers (i.e., supply plant operators) have been holding back milk for manufacturing purposes. This, he said, has resulted in an increasing difference in manufacturing plant efficiencies between those organizations shipping a large percentage of their milk to pool distributing plants and those shipping lower percentages. The end result, according to this witness, has been that Mid-Am has been at a competitive disadvantage in terms of pay prices to producers as its manufacturing plants have become less and less efficient because of the reduced volume of milk being processed.

The witness indicate further that Mid-Am concluded that it could no longer continue to supply the fluid needs of the market at levels which were considerably above those required by the order.<sup>1</sup> Mid-Am then advised handlers of its decision to reduce fluid sales in order to improve the efficiency of its manufacturing plants.

After trying to secure alternative supplies of milk, these handlers asked Mid-Am to develop an import program to secure the necessary supplies of milk. According to the witness, Mid-Am then arranged to import milk from plants in the Upper Midwest and Chicago Regional order markets. Mid-Am charged handlers 12 cents per

hundredweight on all milk (pooled milk as well as imported milk) purchased from Mid-Am.

Mid-Am's witness pointed out that in September 1978, when Mid-Am imported 4.5 million pounds of milk from plants regulated under other orders, the Class I utilization in the Nebraska-Western Iowa market was only 51 percent. This witness stressed that the need to import this milk would not have been necessary if the order had required realistic shipments from supply plants. He said that presently a supply plant could qualify for pooling by shipping only 13 percent of its annual receipts to pool distributing plants.<sup>2</sup> While noting that this figure is below the percent shipped by all supply plants during the period from 1977 through September 1978, he emphasized it is well below the 78 percent shipped by Mid-Am during this period.

The witness summarized Mid-Am's position by stating that Mid-Am did not intend to ship milk at the levels it has in the past to the detriment of the economic position of its members when other suppliers on the market are not shipping comparable amounts. He therefore maintained that the order should be amended to force other parties in the market to ship more milk in order to fill this void.

Several distributing plant operators or their representatives testified about the "shortage" of milk in the market. While disturbed about the higher price charged by Mid-Am, almost all witnesses acknowledged an understanding of Mid-Am's position—in particular, the need to stay competitive in terms of producer pay prices with other cooperatives and proprietary handlers who were competing for producers. On questioning, these witnesses conceded that there was not an actual shortage of milk in the market, but that instead a profitable manufacturing milk market was making it very difficult to attract supplies of milk for their total plant needs at a price which the distributing plant operators considered reasonable.

The distributing plant operators claimed that the order was failing in its alleged objective of making adequate supplies of milk available to distributing plants for their total Class I and Class II needs at competitive prices. In support of this claim, they emphasized that the 12-cent per hundredweight additional import charge for all milk purchased from Mid-Am distorted their milk costs and impeded their ability to compete

with handlers in surrounding nearby Federal order markets. It was their belief that they should not have to pay "exorbitant" over-order prices to obtain adequate supplies while at the same time many of the pool supply plants are engaged principally in cheese production.<sup>3</sup> It was their contention that the order should "force" milk out of these supply plants by requiring them to ship a higher percentage of their milk supply to distributing plants.

A representative of Fairmont Foods testified that his company had no objection to allowing all Grade A producers in the area to share in the marketwide pool. However, he said, such producers and the plants to which they ship should have an obligation to contribute their fair share toward supplying the Class I and Class II needs of the market. In this connection, he indicated that, as the number of supply organizations and supply plants with extensive manufacturing capabilities increases, shipping requirements must be higher to assure that all such operations are furnishing their fair share of milk for the Class I and Class II needs of the market.

AMPI opposed the proposals to increase the supply plant shipping percentages. The spokesman for the cooperative indicated that higher shipping requirements would not make more milk available to distributing plants, as proponents claimed, but could in fact cause milk supplies to be removed from the market. The witness stressed that higher shipping requirements could result in increased costs to AMPI in qualifying its pool supply plant with such higher costs being borne by producers and consumers. He maintained that the order's present 40 percent shipping requirement is proper and provides the necessary transition in supply plant pooling standards between the lower Class I utilization markets to the north and the higher utilization markets to the south of the Nebraska-Western Iowa market. The cooperative's spokesman stated further that he believed that the supply problem of distributing plants was not related to the order's pool plant shipping requirements but was due, instead, to a business decision of Mid-Am to retain pooled milk in its plant for manufacturing.

Kraft, which operates a pool supply plant in the market, also opposed the proposals to increase the supply plant shipping requirements on the basis that a need for an increase in shipping requirements is not supported by market

<sup>3</sup>Most of the supply plants referred to throughout this decision are manufacturing plants specializing in cheese production.

<sup>1</sup>During the first 9 months of 1978, Mid-Am shipped from 68 to 89 percent of its milk supply on this market to pool distributing plants. The order requires at least 51 percent each month under the pooling provisions being used by Mid-Am.

<sup>2</sup>This apparently is derived by multiplying the 40 percent supply plant shipping requirement by the 4 qualifying months of September-December and then dividing the product by 12.

requirements. The spokesman for the handler stated that pooling standards must reflect the Class I needs of the market. He stated that its proposal to pool a supply plant as a reserve supply plant provided the most practical and efficient method of meeting the objectives of the order's supply plant provisions by providing for supply plant shipments to the market when such shipments are needed and by avoiding the costly inefficiencies inherent in requiring shipments in excess of the market's needs.

He also testified that Kraft is willing to ship its pro rata share of milk supplies to distributing plants, but that Kraft has not been able to consistently do so for several reasons. He said that distributing plant operators do not want to replace direct-ship milk with supply plant milk; that distributors do not receive milk 7 days a week; and that bad weather has often made it difficult to ship the milk, especially since the milk first has to be received at its supply plant and then transhipped to a distributing plant. He indicated that allowing shipments directly from producers' farms to pool distributing plants to count as qualifying shipments for supply plants would make it easier for Kraft to associate more of its milk supply with pool distributing plants.

Five other proprietary supply (cheese) plant operators also testified with respect to changing the pooling standards for supply plants. While opposed to any increase in the shipping requirements, these handlers testified in support of allowing deliveries directly from producers' farms to count as qualifying shipments for their supply plants. They stated that this change would allow them to deliver milk more efficiently. They cited several examples where their farm pick-up trucks go right by a distributing plant on the way to their supply plants. The milk then has to be unloaded at their plants and then reloaded and shipped back to the distributing plant.

One supply plant operator described how he would be able to make more milk available to distributing plants if the milk could move directly from producers' farms. He said that the cost of having to haul milk first to this plant and then to a distributing plant often makes it uneconomical to make such sales. In addition, he said at times it has been impossible to find over-the-road tankers to haul milk from his plant to a distributing plant.

It is obvious from the testimony presented that there are rather sharp differences of opinion regarding what proportion of a supply plant's receipts

should be shipped to pool distributing plant to qualify the supply plant as a pool plant. Essentially, however, the minimum shipping requirements of the order should assure that those supply plants that are sharing in the Class I proceeds of the fluid market will make needed milk supplies available to distributing plants for fluid use. It is within this context that supply plant shipping requirements must be considered.

The adoption of substantially higher shipping requirements on a year-round basis, as provided under several proposals, should be based on an indication that distributing plants are experiencing difficulty in obtaining an adequate supply of milk for Class I use. Data introduced into the record show that deliveries of milk to pool distributing plants by all suppliers have consistently been in excess of the fluid needs of such plants. For example, during the 14-month period of August 1977-September 1978, the ratio of total receipts at distributing plants from producers and pool supply plants to total Class I producer milk averaged 125, ranging from a low of 117 in December 1977 to a high of 129 in October 1977 and July 1978. In fact, this ratio was 122 in September 1978, the first month in which Mid-Am held back local supplies for its manufacturing operations. These data indicate that distributing plants are obtaining from all suppliers regularly associated with the market an adequate supply to meet their fluid needs.

The record does not support proponents' claim that an increase in shipping requirements would make available to distributing plants significant quantities of additional milk supplies. An exhibit introduced into the record shows that the 8 supply plants on the market, in fact, have been shipping milk each month during a recent 12-month period at levels substantially above the order's present minimum shipping requirements. In this regard, Table 1 shows the percentage of the producer milk at each of these plants that was shipped to distributing plants during three periods: September-December 1977; January-March 1978; and April-August 1978.

Table 1.—Percentage of Producer Milk Received at Pool Supply Plants That Was Transferred to Pool Distributing Plants in the Nebraska-Western Iowa Market During Selected Time Periods<sup>1</sup>

Handler:	Sep.-Dec. 1977	Jan.-Mar. 1978	Apr.-Aug. 1978
A.....	79	79	77
B.....	68	64	50
C.....	69	57	44

Table 1.—Percentage of Producer Milk Received at Pool Supply Plants That Was Transferred to Pool Distributing Plants in the Nebraska-Western Iowa Market During Selected Time Periods<sup>1</sup>—Continued

	Sep.-Dec. 1977	Jan.-Mar. 1978	Apr.-Aug. 1978
D.....	43	12	11
E.....	53	34	35
F.....	44	33	25
G.....	81	7	6
H.....	52	48	43

<sup>1</sup>For each time period, the percentage for each handler is the simple average of the handler's monthly percentages for that period.

From this table, it can be seen that Mid-Am's proposed shipping requirements of 50 percent during the months of September-December and 30 percent during January-August would not have had much practical effect in making more milk available to distributing plants because most of the supply plants on the market already were shipping well above those levels. Likewise, Fairmont's proposal for higher shipping requirements would have had little effect in this regard during the seasonal low-production months when the greatest need for supply plant milk occurs. Those plants that were below these levels are fairly small plants so that any additional milk made available by an increase in shipments from these plants would have been relatively insignificant. While we recognize that the proposal by Wells Dairy would have required a somewhat higher level of shipments, we do not agree that such an increase can be justified.

Data introduced into the record established that suppliers have consistently delivered more than the Class I needs of pool distributing plants. A substantial quantity of this extra milk is used in Class II products. In 1978, for example, 11.3 percent of milk in its market was used for Class II use.<sup>4</sup> Presumably, such use occurred largely at pool distributing plants in conjunction with the fluid operations of those plants. It is not the intent of the order to require supply plants to ship milk to distributing plants for Class II use. The order provisions are not structured to encourage such movements since this normally is an uneconomic marketing arrangement for producers.

There is no demonstration on the record that a shipping percentage higher than the present 40 percent is necessary to assure that supply plants will make adequate quantities of milk available to distributing plants for fluid use. Instead, it is apparent that distributing plants are

<sup>4</sup>Official notice is taken of "Federal Milk Order Market Statistics" for October, November, and December 1978 published by the Agricultural Marketing Service, USDA.

able to acquire from supply plants whatever milk supplies are needed and when needed for fluid uses. In this connection, it is significant to note that several supply plant operators stated on the record that between the time Mid-Am announced its decision to reduce local supplies to distributing plants and the hearing none of the distributing plant operators had contacted them for supplemental milk supplies.

Although the supply plant shipping requirements should not be increased above the present 40 percent level, several changes should be made in the pooling standards to encourage greater efficiency in supply plant operations and to assure that distributing plants can continue to obtain adequate supplies for fluid uses from supply plants.

As indicated previously, several of the proposals under consideration would provide for year-round shipping requirements for supply plants. Proponents argued that such requirements should be adopted because distributing plants need milk every month of the year and not just during the months when milk production drops off. They also expressed the view that all supply plants in the market should share on a pro rata basis in supplying the needs of the market each month of the year.

The risk in requiring year-round shipments is that at times supply plants may be forced to make uneconomic shipments merely to qualify for pooling. During the months of heavier milk production, practically all of the fluid needs of the market can be met by direct shipments from producers' farms. For this reason, it is preferable in this

market to allow market forces to dictate how much milk is needed from supply plants during the months of highest milk production.

One proposal under consideration, Kraft's, would provide complete flexibility in this regard by requiring no regular shipments from supply plants. Instead, the market administrator would call on supply plants to ship whenever he deemed such shipments were necessary. The problem with this approach is that the market administrator could become overly involved with directing month-to-month and even day-to-day shipments. In addition, he would be in the controversial position of having to determine when additional shipments from supply plants are actually warranted.

There is no doubt that in this market regular shipments are needed from supply plants, as is evident by the fact that supply plants are now shipping well above the minimum levels required by the order. In view of this, it is desirable to maintain at least a minimum level of shipments during those months when the market is most in need of such shipments.

Table 2 indicates that the average Class I utilization of this market during the past 5 years is highest during the months of September through March. During the months of January, February, and March, months when no shipments are now required, the Class I utilization is as high as, or higher than, the utilization during the months of September through December, when shipments must now be made.

these months would not have to meet the shipping requirement during the succeeding months of April through August. This is not to say that no shipments are needed from supply plants during these months; but at the risk of requiring unnecessary shipments, it is preferable to let market forces determine who ships to whom during these months when production is the highest relative to the Class I needs of the market.

The order also should be amended to provide for a temporary upward or downward adjustment of the shipping percentages for supply plants if the Director of the Dairy Division determines that additional supplies are needed at distributing plants or to prevent uneconomic shipments of milk to such plants. The adjustment should be limited to 20 percentage points.

Under such an arrangement, the Director would investigate the need for revision, either at his (her) own initiative or at the request of interested persons. If the investigation showed that a revision might be appropriate, the Director would issue a notice stating that a temporary revision of the shipping requirements is being considered and inviting views of interested persons with respect to the proposed revision. After evaluating such views, the Director would then decide whether a temporary revision was warranted.

The evidence developed regarding the supply plant pooling issue suggests the possibility that an emergency situation affecting the market's supply-demand situation could develop for a short time which warrants an immediate adjustment (up or down) in the shipping percentages. Presently, any needed change in the shipping requirement for supply plants can be accomplished only through a time-consuming amendment proceeding or by suspension. Such changes that could be accomplished through suspension, however, are limited because of procedural requirements to relaxing rather than increasing shipping requirements. Inclusion of a provision to adjust temporarily supply plant shipping percentages will enhance the ability of the order to deal with short-run emergency situations on a timely basis.

AMPI opposed the adoption of this type of provision. The spokesman for the cooperative contended that there has been very limited experience in other markets in using the "call" pooling feature and that its impact basically remains untested. He also stressed that the procedures that would have to be followed in implementing the temporary

TABLE 2.—Class I Utilization in the Nebraska-Western Iowa Market, 1974-78<sup>1</sup>

	1974	1975	1976	1977	1978	Average
January.....	61	55	57	50	56	56
February.....	59	54	53	49	57	54
March.....	55	53	54	50	56	54
April.....	53	54	50	48	50	51
May.....	47	48	44	44	48	46
June.....	42	44	42	44	44	43
July.....	44	46	43	44	44	44
August.....	47	50	44	49	47	47
September.....	53	59	50	56	51	54
October.....	58	61	53	57	50	56
November.....	58	57	55	60	49	56
December.....	53	56	51	58	50	54
Average.....	52	53	49	50	50	

<sup>1</sup> Official notice is taken of the 1975 and 1976 annual summaries of "Federal Milk Order Market Statistics" published by the Agricultural Marketing Service, USDA.

These data lead to the conclusion that the order should be amended to include January, February, and March, along with September, October, November,

and December, as the months during which minimum shipments are required from supply plants. A supply plant that meets the shipping requirement during

adjustment would be lengthy. He concluded that any need to adjust shipping standards to cope with emergency situations could be accomplished equally well through an emergency amendment proceeding.

A provision virtually identical to the one proposed herein has been in the Chicago Regional order since 1969. The record of this hearing provides no indication that this type of provision has not operated satisfactorily in that market. Moreover, through this type of provision the pooling standards can be changed on very short notice. By contrast, the amendment proceeding has become, if anything, more cumbersome as various new hearing procedures have been implemented. For this reason, we believe that inclusion of the proposed temporary revision of the supply plant shipping percentage would be of benefit to the market in an emergency situation and, therefore, should be adopted.

To the extent possible, the order should encourage milk to move to distributing plants in the most efficient way possible. One means of providing greater efficiency in milk handling practices in this market is to allow handlers to count as a qualifying shipment from their supply plants milk that they deliver directly from producers' farms to distributing plants. The attached proposed order provides for this by allowing a supply plant to qualify as a pool plant on the basis of direct deliveries from producers' farms as well as transfers from the plant.

Current order provisions provide that only transfers to pool distributing plants count towards meeting the supply plant shipping requirement. Testimony indicates that because of this requirement milk pooled through supply plants is being received at such plants, reloaded into tank trucks, and then delivered to pool distributing plants when some of the milk could be delivered more efficiently directly to distributing plants initially. Also, a further deterrent under the current order provisions to moving the milk directly from farms to distributing plants is the requirement that the distributing plant operator be the accountable handler for the milk rather than the supply plant operator. In this case, the producers would receive payment through the distributing plant rather than the supply plant. Allowing direct deliveries to count as qualifying shipments would remove the need to supply milk through a supply plant for purposes of pooling the supply plant or maintaining the producers on the supply plant operator's payroll.

The amount of direct-ship milk that can be used to qualify a supply plant as a pool plant should be limited to 50 percent of the plant's total required shipments for pooling. Also, a supply plant operator's deliveries of producer milk directly to distributing plants from producers' farms should be limited to those producers who are located within 150 miles of the supply plant (as based on the post office address of the producer). Although these limitations were not proposed at the hearing, the current milk handling arrangements in this market do not indicate a need for modifying the pooling standards to the extent proposed.

A supply plant customarily demonstrates its association with the fluid market by shipping milk to distributing plants for fluid use. Normally, the supply plant obtains such milk from producers who are located within a reasonable hauling distance from the supply plant. As indicated at the hearing, some of the producers associated with a supply plant are located between the supply plant and the distributing plant to which the supply plant is shipping milk. Presumably, other producers delivering milk to the supply plant are located more distant from the distributing plant than the supply plant. While the procurement patterns may vary somewhat among the supply plants in the market, it is reasonable to presume that the limited change in the pooling standards would adequately accommodate most supply plants that desire to move part of their milk supply directly from farms to distributing plants.

Permitting a supply plant to qualify for pooling solely on the basis of direct deliveries not only would go beyond what is needed in the market but also could result in the development of milk handling arrangements not typical of supply plant operations that could be disruptive to the fluid market. If a pool supply plant did not have to ship milk received at the plant, a manufacturing plant located quite some distance from the market could attach itself to the market merely through the delivery of milk to pool distributing plants from producers located near the market center who had no real association with the manufacturing plant. This could result in the attachment of new milk supplies to the market solely for manufacturing with little intent on the part of the plant operator of making such milk available for fluid use. Also, without some limitation regarding the producers whose milk may be diverted, a supply plant operator could seek out

producers anywhere in the milkshed without regard to whether they are located within a reasonable hauling distance of the supply plant. This could be disruptive to the normal procurement arrangements of other handlers. The order changes adopted herein are intended to accommodate the supply plant operations as they now exist in the Nebraska-Western Iowa market. They should not encourage new milk handling arrangements that could result in disorderly conditions for the market.

Additionally, limiting the amount of direct deliveries that can count as a qualifying shipment for a supply plant provides a distinction from an operational standpoint between a pool supply plant and a cooperative balancing plant. The order now provides that milk delivered directly from farms to distributing plants can count as a qualifying shipment, without limitation, in the case of a balancing plant operated by a cooperative association (§ 1065.7(c)). Under this type of pooling arrangement, the cooperative must deliver 51 percent of its member producer milk to distributing plants each month of the year to qualify such plant. Also, no automatic pooling status is provided during the heavy production months, as is the case for pool supply plants.

Under this pooling arrangement, a situation could arise where a supply plant operator, although having met the overall shipping requirement, failed for some reason to transfer a sufficient quantity of milk from the supply plant itself to meet this facet of the shipping standard. In administering the order in this case, a portion of the supply plant operator's diversions to distributing plants should not be considered as part of the supply plant's total receipts if this would result in the plant meeting the shipping standard. The milk disassociated from the supply plant would be whatever amount is necessary to make the remaining diversions to distributing plants equal (or be less than) the quantity of transfers to such plants. The disassociated milk should then be treated as producer milk of the distributing plant operator, who would be required to account to the pool for such milk and pay the producers involved. Under this situation, it would be necessary for the supply plant operator to designate the dairy farmers who are to be disassociated from the supply plant. If he fails to do so, then the plant should not qualify as a pool plant.

The disassociation of some of a supply plant's diverted milk would result in the pooling of the supply plant only in those cases where a large

proportion of the plant's total supply had been moved to distributing plants. As one reduces the total deliveries, a point would be reached where mathematically the pooling standard could not be met. In this case, the supply plant would be a nonpool plant and all of the milk claimed by the plant operator as having been diverted to a distributing plant would be treated as producer milk of the distributing plant operator.

AMPI proposed at the hearing that the cooperative balancing plant pooling provision (§ 1065.7(c)) be eliminated in view of the fact that there would be little practical difference in terms of the pooling standards between a supply plant and a cooperative balancing plant if the unlimited direct delivery feature for supply plants were adopted. Counsel for Mid-Am objected to the proposal on the basis that it was not part of AMPI's original proposal as published in the hearing notice and thus was outside the proper scope of the hearing. The Administrative Law Judge presiding at the hearing did not rule on the objection but instead concluded that whether or not AMPI's proposed modification is "legally sustainable" was a matter for consideration by the Secretary. In view of the order changes adopted herein relative to pooling standards for supply plants, the legal issue raised in the objection is moot. Accordingly, there is no need to pursue the legal issue raised by the objection.

2. *Diversion of producer milk.* (a) *Diversions to nonpool plants.* Rules concerning the diversion of producer milk from pool plants to nonpool plants should be modified. During the months of September through March, a cooperative association should be allowed to divert to nonpool plants (except producer-handler plants) a quantity of milk not in excess of 40 percent of the quantity of producer milk that the association causes to be delivered to or diverted from pool plants during the month. During the months of April-August the cooperative should be allowed to divert 50 percent of such receipts. The operator of a pool plant (other than a cooperative association) should be allowed to divert to nonpool plants (except producer-handlers' plants) any milk that is not under the control of a cooperative association that is likewise diverting milk to nonpool plants during the month. The quantity of milk that the operator of a proprietary plant may divert should not exceed 40 percent during the months of September-March and 50 percent during the months of April-August of the milk received at or diverted from such pool plant that is

eligible to be diverted by the plant operator.

The order also should provide that at least one day's production of a producer must be physically received at a pool plant during each month in order for the milk of such producer to be eligible for diversion to a nonpool plant as producer milk.

Presently, diversions to nonpool plants are limited to 30 percent of producer milk received at pool plants during the months of January, February, March, September, October, and November, and 40 percent of such receipts during other months of the year. To be eligible for diversion, at least 2 days' production of a producer must be received at a pool plant during each month.

AMPI proposed that diversion eligibility for a producer be reduced to 1 day's production received at a pool plant and that diversion limits be increased to 40 percent during each of the months of September-December and 50 percent during each of the months of January-August. A spokesman for AMPI testified that the present diversion limits cause unnecessary, uneconomic, and costly milk movements, including unnecessary pumping and handling of the milk. The unnecessary hauling wastes thousands of gallons of fuel every month, he said, while the extra pumping damages the quality of the milk.

The witness indicated that AMPI regularly hauls producer milk from farms in Minnesota and South Dakota to its supply plant at Sibley, Iowa, solely for the purpose of meeting the present diversion limitations. He estimated that this unnecessary hauling of milk costs AMPI approximately \$10,000 per month. Also, he said, because of the difficulty in estimating beforehand the exact quantity of milk that may be diverted, AMPI has over-diverted several times in the last couple of years, causing milk regularly associated with the pool to be excluded.

A spokesman for Mid-Am testified in opposition to AMPI's proposal. This witness argued that the present diversion limits are adequate because data introduced into the record showed that the amount of milk being diverted by all handlers in the market was well within the existing limits. He stated that liberalization of the diversion provisions would make less milk available to the fluid market at a time when market conditions call for greater shipments.

Although most handlers are able to operate within the diversion limits presently in the order, it is apparent from the testimony, already described

that a least one—AMPI—is not able to do so. It should be noted in this connection that Mid-Am qualifies its large manufacturing plant at Norfolk as a pool plant. In addition, 4 of the 6 proprietary supply plants on the market also have manufacturing facilities. Accordingly, milk not needed by these handlers for fluid use is manufactured right at these pool plants instead of having to be diverted to nonpool plants. AMPI, however, has only one plant pooled under the order which is the supply plant at Sibley. The plant has no manufacturing facilities. Thus, reserved supplies associated with this plant are diverted by AMPI to nonpool plants for manufacturing. This is why AMPI has some difficulty staying within the diversion limits while other handlers in the market do not.

The present diversion limits are unduly tight and discriminate between handlers that operate pool manufacturing plants and those that do not. For example, during the month of October, a handler operating a pool supply plant which also manufactures cheese could ship 40 percent of its milk to a pool distributing plant to qualify for pooling and manufacture the remaining 60 percent of its milk into cheese. A cooperative that operates a pool supply plant without manufacturing facilities could also manufacture 60 percent of the milk pooled through that plant by sending it to one of its nonpool manufacturing plants. However, in this example, only 30 percent of the total receipts could be diverted directly to the manufacturing plant; the remaining 30 percent would have to be received first at the supply plant and then transferred to the manufacturing plant, possibly resulting in unnecessary hauling and handling of the milk. In the case of a cooperative that does not operate a pool supply plant but which does have a nonpool manufacturing plant, 70 percent of the cooperative's milk would have to be shipped to pool plants; the cooperative could divert the remaining 30 percent to its nonpool manufacturing plant. AMPI falls within these latter 2 categories, pooling part of its milk through its Sibley supply plant and pooling the remainder as a handler on bulk tank milk.

Theoretically, the diversion allowance for plant operators should be set at the reciprocal of the shipping requirements for a supply plant or a cooperative balancing plant. Under the present shipping standards, this would justify diversion limits of 50 to 60 percent. In view of the fact that AMPI did not propose that diversion limits be increased to this extent, the limits

should be held to 40 percent during the months of September through March and 50 percent during the months of April through August.

Recognizing the need for coordination between supply plant shipping requirements and diversion limitations, AMPI proposed that the present months of more limited diversions be changed from September–November and January–March to September–December to coincide with the shipping requirement months for supply plants. As noted earlier, the shipping requirement months for supply plants would be extended to September–March. For this reason, January–March should remain as months in which lower diversion limits apply and, as suggested by AMPI, December also should be included with these months.

The change in diversion limits would have no effect on the amount of milk that a supply plant operator—either a proprietary handler or a cooperative association—would have to make available to distributing plants. The amount of milk that a supply plant operator must make available to pool distributing plants is governed by supply plant shipping requirements. The change in diversion limits, however, will allow more milk that is not needed at a pool supply plant to be diverted to a nonpool manufacturing plant instead of first having to be received at the pool supply plant and then transferred to the nonpool plant. In this way, the change in diversion limits will permit greater efficiency in handling the market's reserve milk supplies.

It is not necessary to require 2 days' production of a producer to be received at a pool plant in order for milk of the producer to be eligible for diversion to a nonpool plant. One day's production received at a pool plant is sufficient to demonstrate that a producer has some association with the fluid market.

An AMPI spokesman testified that the present 2-day requirement has occasionally caused problems when one day's production of a large producer has been picked up in the same bulk tank truck that was also picking up 2 days' production of smaller producers. The spokesman indicated that the cooperative, having assumed that all producers whose milk was on the truck had met the 2-day production requirement, would not discover the error until after the end of the month, when it was too late to correct the problem.

Requiring that only one day's production be received at a pool plant during the month should eliminate this problem.

As proposed by Mid-Am, the order should allow the Director of the Dairy Division to increase or decrease the diversion limits by 20 percentage points. However, the provision should depart slightly from Mid-Am's proposal by allowing the Director to revise diversion limits independently of any change to supply plant shipping requirements. This will provide greater flexibility in accommodating situations in which an adjustment may be needed in shipping requirements but not necessarily in diversion limits or vice-versa.

Temporary adjustment of diversion limits may be needed for the same reasons as a temporary increase or decrease in supply plant shipping requirements, i.e., the market may need more milk for fluid use or there may be an excessive amount of milk being delivered for fluid use. A decrease or increase in diversion limits will help to accommodate these situations, particularly with regard to milk being pooled by a cooperative acting as a handler on bulk tank milk.

A cooperative acting as a handler on bulk tank milk, unlike a supply plant, does not have any particular standard to meet as far as delivering a certain percent of its milk to pool distributing plants. However, the amount of milk such a cooperative may divert is directly dependent upon the pounds of milk the cooperative delivers to pool plants.

In view of this, to require a cooperative bulk tank handler to deliver more milk to pool distributing plants it is necessary to reduce the amount of milk the cooperative may divert to nonpool plants. On the other hand, if the market is oversupplied with milk for fluid use, it would be necessary to increase diversion limits so the cooperative could divert more of its milk to nonpool plants for manufacturing use.

In computing diversion limits, the base on which the diversion percentage is computed should be equal to the amount of producer milk delivered to pool plants plus the amount diverted to nonpool plants. Presently, diversion limits are based only on the amount of producer milk delivered to pool plants.

This change will provide for the computation of diversion limits on the same basis as shipping requirements for supply plants. This will insure greater uniformity in market performance between supply plant operators and cooperative bulk tank handlers.

When a handler diverts milk in excess of the limits prescribed in the order, the quantity that is over-diverted cannot qualify as producer milk and be priced under the order. Presently, the diverting handler is required to designate the

dairy farmers whose milk is over-diverted. If the handler fails to do so, the order disqualifies all milk diverted by the handler during the month.

This procedure should be modified slightly. In the case of over-diverted milk, the diverting handler should continue to have the prerogative of designating the dairy farmers whose milk is over-diverted. If the handler fails to designate the over-diverted milk, the market administrator would disqualify all of the milk diverted by the handler on the last day of the month, then all the milk diverted on the second-to-last day, and so on in daily allotments until all of the over-diverted milk is accounted for. For example, if a handler over-diverted 10,000 pounds of milk for the month, but diverted 45,000 pounds on the last day of the month, the entire 45,000 pounds would be disqualified.

The procedure, which was proposed by Kraft, Inc., and supported by AMPI in its brief, will provide a less severe penalty for a handler who inadvertently over-diverts. In the event a handler does not identify which producers' milk is over-diverted, the new procedure will allow the market administrator to make this determination in a fair and orderly manner.

(b) *Diversion between pool plants.* Kraft, Inc., proposed that the order be amended to provide for diversions between pool plants. This proposal was a corollary change to its proposal to allow supply plants to qualify for pool status on the basis of deliveries by the supply plant operator to distributing plants directly from producers' farms.

The order should be amended to provide for diversions between pool plants. This will provide the technical means under the order for milk to be delivered by supply plant operators directly from producers' farms to pool distributing plants and still count as shipments from the supply plant. Also, it will allow the operator of any pool plant to divert milk supplies to another pool plant and retain the producer milk status and payroll responsibility for such milk. Without this provision, a handler wishing to retain his regular producers on his payroll for the entire month would have to physically receive the milk of such producers into his plant (so that it will be considered "producer milk" there), then pump it back into the truck, and deliver it to the other pool plant. Such milk would then be considered a transfer from one plant to another with the transferor-handler accounting to the pool for the milk and paying those producers as well.

This practice is obviously uneconomic, resulting in unnecessary

and costly movements of milk. In addition, the unnecessary pumping of milk is damaging to its quality. Permitting diversions of milk between pool plants will promote the efficient handling of milk.

In the case of diversions between pool plants, the question arises as to whether such diversions should be considered as a receipt at the divertor plant, the divertee plant, or both for the purpose of determining whether such plants have met the pooling requirements of the order. As adopted herein, such diversions would be treated in the same manner as transfers between pool plants.

The order now includes milk that is transferred from one distributing plant to another in the receipts of the transferor plant. The transfer is excluded from the receipts of the transferee plant. Diversions between pool distributing plants should be treated in the same way.

Milk that is transferred from a pool supply plant to a pool distributing plant is presently included in the receipts of both the supply plant and the distributing plant. Accordingly, diversions from a pool supply plant to a pool distributing plant should be considered in the receipts of both plants.

Fluid milk products that are transferred from a pool distributing plant to a pool supply plant are included in the receipts of the distributing plant but excluded from the receipts of the supply plant. Diversions from a pool distributing plant to a pool supply plant should also be treated this way.

For accounting purposes, milk diverted between pool plants will continue to be the "producer milk" of the diverting handler.

**3. Class I price zones and location adjustments.** The Class I pricing structure under the order should be revised to provide for two pricing zones in place of the three zones now in the order and to modify the application of location adjustments. Map No. 1 illustrates the revised pricing zones. As shown, Zone 1 should have a Class I differential of \$1.60, and Zone 2 should have a Class I differential of \$1.75.

Location adjustments outside of these two zones should apply only at plants in Nebraska, South Dakota, North Dakota, Minnesota, Wisconsin, and Iowa. In these areas, a minus location adjustment should apply. The location adjustment should be computed at the rate of 1.5 cents per hundredweight per 10 miles and should be based on the distance from Omaha or Norfolk, Nebraska, whichever is closer. A comparison of location adjustments at selected plant

locations outside of Zones 1 and 2 is shown on Table 3.

Table 3.—Present and Proposed Plant Location Adjustments at Selected Plant Locations

Location	Present Location Adjustment (cents per cwt)	Proposed Location Adjustment (cents per cwt)
O'Neil, Neb. ....	None	-12
Orchard, Neb. ....	None	-9
Hartington, Neb. ....	None	-7
LeMars, Iowa ....	-10	-16.5
Sibley, Iowa ....	-10	-24
Atwood, Kan. ....	+12	None
Clarkfield, Minn. ....	-22	-33
Freeman, S.D. ....	None	-15
Kumblton, Iowa ....	-10	-10.5
Lake Benton, Minn. ....	-16	-31.5
Lake Preston, S.D. ....	-12	-23.5
Laurel, Neb. ....	None	-6
Lytton, Iowa ....	-10	-18
New Ulm, Minn. ....	-23.5	-44
Plainview, Neb. ....	None	-6
Sanborn, Iowa ....	-10	22.5
West Point, Neb. ....	None	-7.5
Whittemore, Iowa ....	-16	-33

Currently, the marketing area is divided into three pricing zones. These zones are shown on Map No. 2. The Class I price at plants located in Zone 1 is \$1.60 over the basic formula price. The Zone 2 Class I price is 10 cents below the Zone 1 price, while the Zone 3 Class I price is 15 cents higher than the Zone 1 price. Uniform prices in each of these zones bear the same relationship, i.e., the Zone 2 price is 10 cents below the Zone 1 price, and the Zone 3 price is 15 cents above the Zone 1 price.

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The order also provides that at a plant located outside of the marketing area and within 100 miles of the nearest specified basing point, the applicable Class I and uniform prices at such plant are the prices applicable in the nearest pricing zone. At plants located outside of the marketing area and more than 100 miles from the nearest specified basing point, the Class I and uniform prices are reduced at the rate of 1.5 cents per hundredweight for each 10 miles of fraction thereof that such plant is located more than 100 miles from the nearest basing point.

Proposals to revise the pricing structure were made by two proprietary handlers and two cooperative associations.

Roberts Dairy, which operates distributing plants at Omaha and Grand Island, Nebraska, submitted a proposal that would have combined Zones 1 and 2 into single zone for pricing purposes. At the hearing, however, it abandoned this proposal. The proposal was not supported by any other party.

Wells Dairy, Inc., of LeMars, Iowa, (presently located in Zone 2) submitted a proposal that would reduce the Class I differential in Zone 2 from \$1.50 to \$1.40. A representative of Wells Dairy testified that the present \$1.50 Class I differential puts it at a disadvantage relative to its competitors under the Eastern South Dakota, Upper Midwest, and Iowa Federal orders. (The Class I differential under the Eastern South Dakota order is \$1.40; the Class I differential applicable to competing handlers under the Upper Midwest order would be either \$1.06 or \$1.12, depending upon their location; and the Class I differential to competing handlers under the Iowa order is \$1.40 or slightly less, again depending upon the respective plant's location.)

The Wells Dairy representative testified that the other markets in which it claims to be at a price disadvantage represent about 65 percent of its total sales territory. He stated that the current order price plus the the over-order charges imposed by cooperative associations supplying his plant result in Wells Dairy having a 33-cent price disadvantage relative to its competitors, under other orders.

Mid-America Dairy, Inc., proposed that Zones 1 and 3 be revised so as to shift 20 Zone 3 counties in central Nebraska into Zone 1. A Mid-Am spokesman testified that conditions have changed significantly since these pricing zones were established in 1967. He said that Zone 3 was primarily established to attract an adequate supply of milk for plants located in central and western Nebraska. Also, he

noted that attention was given to alignment prices with the Eastern Colorado order based on the historical premise that as milk moved westward the prices should increase at a rate that approximated the cost of transporting milk.

The spokesman testified that supplies in Zone 3 are now more than adequate. He said that only 46 percent of the milk received at Zone 3 plants during the first 9 months of 1978 was actually used in Class I and that this did not include milk of Mid-Am that was pooled on the Eastern Colorado order but which formerly had been associated with Zone 3 plants. He noted that inclusion of the later milk supplies in the order 65 pool would have dropped the Zone 3 Class I utilization to about 1/3 of the Grade A supplies potentially available. From these figures, he concluded a higher price is no longer needed in this area to obtain an adequate supply of milk for distributing plants in that zone.

A second argument made by Mid-Am was that the plus 15-cent differential, which is applicable to the uniform price paid to producers as well as to the Class I price, is, in effect, subsidizing producers in Zone 3 at the expense of producers in Zone 1. This is because the pounds of Class I milk on which handlers pay the 15-cent higher Class I price is only about half of the producer milk in Zone 3 on which producers receive the 15-cent higher uniform price. Mid-Am estimated that this subsidization reduced the Zone 1 uniform price by one cent per hundred weight during 1977.

A spokesman for Fairmont Foods testified that his company supports a reduction of the Class I price at North Platte, Nebraska (now included in Zone 3). This witness indicated that the majority of the milk produced in the Zone 3 counties proposed to be included in Zone 1 now moves into Zone 1. He said that Fairmont now distributes over half of the milk from its North Platte plant in Zone 1 in competition with Zone 1 handlers. In 1976, he noted, most of the distribution from this plant was west and north of North Platte, mainly in the northwest corner of Colorado, the eastern edge of Wyoming, and the northwest part of Nebraska. The witness also testified that a reduction in price at North Platte would not jeopardize the milk supply for Fairmont's plant.

A spokesman for Roberts Dairy, which operates pool distributing plants at Grand Island and Omaha and a nonpool plant at Lincoln, Nebraska, also testified in support of Mid-Am's proposal to transfer 20 Zone 3 counties

into Zone 1. The witness stated that this change would put his entire operation in a better competitive position relative to competing handlers. He testified that while some distribution from the Grand Island Zone 3 plant goes to areas in Zone 3, such as McCook, North Platte, and Ogallala, Nebraska, and also into northwest Kansas, most of the distribution from this plant is in competition with Zone 1 handlers, particularly in the Norfolk and Columbus-Seward areas.

The witness also indicated that because Roberts Dairy has pool plants in both Zones 1 and 3, his company is forced to pay more than other handlers, for milk used in Class II and Class III because of the way receipts are allocated under the order to the handler's utilization at the two plants. He claimed that equalizing the price at both the Grand Island and Omaha locations would eliminate this problem.

The witness contended that the proposed lower price at Grand Island would have no impact on the supply of milk at that plant. It was his belief that even at the reduced price the Order 65 distributing plants at Grand Island and North Platte would remain the best market for supply plants and cooperatives operating in this part of the marketing area.

A spokesman for AMPI testified in support of the proposed transfer of Zone 3 counties also. While noting that AMPI had no producers or customers in Zone 3, he said that his organization supported the proposal because it did not feel the rest of the market should be subsidizing Zone 3 producers.

Opposition to restructuring the pricing in Zone 3 came from several supply plant operators, namely, Dodge Dairy Products, Inc., Dodge, Nebraska (Zone 1); Ravenna Cheese Co., Ravenna, Nebraska (Zone 3); Oxford Cheese Co., Oxford, Nebraska (Zone 3); Neu Cheese Co., Hartington, Nebraska (Zone 1); and Orchard Dairy Products, Inc., Orchard, Nebraska (Zone 1).

These handlers took the position that redefining Zone 3 as proposed would substantially reduce the price to dairy farmers delivering milk to Zone 3 plants. They contended that such a reduction would jeopardize the milk supplies of distributing plants located in Grand Island and North Platte (and, presumably, the Zone 3 plants of Oxford Cheese and Ravenna Cheese) because producers delivering to those plants would find a more attractive outlet in the Eastern Colorado market.

Three individual producers who ship milk to Zone 3 plants also testified against any reduction in price at such

plants. They testified that if this price were reduced, they would probably look for higher-priced markets in Kansas or Colorado.

A final pricing proposal was made by Land O'Lakes, Inc. (LOL); This cooperative, which has no producers on the Nebraska-Western Iowa market, proposed a change in the application of location adjustments to plants located outside of the marketing area. Presently, such location adjustments are not applied within 100 miles of a basing point. Only beyond 100 miles do they begin at the rate of 1.5 cents per 10 miles from the nearest basing point. Under LOL's proposal, location adjustments would apply within this 100-mile area. The effect of the proposal, therefore, would be to reduce Class I and uniform prices at plant locations outside the marketing area.

A spokesman for LOL testified that the purpose of its proposal is to resolve a price misalignment problem between the Nebraska-Western Iowa and Eastern South Dakota orders in the general procurement area of eastern South Dakota. LOL claims that this misalignment has caused it to lose producers on the Eastern South Dakota market because such producers were able to obtain greater returns by having their milk pooled under the Nebraska-Western Iowa order.

Mid-Am supported the LOL proposal to remove the 100-mile buffer zone applicable to location adjustments. The cooperative stated, however, that it would prefer that the amendment be limited to the states of South Dakota and Minnesota. The cooperative's spokesman indicated that the pricing structure of the order should encourage milk to move to the primary market. He noted, however, that under the present order provisions there is little incentive for milk to move from southern South Dakota, where Mid-Am competes with AMPI and LOL for milk supplies, to Omaha.

Several examples were cited in support of this argument. The Mid-Am witness testified that a nonpool plant at Freeman, South Dakota, which is roughly 200 miles from Omaha, now carries the Zone 1 price. Producer milk under Order 65 is diverted to this plant. Another nonpool plant is located at Lake Preston, South Dakota, which is about 260 miles from Omaha. This plant also receives diverted milk pooled under Order 65. The price at this plant is only 12 cents below the Zone 1 price.

Also cited by the spokesman for Mid-Am was the Order 65 price for diverted milk at nonpool plants at Clarkfield, Minnesota, and Lake Benton,

Minnesota. Although the Lake Benton plant is roughly 265 miles from Omaha, the price at Lake Benton is only 16 cents less than at Omaha. The price at Clarkfield, which is about 275 miles from Omaha, is 22 cents below the Omaha price:

Mid-Am contends that the present order provisions encourage milk to be kept at these distant plants for manufacturing purposes rather than to be moved to the population centers to meet the fluid needs of the market.

AMPI testified in opposition to the proposal of Well's Dairy to reduce the price in Zone 2 and LOL's proposal to modify location adjustments. An AMPI spokesman testified that there was no basis to reduce the Zone 2 price. He noted that the proposal had been considered at an earlier hearing and turned down. It was his position that there had been no changes in the market since that prior decision which would warrant adoption of the proposal at this time.

With respect to the LOL proposal, this witness testified that he did not believe there was a misalignment of prices in eastern South Dakota between the Nebraska-western Iowa order and the Eastern South Dakota order. He contended that there has been little or no shift of producers from Order 76 to Order 65; that any attempt to align the uniform prices of the respective orders would be futile; and that adoption of the proposal would misalign prices in eastern South Dakota, southwestern Minnesota, and along the eastern edge of the Order 65 marketing area.

It is evident from the testimony presented at the hearing that the current problem of location pricing is essentially one of insuring adequate milk supplies at the principal population centers where a high proportion of the market supply is processed for distribution as fluid milk products. A secondary consideration developed on the record concerned the problem of aligning the present price structure with nearby Federal order markets.

The location pricing provisions (zone prices and location adjustments at distant plants) assist in encouraging the movement of milk from supply areas to the principal population centers where processed for fluid uses. They reflect the lesser value of milk when received at an outlying plant location or when diverted to an outlying location. Additionally, the location pricing provisions assist in maintaining a proper price alignment with nearby markets, which is essential to the attraction of raw milk supplies to various locations where needed.

The pricing structure for a market should encourage milk to move from where it is produced to where it is processed and packaged for fluid use. The latter areas are principally metropolitan areas with population concentrations. Thus, a primary consideration in developing an appropriate pricing structure for a market is one of identifying the major population centers of the market.

Of the 1.8 million population (1970 census) in the Nebraska-Western Iowa marketing area, by far the largest metropolitan area is Omaha-Council Bluffs with a 1970 population of 480,000.<sup>5</sup> The next largest area is Lincoln with a 1970 population of 168,000. The only other metropolitan area is Sioux City with a 1970 population of 116,000.

The 3 pool distributing plants in the Omaha-Council Bluffs area and the 2 distributing plants in the Lincoln area process a relatively large proportion of the Class I milk priced under the order. (There are no distributing plants in the Sioux City area.) They are not only the major distributors in these areas but also have substantial distribution in other parts of the marketing area. Producer supplies of milk are moved to plants in these major population centers in the market from various locations throughout the marketing area and beyond.

The order's present pricing structure does not adequately encourage the movement of milk from supply areas to plants in these population centers. This has been particularly true in the situation where the prices applicable to milk delivered to the Omaha-Lincoln area are the same or only slightly higher than the order prices applicable at outlying plant locations in northeastern Nebraska, northwestern Iowa, eastern South Dakota, and southwestern Minnesota.

Much of the milk supply in this market originates from these northern areas. In December 1977, 14 percent of the producer milk on the market came from 15 counties in southwestern Minnesota; 19 percent of the producer milk came from western Iowa (with 6 northwestern Iowa counties alone accounting for 12 percent of the milk on the market); and 12 percent of the market's milk came from eastern South Dakota. In total, these 3 areas account for 45 percent of the milk on the market. In all of this territory, there are only 2 pool plants on this market—a pool distributing plant

<sup>5</sup> Official notice is taken of the 1970 Census of Population for Nebraska, Iowa and South Dakota, Bureau of the Census, U.S. Department of Commerce.

located at Le Mars, Iowa, and a pool supply plant located at Sibley, Iowa.

In northeastern Nebraska, there is an 11-county area in which 15 percent of the market's milk is produced. In these 11 counties, there are only 2 pool plants, both of which are cheese plants that are qualified as pool supply plants. The Class I and uniform prices in this area are the same as those in Omaha and Lincoln.

Several examples will highlight the pricing problems that now exist under the present pricing provisions.

A pool supply plant outside the marketing area is located at Sibley, Iowa. Sibley is about 175 miles from Omaha. The order now provides a transportation allowance of 1.5 cents per 10 miles to transport 100 pounds of bulk milk. At this rate, the price difference between Sibley—which is in a heavy production area—and Omaha—the largest city in the market—should be 27 cents ( $0.015 \times 18 = .27$ ). However, the price at Sibley is now only 10 cents below the Omaha price. (Omaha has a Class I differential of \$1.60 compared to \$1.50 at Sibley.)

One of the recipients of AMPI's Sibley milk is Wells Dairy at Le Mars, Iowa. The distance between Le Mars and Sibley is about 52 miles. At 1.5 cents per 10 miles, the allowance for hauling milk from Sibley to Le Mars would be 9 cents per hundredweight. Under the order, however, there is no difference in the prices at these two locations.

Kraft, Inc., operates a pool supply plant at O'Neill, Nebraska. Milk from this plant is shipped to a pool distributing plant at Lincoln, Nebraska. The distance from O'Neill to Lincoln is roughly 200 miles, yet there is no difference in prices between O'Neill, which is in a sparsely populated rural area, and Lincoln, the second largest city in the State.

Similar comparisons can be made with respect to the pool supply plants at Orchard, Nebraska, and Hartington, Nebraska. There is presently no price adjustment to cover the cost of transporting milk from these supply plants to distributing plants to the south. Consequently, these costs must either be absorbed by the supply plant operator or, more likely, passed on to the distributing plant operator buying the milk.

Not only does the present pricing structure discourage the movement of milk to the population centers through supply plants, it also provides little or no incentive to move it to distributing plants on a direct-ship basis. Since producers generally bear the cost of transporting milk from their farms to the

processing plant, they seek to find outlets which will provide the highest price and the least transportation cost. If a cheese plant happens to be the closest plant, and a producer can get the same price there that he can by shipping milk a farther distance to a distributing plant, he naturally will ship his milk to the cheese plant.

The current pricing provisions contribute to the problems described by distributing plant operators of getting a sufficient supply of milk. By revamping Zone 1 as proposed herein and changing the application of location adjustments to outlying plants, the Zone 1 uniform price will be much more attractive relative to supply areas to the northeast. It will better insure the availability of milk at plants in the market's population centers.

The only pool distributing plant outside the State of Nebraska is Wells Dairy, Inc., at Le Mars, Iowa. Le Mars had a 1970 population of only 8,000 but is about 25 miles from Sioux City with a population of 86,000. Wells Dairy is about 100 miles from its closest Order 65 regulated competitors, Gillette Dairy at Norfolk and Muller Dairy at Howells, Nebraska. Wells Dairy also competes with several other Zone 1 handlers in Omaha and Lincoln. The distance from Le Mars to Omaha is about 125 miles, and from Le Mars to Lincoln it is about 180 miles.

As adopted herein, the Class I differential at Le Mars would be reduced from \$1.50 to \$1.435. Several Zone 1 handlers expressed opposition to any decrease in price at Le Mars, claiming that it would have an adverse effect on their ability to compete throughout much of eastern Nebraska where their sales overlap with those of Wells Dairy. They urged that the present 10-cent difference in Class I prices that now exists for milk received at Le Mars and at Zone 1 plants be retained.

Based on a hauling cost of at least 1.5 cents per 10 miles, the 125-mile distance from Le Mars to Omaha would suggest a hauling cost of about 20 cents per hundredweight. Thus, it is not reasonable to expect that the adopted 16.5 cent lower price at Le Mars would be disruptive to Zone 1 handlers in competing with Wells Dairy for fluid milk sales in the Omaha-Lincoln area.

Contrary to AMPI's position, there have been significant changes in the market since the prior hearing that support the changes adopted herein. At the time of the last hearing, October 1976, there were no proposals to change location adjustments at plant locations outside the marketing area. As a result, there would have been serious

problems—as pointed out by AMPI—in changing the Zone 2 price without also changing the price in the areas bordering the marketing area. In addition, in October 1976, there was a pool distributing plant located in Sioux City, which has since been closed, that was located about 25 miles from the Wells Dairy distributing plant in Le Mars. It would have been disruptive at that time to lower the Le Mars price without also adjusting the price at Sioux City.

The location adjustments adopted will not cause any misalignment in the Eastern South Dakota—southwestern Minnesota area, as claimed by AMPI. The proposed location adjustments provide for better alignment with the Eastern South Dakota order and Upper Midwest order than do the existing location adjustments. As revised, the Order 65 Class I price differential at Sioux Falls, South Dakota, would be \$1.39 compared to \$1.40 at that location under the Eastern South Dakota order. The Order 65 Class I differential at New Ulm, Minnesota, where AMPI operates a nonpool manufacturing plant, would be \$1.16, compared to \$1.12 under the Upper Midwest order.

AMPI is correct that the proposal of Land O'Lakes would have caused some price misalignment under the existing price zones. However, with the elimination of 11 northeastern Nebraska counties (Antelope, Burt, Cedar, Cuming, Dakota, Dixon, Knox, Pierce, Thurston, Washington, and Wayne) and 6 Iowa counties (Freemont, Harrison, Monona, Mills, Pottawattamie, and Woodbury) from the present Zone 1 and the complete elimination of the present Zone 2, as provided herein, the adopted location adjustments zoned from Norfolk and Omaha, Nebraska, will provide a smooth transition in pricing from Zone 1 to areas outside of Zone 1.

It is impossible to tell from the information on the record whether or not producers from Order 76 have shifted to Order 65, as contended by Land O'Lakes. In any event, whether they have or have not is not critical to the issue at hand. What is significant is that the Order 65 Class I price and uniform price adjusted to the South Dakota locations are too high relative to the prices in Zone 1 of the Nebraska-Western Iowa order. The AMPI witness admitted as much when he stated that "there really is inadequate incentive for any milk to move to the market in this Federal order."

AMPI contends in its brief that "whenever a system of zone pricing is adopted in an order, such as the Order 65 system of zone prices, there can

never be an incentive to move milk." Mid-Am's support of the proposal, AMPI argues, is "simply an argument to redistribute pool proceeds by reducing the price paid to AMPI producers and increase the prices received by Mid-America producers at its intra-market manufacturing plants."

With the present broad pricing zones and insufficient location adjustments, it is true that there is little or no incentive to move milk from production areas to distributing plants. However, by modifying the pricing structure, as adopted herein, a solution can be reached whereby significantly greater pricing incentives to move milk can be incorporated in the order, while at the same time the benefits of flat pricing for competing handlers in the heart of the marketing area can be maintained.

The basing points for determining location adjustments should be limited to Norfolk and Omaha. These points, located in Zone 1, represent significant population concentrations and distributing plant locations.

There is no reason to maintain Chadron, Grand Island, Lincoln, North Platte, Scottsbluff, and Sioux City as basing points. As provided herein, Grand Island and North Platte would be included in pricing Zone 1, while Lincoln is already in Zone 1. Milk moving into Zone 1 comes from north and east of the zone. Since Norfolk and Omaha are at the northern and eastern perimeters of the zone, it is not necessary to maintain the other basing points except for the purpose of having minus location adjustments to the south and west of the marketing area. However, milk does not move to the market from those areas—and is not likely to—because higher prices in neighboring Federal order markets to the south and west tend to attract the milk to those markets. In view of the fact that no milk moves into the market from the southern and western areas, no purpose would be served in maintaining minus location adjustments there.

There are no plants at either Chadron or Scottsbluff, which are in northwestern Nebraska. In fact, in that part of the present Zone 3 that would be retained in the plus 15-cent price zone, there is only one small distributing plant, which is at Kimball, Nebraska, 45 miles south of Scottsbluff. There is no indication on the record that removal of Scottsbluff and Chadron as basing points would have any effect on this handler's operations.

As discussed previously and as shown on Map No. 1, Zone 1 would be enlarged by including 20 central Nebraska counties now in Zone 3 and 7

additional Nebraska counties not now included in any pricing zone. The 20 counties now included in Zone 3, all of which are in the marketing area, are Keith, Lincoln, Frontier, Red Willow, Custer, Dawson, Gosper, Furnas, Phelps, Harlan, Valley, Greeley, Sherman, Howard, Buffalo, Hall, Kearney, Adams Franklin, and Webster. The 7 counties now outside any pricing zone, and which also are outside the marketing area, are Perkins, Chase, Dundy, Hayes, Hitchcock, Pawnee, and Richardson. There are no plants receiving producer milk in any of these 7 counties, which are added to Zone 1 to facilitate the designation of the appropriate price in those areas.

Two of the 3 pool distributing plants that would be affected by this price change are located adjacent to the present Zone 1.<sup>6</sup> One of the plants is located at Grand Island in Hall County and the other is at Hastings in Adams County. The third distributing plant is located at North Platte about 140 miles west of Grand Island.

While it is necessary to use the pricing mechanism to insure adequate supplies of milk, it is not in the public interest to provide any higher prices than are necessary for this purpose. Based on the evidence in the record—notably that given by the major cooperative in the market and 2 of the 3 distributing plant operators that would be affected—there appears to be no basis for maintaining a Class I differential of \$1.75 in central Nebraska.

Opposition to the proposal was largely speculative in that it was based on what might happen if the price were lowered. There was no convincing evidence to support such speculation, nor was there any substantive testimony as to how the market would be adversely affected by the loss of present Zone 3 supply plants now on the market should such plants shift to another market because of more attractive prices. It is true that a lower price in central Nebraska would widen the difference between the Eastern Colorado uniform price and the Nebraska-Western Iowa uniform price. However, the difference would not appear to be wide enough to make it worthwhile for supply plants to shift regulation to the Eastern Colorado market. In any event, there is no indication that milk supplies for distributing plants in this market would be jeopardized under the pricing changes adopted herein.

<sup>6</sup>At the time of the hearing there were 4 pool distributing plants in this 20 county area. Official notice is taken of the commercial fact that the Beatrice Foods Company discontinued operations at its Grand Island plant in February 1973.

To accommodate the revised pricing structure adopted herein, certain non-substantive conforming changes have been made in the order language. Pricing zones are no longer defined in the marketing area definition but instead are set forth in the provisions relating to plant location adjustments for handlers. Also, certain "dead" language has been removed from the sections concerning class prices and announcement of class prices.

**4. Payments to producers and cooperative associations.** The order should be amended to allow handlers, in making partial payments to producers, to make proper deductions from such payments if authorized in writing by the producer.

Presently, the order allows handlers to make authorized deductions from producer payments only when making the final payment on the 15th day of the month. As adopted herein, the order also would allow such handler to make authorized deductions when making the partial payment on or before the 27th day of the month.

Kraft, Inc., proposed this change in the order, citing difficulties caused by the present provisions. A Kraft spokesman testified that there are now occasions when the balance owed to a producer at the time of final payment is less than the authorized deductions for that month. He said that deductions from producers' milk checks are made as an accommodation to producers who have executed assignments in favor of creditors and is a common practice within the dairy industry. He also stated that, when such deductions may only be made from the final payment, there is a wide disparity in the net amount of the final payment as compared to the partial payment. Producers, he said, have expressed dissatisfaction with this procedure, preferring instead to receive approximately equal semi-monthly payments.

The order should allow authorized deductions to be made at the time of partial payment as well as at the time of final payment. This will help insure that producers' obligations can be met through deductions from their checks. It will also aid producers in financial planning by providing equal or nearly equal payments twice a month.

**5. Charges on overdue accounts.** The order should provide a charge on all handler obligations to the market administrator that are overdue. Such charge should be 1 percent per month and should apply on the first day that a payment is overdue and on the same day of each succeeding month until the obligation is paid. Payments subject to

the charge would be those due the market administrator for the producer-settlement fund, order administration, marketing services, and audit adjustments.

The institution of a late-payment charge was proposed by Mid-Am. As set forth in the hearing notice, the cooperative proposed that such charge apply to any overdue account due the market administrator by a handler. The late-payment charge, as proposed, would be three-fourths of 1 percent and would apply beginning the day following the date on which payment of an obligation is due.

At the hearing, Mid-Am proposed three changes to its original proposal: First, the application of the late-payment charge would be expanded to apply also to overdue handler obligations to producers and cooperative associations; second, the rate of the late-payment charge would be changed to the prime rate plus two percentage points; and third, the charge would apply on a daily basis rather than on a monthly basis, beginning the first day after an obligation was due.

Mid-Am held that adoption of its proposal, as revised, would provide handlers with the necessary incentive for making prompt payments of both their order obligations to the market administrator and to producers and cooperative associations. Proponent cited the collection problems being experienced by the market administrator and indicated that producers have an interest in timely payments. In this connection, the Mid-Am spokesman pointed out that in the last year and a half there were at least 4 occasions when the payment due Mid-Am from the market administrator out of the producer-settlement fund was either late or reduced because handlers were delinquent in making their payments to the producer-settlement fund. In addition, he indicated that those handlers making late payments have a competitive advantage in their business operations relative to handlers making timely payments.

In support of the proposed late-payment charge, Mid-Am contended that the charge should be at least as much as the cost of obtaining a loan from commercial sources since delinquent handlers are in effect borrowing money from producers. The cooperative's spokesmen indicated that a charge based on the prime rate plus 2 percentage points is in line with current interest rates on commercial loans. In urging that the charge be apportioned on a daily basis, the witness contended that assessing a charge for only the

number of days that payment is actually late, rather than on a monthly basis, would encourage more timely payments.

A spokesman for Fairmont Foods Company supported the adoption of a charge on handler obligations that are late to the market administrator. He proposed that such charge be one percent per month and that it be applied on the first day that a delinquency occurs. The principal reason cited by Fairmont in supporting a late-payment charge was that it would prevent handlers who are delinquent in their payments to the market administrator from having a competitive advantage relative to those handlers making timely payments.

A number of handlers who did not testify at the hearing on this issue submitted briefs in opposition to Mid-Am's proposal to assess a late-payment charge on handler obligations to producers and cooperative associations. Generally, they held that inadequate notice was given to interested parties to fully explore at the hearing the various ramifications of applying a late-payment charge on such transactions. Moreover, it was their position that this modification would improperly involve the government in the affairs of private parties.

The record evidence indicates that handlers in this market have been chronically late in paying their various order obligations to the market administrator. Data submitted into evidence by the market administrator's office demonstrated the severity of the problem. For example, during the 21-month period of January 1977-September 1978, the market administrator issued 301 buildings to handlers. These covered monthly obligations of handlers to the producer-settlement, administrative expense, and marketing service funds, which were due by the 13th, 14th, and 15th day, respectively, of the month. For this 21-month period, none of the payments due either the producer-settlement or administrative expense funds were received by the market administrator on time. Only 1.3 percent of the payments had been received by the 15th day of the following month.

This record of payment delinquency likely can be attributed in part to the relatively short time between the mailing of the billings to handlers and the due date when such payments are due the market administrator. For example, in the case of payments to the producer-settlement fund, the market administrator's office completes such billings at the latest by the 12th of the month, and on the following day these

payments are due from the handler. Nevertheless, even by the 20th day of the month, which should have been sufficient time to complete the billing and payment cycle through the mail, only 166 payments, or 55 percent of the payments due, were received by the market administrator. As late as the 30th day of the month, 6 percent of the payments had still not been made.

It is essential to the effective operation of the order that handlers make their payments to the market administrator on time. Under the marketwide pooling arrangement, it is necessary that handlers with class I utilization higher than the market average pay part of their total use value of milk to the producer-settlement fund. Through this means, money is made available to handlers with lower than average Class I utilization so that all handlers in the market, irrespective of the way they use the milk, can pay their producers the uniform price. The success of this arrangement depends on the solvency of the producer-settlement fund.

Also, the prompt payment of amounts due the administrative expense and market service funds is essential to the performance by the market administrator of the various administrative functions prescribed by the order. Delinquent payments to these funds could impair the ability of the market administrator to carry out his duties in a timely and efficient manner.

Payment delinquency also results in an inequity among handlers. Handlers who pay late are, in effect, borrowing money from producers. In the absence of any late-payment charge that approximates the cost of borrowing money from commercial sources, handlers who are delinquent in their payments have a financial advantage relative to those handlers making timely payments.

Because of the late-payment problem that exists in the market, it is appropriate to adopt a late-payment charge of 1 percent per month of the unpaid balance on overdue handler obligations to the market administrator and to apply this charge the first day the obligation is overdue. Whether a penalty of 1 percent will be a sufficient inducement to handlers to make their payments to the market administrator on time can be determined only through experience. However, if such penalty is to have an impact, it must be an amount that approximates what a delinquent handler is charged by commercial banks for money borrowed for short-term purposes. If the penalty is established at a somewhat lesser rate, handlers who

may have payment problems would be encouraged to delay their payments, knowing that the penalty charge is cheaper than borrowing money commercially at a higher loan rate. At the time of the hearing, the spokesman for Mid-Am indicated that the interest charge on short-term loans in the market was slightly over 12 percent per annum or 1 percent per month. In view of this, a monthly penalty of 1 percent should provide reasonable assurance that producer funds do not represent a cheaper source of money.

A penalty charge of this amount should apply irrespective of whether the obligation is paid 1 day late or 10 days late. If the late-payment charge were treated as interest and computed on a daily basis, as suggested by Mid-Am, the order would merely represent a banking service for handlers who desire to use producer funds as an alternative source of money at the going interest rate. This is not the intended purpose of the late-payment charge. Rather, it is to be a penalty that will induce handlers to pay their obligations to the market administrator on time.

Under the provisions adopted herein, overdue handler obligations that are payable to the market administrator would be increased by 1 percent on the day after the due date. Any remaining unpaid portion of the original obligation would be further increased by 1 percent on the same date of each succeeding month until the obligation is paid. The late-payment charge would apply not only to the original obligation but also to any unpaid penalty charges previously assessed.

As proposed at the hearing, the order should apply a penalty charge on overdue obligations of a handler operating a partially regulated distributing plant. Under certain conditions, such a handler may be required to make payments to the producer-settlement and administrative expense funds. In the absence of any penalty, a partially regulated handler could have an advantage on his order obligations relative to fully regulated handlers who are subject to the additional charge when they fail to make timely payments. Also, as pointed out earlier, prompt payments to the administrative expense fund are essential to the market administrator's performance of his duties.

A late-payment charge should not apply on handler obligations to producers and cooperatives, as Mid-Am proposed at the hearing. Under the present payment practices, it would be difficult to know with certainty when payment has been made. This, of course,

presents a problem of knowing when a late-payment charge should apply. The record does not provide an adequate basis for overcoming this problem, such as through the use of different payment or reporting procedures. Thus, such a charge should not be adopted without further exploration of this issue at another hearing.

Counsel for Kraft, through an objection raised at the hearing, argued that Mid-Am's proposal to apply a late-payment charge on handler obligations to producers and cooperatives should not be considered in this proceeding because proper notice was not provided to the public since the original late-payment proposal of Mid-Am that was included in the hearing notice applied only to handler obligations due the market administrator. The administrative law judge did not rule on the objection, but indicated that the objection should be resolved at the decisionmaking level in connection with the entire late-payment issue. Since it is concluded that there should be no late-payment charges on handler obligations to producers and cooperatives, there is no need to consider Kraft's objection.

As noted previously, part of the lateness in payments to the market administrator can be attributed in part to the relatively short time between the mailing of the market administrator's billings to handlers and the date by which such billings are to be paid. Presently, the uniform price is announced on the 12th day of the month (the latest date that billings are completed by the market administrator's office), and payments of such billings to the producer-settlement fund are due on the next day. It is obvious that this time interval is insufficient to allow for the transmission of the billings and payments through the mail. Similarly, it is unrealistic to expect the market administrator to make payment from the producer-settlement fund on the 14th day of the month, as now required by the order, if the necessary payments to the producer-settlement fund have not been received. Finally, if the market administrator is unable to make payments out of the producer-settlement fund by the 14th day of the month, those handlers receiving such payments cannot be expected to pay cooperative associations by the 14th day of the month or producers by the 15th day of the month, as the order requires.

A proposal that would have allowed more time for the submission of billings and payments through the mails was included in the notice of hearing. At the hearing, the proponent, Mid-Am, abandoned the proposal. In its brief,

however, the cooperative indicated that it would be proper to consider its proposed change in payment dates in order to make the various payment dates under the order more practical and realistic in terms of achieving timely payments. A witness for Fairmont Foods Company indicated support for the proposal but did not elaborate. No other parties either supported or opposed the proposal.

It would not be reasonable to impose a late-payment charge on handler obligations to the market administrator without providing handlers an opportunity to comply with the order in making the required payments. It is within this context that the changes in dates adopted herein are made.

The various payment dates in the order must be coordinated. The first payment due, the payment to the producer-settlement fund, must be coordinated with the announcement of the uniform price. It is only after this price is available that the obligations to and from the producer-settlement fund can be determined and payments made to producers and cooperatives.

The order provides for announcement of the uniform price by the 12th day of the month. Payments to the producer-settlement fund, therefore, should be made by the 15th of the month; payments to handlers from the producer-settlement fund should be made by the 16th day of the month; and payments to producers should be made by the 18th day of the month and to cooperative associations 1 day earlier. These payment dates give handlers a reasonable amount of time to comply with the order in making the required payments.

In conjunction with other changes adopted herein, the dates by which handlers are required to pay administrative and marketing service assessments to the market administrator also should be changed. Such payments are now due on the 14th day of the month for administrative assessments and 1 day later for marketing service assessments. No purpose is served by requiring payments to the producer-settlement, administrative expense, and marketing service funds on different dates. Accordingly, payments to the administrative expense and marketing service funds should be due on the same date that payments to the producer-settlement fund are due.

*6. Market administrator's reports and announcements concerning classification.* A proposal by Mid-America Dairymen, Inc., to require the market administrator to report to a cooperative association the

classification of milk received by a handler from the cooperative's supply plant should be denied.

The testimony on the record did not clearly indicate the intent and need for this change in the order. Moreover, Mid-Am proposed in its brief that no action be taken on the proposal. There was no other support for the proposal.

#### Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

#### General Findings

The following findings and determinations supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they conflict with those set forth below.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the market area. The minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

#### Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions of such agreement would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Nebraska-Western Iowa marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out:

1. Section 1065.2 is revised to read as follows:

#### § 1065.2 Nebraska-Western Iowa marketing area.

The "Nebraska-Western Iowa marketing area" (hereinafter referred to as the "marketing area") means all the territory within the boundaries of the counties and townships listed below, including such territory as is now occupied and as may be occupied in the future by Government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments. Where such establishment is partly within and partly without the designated boundaries, the marketing area shall include the entire area encompassed by such establishment.

(a) *Nebraska Counties:* Adams, Antelope, Banner, Boone, Box Butte, Buffalo, Burt, Butler, Cass, Cedar, Cheyenne, Clay, Colfax, Cuming, Custer, Dakota, Dawes, Dawson, Deuel, Dixon, Dodge, Douglas, Fillmore, Franklin, Frontier, Furnas, Gage, Garden, Gosper, Greeley, Hall, Hamilton, Harlan, Howard, Jefferson, Johnson, Kearney, Keith, Kimball, Knox, Lancaster, Lincoln, Madison, Merrick, Morrill, Nance, Nemaha, Nuckolls, Otoe, Phelps, Pierce, Platte, Polk, Red Willow, Saline, Sarpy, Saunders, Scotts Bluff, Seward, Sheridan, Sherman, Sioux, Stanton, Thayer, Thurston, Valley, Washington, Wayne, Webster, and York.

(b) *Iowa Counties:* Cass, Cherokee, Crawford, Fremont, Harrison, Ida, Mills, Monona, Montgomery, O'Brien, Page, Plymouth, Pottawattamie, Sac, Shelby, Sioux, and Woodbury.

(c) *South Dakota Counties:* That portion of Union County comprising Jefferson Township, North Sioux City, and the unorganized territory adjacent thereto, as defined and mapped in the United States 1960 Census of Population.

2. In § 1065.7, the word "January" in paragraph (d)(3) is changed to "April,"

and paragraphs (a) and (b) are revised as follows:

#### § 1065.7 Pool plant.

\* \* \* \* \*

(a) A distributing plant from which there is:

(1) Route disposition (except filled milk) in the marketing area during the month equal to not less than 15 percent of the Grade A milk received at such plant from dairy farmers, supply plants (exclusive of transfers and diversions from plants qualifying as pool plants pursuant to this paragraph), and handlers described in § 1065.9(c); and

(2) Total route disposition (except filled milk) during the month or the immediately preceding month equal to not less than 35 percent of the Grade A milk received at the plant during such month from the sources specified in paragraph (a)(1) of this section.

(b) A supply plant from which during the month the volume of fluid milk products, except filled milk, transferred and diverted to pool distributing plants is 40 percent or more of the total Grade A milk received at the plant from dairy farmers (including producer milk diverted from the plant pursuant to § 1065.13) and handlers described in § 1065.9(c), subject to the following additional conditions:

(1) Not more than one-half of the shipping percentage specified in this paragraph may be met through the diversion of milk from the supply plant to pool distributing plants;

(2) The volume of fluid milk products included as qualifying shipments pursuant to this paragraph shall be reduced by the volume of any fluid milk products transferred or diverted from any pool distributing plant to the supply plant or to any other plant operated by the operator of the supply plant;

(3) The shipping requirements of this paragraph may be increased or decreased by 20 percentage points by the Director of the Dairy Division if that person finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the Director shall investigate the need for revision either at his (her) own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments; and

(4) A supply plant that qualifies as a pool plant in each of the months of September through March shall be a pool plant for the following months of April through August unless written

application is filed with the market administrator by the plant operator requesting the plant be designated a nonpool plant. In such case, nonpool status will be effective the first month following such notice and thereafter until the plant again qualifies as a pool plant on the basis of transfers and diversions. Any plant that qualifies as a pool plant pursuant to this paragraph will be subject to any shipping requirement announced pursuant to paragraph (b)(3) of this section.

\* \* \* \* \*

3. In § 1065.9, paragraph (c) is revised to read as follows:

§ 1065.9 Handler.

\* \* \* \* \*

(c) A cooperative association with respect to milk of its member producers which is delivered from the farm to the pool plant of another handler in a tank truck owned and operated by, or under contract to, such cooperative association. The milk shall be deemed to have been received from producers by the cooperative association at the location of the plant to which it is delivered. Milk delivered pursuant to this paragraph shall not include milk of its member producers diverted to pool plants by the association as a handler pursuant to paragraph (a) of this section;

\* \* \* \* \*

4. Section 1065.13 is revised to read as follows:

§ 1065.13 Producer milk.

"Producer milk" of each handler means all skim milk and butterfat contained in milk from producers that is:

(a) Received at a pool plant directly from a producer or a handler described in § 1065.9(c), excluding such milk that is diverted from another pool plant;

(b) Received by a handler described in § 1065.9(c) from producers in excess of the quantity delivered to pool plants;

(c) Diverted from a pool plant for the account of the handler operating such plant to another pool plant. Milk delivered pursuant to this paragraph by a supply plant operator shall be limited to those producers who are located within 150 miles of the supply plant (as based on the post office address of the producer). Such milk shall be priced at the plant to which diverted; or

(d) Diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler operating such pool plant or for the account of a handler described in § 1065.9(b), subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless during the

month at least one day's production of milk of such dairy farmer is physically received as producer milk at a pool plant;

(2) The total quantity of milk diverted by a cooperative association during the month may not exceed 40 percent in the months of September through March, and 50 percent in other months, of the producer milk that the cooperative association causes to be delivered to or diverted from pool plants during the month;

(3) The operator of a pool plant (other than a cooperative association) may divert for his account any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d)(2) of this section. The total quantity so diverted during the month may not exceed 40 percent in the months of September through March, and 50 percent in other months, of the milk received at or diverted from such pool plant during the month that is eligible to be diverted by the plant operator.

(4) The diversion limits of this paragraph may be increased or decreased by 20 percentage points by the Director of the Dairy Division if that person finds such revision is necessary to obtain needed shipments or to prevent uneconomic shipments. Before making such a finding, the Director shall investigate the need for revision either at his (her) own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the Director shall issue a notice stating that the revision is being considered and invite data, views, and arguments;

(5) Any milk diverted in excess of the limits prescribed in paragraph (d) (2), (3), and (4) of this section shall not be producer milk. The diverting handler may designate the dairy farmers whose diverted milk will not be producer milk. Otherwise, the total milk diverted on the last day of the month, then the second-to-last day, and so on in daily allotments will be excluded until all of the over-diverted milk is accounted for; and

(6) Diverted milk shall be priced at the location of the plant to which diverted.

5. In § 1065.41, paragraph (b)(2) is revised to read as follows:

§ 1065.41 Shrinkage.

\* \* \* \* \*

(b) \* \* \*

(2) Plus 1.5 percent of the skim milk and butterfat, respectively, in milk received from a handler described in § 1065.9(c) and in milk diverted to such plant from another pool plant, except

that, in either case, if the operator of the plant to which the milk is delivered purchases such milk on the basis of weights determined from its measurement at the farm and butterfat tests determined from farm bulk tank samples, the applicable percentage shall be 2 percent;

\* \* \* \* \*

6. In § 1065.42, paragraph (a) is revised to read as follows:

§ 1065.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or a bulk fluid cream product from a pool plant to another pool plant shall be classified as Class I milk unless both handlers request the same classification in another class. In either case, the classification of such transfers or diversions shall be subject to the following conditions:

(1) The skim milk or butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the transferee-plant or divortee-plant after the computations pursuant to § 1065.44(a)(12) and the corresponding step of § 1065.44(b);

(2) If the transferor-plant or divortor-plant received during the month other source milk to be allocated pursuant to § 1065.44(a)(7) or the corresponding step of § 1065.44(b), the skim milk or butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor-handler or divortor-handler received during the month other source milk to be allocated pursuant to § 1065.44(a) (11) or (12) or the corresponding step of § 1065.44(b), the skim milk or butterfat so transferred or diverted, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent that would be the case if the other source milk had been received at the transferee-plant or divortee-plant.

\* \* \* \* \*

§ 1065.44 [Amended]

7. In § 1065.44(a)(8)(ii)(a), the introductory text of (a)(11), and (a)(12)(i)(b), the words "and diversions" are added following the word "transfers" in the parenthetical expression and in § 1065.44(a)(13) the reference to "§ 1065.42(a)(1)" is changed to "§ 1065.42(a)."

8. In § 1065.50, paragraph (a) is revised as follows:

**§ 1065.50 Class prices.**

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus \$1.60.

9. Section 1065.52 is revised to read as follows:

**§ 1065.52 Plant location adjustments for handlers.**

(a) The following zones are defined for the purpose of determining location adjustments:

(1) Zone I shall include the Nebraska counties of Adams, Boone, Buffalo, Butler, Cass, Chase, Clay, Colfax, Custer, Dawson, Dodge, Douglas, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Gosper, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Howard, Jefferson, Johnson, Kearney, Keith, Lancaster, Lincoln, Madison, Merrick, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Platte, Polk, Red Willow, Richardson, Saline, Sarpy, Saunders, Seward, Sherman, Stanton, Thayer, Valley, Webster, and York.

(2) Zone 2 shall include the Nebraska counties of Banner, Box Butte, Cheyenne, Dawes, Deuel, Garden, Kimball, Morrill, Scotts Bluff, Sheridan, and Sioux.

(b) For producer milk received at a pool plant (or diverted to a nonpool plant) and disposed of as Class I milk or assigned Class I location adjustment credit pursuant to paragraph (d) of this section, the Class I price specified in § 1065.50(a) shall be adjusted for the location of the plant receiving the milk as follows:

(1) In Zone 1, no adjustment;

(2) In Zone 2, plus 15 cents;

(3) At a plant located outside of Zones 1 and 2 and in the States of Nebraska, Iowa, Minnesota, North Dakota, South Dakota, or Wisconsin, the price shall be reduced by 1.5 cents per 10 miles or fraction thereof (by shortest hard-surfaced highway and/or all weather road distance as measured by the market administrator) that such plant is located from the nearer of the city halls in Norfolk or Omaha, Nebraska; and

(4) At any other location, no adjustment.

(c) The Class I price applicable to other source milk shall be adjusted by the amounts set forth in paragraph (b) of this section, except that the adjusted Class I price shall not be less than the Class III price.

(d) Transfers between pool plants shall be assigned Class I disposition at the transferee-plant, in excess of the sum of receipts at such plant from producers and handlers described in

§ 1065.9(c), and diversion from other pool plants and the volume assigned as Class I to receipts from other order plants and unregulated supply plants, such assignment to be made first to transferor-plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least adjustment would apply.

10. Section 1065.53 is revised to read as follows:

**§ 1065.53 Announcement of class prices.**

The market administrator shall announce publicly on or before the 5th day of each month the Class I price for the following month and the Class II and Class III prices for the preceding month.

**§ 1065.71 [Amended]**

11. In § 1065.71(a), the number "13th" is changed to "15th".

**§ 1065.72 [Amended]**

12. In § 1065.72, the number "14th" is changed to "16th".

13. Section 1065.73 is revised to read as follows:

**§ 1065.73 Payments to producers and to cooperative associations.**

(a) Each handler shall pay for milk received from producers for whom payment is not made pursuant to paragraph (b) or (c) of this section as follows:

(1) On or before the 27th day of the month, the handler shall pay each producer who had not discontinued shipping milk to such handler for milk delivered during the first 15 days of the month. The amount to be paid for each hundredweight of milk delivered shall be not less than the uniform price for the preceding month, less proper deductions authorized in writing by such producer;

(2) On or before the 18th day after the end of the month, the handler shall pay to each producer for each hundredweight of milk delivered the uniform price pursuant to § 1065.61, as adjusted pursuant to §§ 1065.74 and 1065.75, less the following amounts:

(i) The payments pursuant to paragraph (a)(1) of this section;

(ii) Deductions for marketing services pursuant to § 1065.86; and

(iii) Any proper deductions authorized in writing by the producer. However, if by the date specified above the handler has not received full payment for such month pursuant to § 1065.72, he may reduce his total payment to all producers uniformly by not more than the amount of reduction in payment from the market administrator; the handler shall complete such payments not later than the date for making such payments pursuant to this paragraph

next following receipt of the balance from the market administrator.

(b) Each handler shall pay a cooperative association as follows for milk received from producers if the cooperative association has filed a written request for payment with the handler and if the market administrator has determined that such cooperative association is authorized to collect payment:

(1) On or before the 26th day of the month, an amount not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a)(1) of this section, less any deductions authorized in writing by such cooperative association; and

(2) On or before the 17th day after the end of each month an amount not less than the sum of the individual payments otherwise payable to producers pursuant to paragraph (a)(2) of this section, less proper deductions authorized in writing by such cooperative association.

(c) Each handler shall pay a cooperative association for receipts of milk for which such cooperative association is the handler pursuant to § 1065.9(c) as follows:

(1) On or before the 26th day of the month, the handler shall pay for milk received during the first 15 days of the month. The amount to be paid for each hundredweight of milk delivered shall be not less than the uniform price for the preceding month; and

(2) On or before the 17th day after the end of each month, the handler shall pay for each hundredweight of milk delivered the uniform price, as adjusted by the butterfat differential specified in § 1065.74, applicable at the location of the receiving handler's plant, less the amount paid pursuant to paragraph (c)(1) of this section.

(d) Each handler shall pay a cooperative association for fluid milk products received from a pool plant operated by the cooperative association as follows:

(1) On or before the 26th day of the month, the handler shall pay for each hundredweight of fluid milk products received not less than the Class III price for the preceding month, adjusted by the butterfat differential pursuant to § 1065.74 for the preceding month; and

(2) On or before the 17th day after the end of the month, the handler shall pay for each hundredweight of fluid milk products received according to the classification of such fluid milk products pursuant to § 1065.42 at not less than the applicable class prices specified in § 1065.50, adjusted for the location of the transferee plant and by the butterfat

differential specified in § 1065.74, less payment made pursuant to paragraph (d)(1) of this section;

(e) In making payments to producers pursuant to paragraphs (a) and (b) of this section, each handler shall furnish each producer or cooperative association with a supporting statement, in such form that it may be retained by the producer, which shall show:

- (1) The month and the identify of the handler and of the producer;
- (2) The pounds per shipment, the total pounds, and the average butterfat test of milk delivered by the producer;
- (3) The minimum rate at which payment to the producer is required under the provisions of §§ 1065.61, 1065.74, and 1065.75;
- (4) The rate which is used in making the payment, if such rate is other than the applicable minimum rate;
- (5) The amount or the rate per hundredweight of each deduction claimed by the handler, including any deduction claimed pursuant to § 1065.86 together with a description of the respective deductions; and
- (6) The net amount of payment to the producer.

(g) Nothing in this section shall abrogate the right of a cooperative association to make payments to its member producers in accordance with the payment plan of such cooperative association.

14. Section 1065.75 is revised to read as follows:

**§ 1065.75 Plant location adjustments for producers and on nonpool milk.**

(a) The uniform price pursuant to § 1065.61 for producer milk received at a pool plant or diverted to a nonpool plant shall be adjusted according to the location of the plant of actual receipt at the rates set forth in § 1065.52.

(b) For purposes of computations pursuant to §§ 1065.71 and 1065.72, the uniform price shall be adjusted at the rates set forth in § 1065.52 applicable at the location of the nonpool plant from which the milk was received, except that the adjusted weighted average price shall not be less than the Class III price.

15. A new § 1065.78 is added as follows:

**§ 1065.78 Charges on overdue accounts.**

Any obligation of a handler pursuant to §§ 1065.71, 1065.76, 1065.77(a), 1065.85, and 1065.86, for which remittance has not been made (or, if mailed, postmarked) by the date specified for such payment, shall be increased one percent, and any remaining amount due shall be increased at the same rate on the

corresponding day of each month thereafter until paid. The amounts payable pursuant to this section shall include unpaid charges previously made pursuant to this section. For the purpose of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

**§ 1065.85 [Amended]**

16. In the preamble of § 1065.85, the number "14th" is changed to "15th".

Note.—This recommended decision constitutes the Department's Draft Impact Analysis Statement for this proceeding.

Signed at Washington, D.C., on: July 24, 1979.

Irving W. Thomas,  
Acting Deputy Administrator, Marketing Program Operations.

[FR Doc. 79-25351 Filed 7-27-79; 9:46 am]  
BILLING CODE 3410-02-M

**Commodity Credit Corporation**

**[7 CFR Part 1464]**

**Tobacco Loan Program; Proposed 1979 Crop Grade Loan Rates—Fire-Cured (Type 21) Tobacco**

AGENCY: Commodity Credit Corporation, USDA.

**ACTION: Proposed Rule.**

**SUMMARY:** This proposal would establish the loan rates to be applied to the various grades of 1979-crop fire-cured (type 21) tobacco so as to provide the level of price support required by the Agricultural Act of 1949, as amended. It would also eliminate price support eligibility for N2 tobacco. Eligible fire-cured (type 21) tobacco could be delivered for price support at the specified rates.

**DATES:** Written comments must be received by August 29, 1979 in order to be sure of consideration.

**ADDRESS:** Send comments to Director, Price Support and Loan Division, ASCS, P.O. Box 2415, Washington, D.C. 20013.

**FOR FURTHER INFORMATION CONTACT:** R. L. Tarczy, (202) 447-6733.

**SUPPLEMENTARY INFORMATION:** In accordance with the provisions of Section 106 of the Agricultural Act of 1949 as amended ("the Act"), the 1979 crop of fire-cured (type 21) tobacco is required to be supported at the level of 90.4 cents per pound. It is expected that price support will be provided through

loans to a producers' cooperative marketing association which would receive eligible tobacco from producers and make price support advances to the producers through auction warehouses. The tobacco received would serve as collateral for the loan. Price support advances would be based on the loan rates for each grade. The proposed loan rates would average the required level of support when weighted by the anticipated grade percentages as authorized by Section 403 of the Act. Price support advances to producers would be the amounts determined by multiplying the pounds of each grade received by the applicable loan rate for that grade less 1 cent per pound, which the producers' association is authorized to deduct and apply against its overhead costs.

It is also proposed to not make available price support on tobacco graded N2 which is tobacco of lower quality. This proposal is being made in an attempt to discourage its marketing.

**Proposed Rule**

Accordingly it is proposed that 7 CFR Part 1464 be amended by revising § 1464.17 to read as follows effective for the 1979 crop of fire-cured tobacco, type 21.

**§ 1464.17 1979 Crop Fire-Cured Tobacco, Type 21, Grade Loan Schedule.<sup>1</sup>**

Grade	Loan Rate				
	Length 47	Length 45	Length 45	Length 44	Length 43
A1F	133	133	135		
A2F	133	134	134		
A1D	133	135	135		
A2D	133	134	134		
B1F	133	134	134		
B2F	125	125	127	122	
B3F	114	115	116	115	87
B4F	102	101	108	106	82
B5F	84	85	88	84	73
B1D	132	132	132		
B2D	125	126	127	122	
B3D	114	115	116	114	84
B4D	94	95	95	94	81
B5D	85	85	86	85	73
B3M	95	95	97	96	81
B4M	87	83	91	90	80
B5M	81	81	81	81	70
B2S	92	94	97	95	77
B4S	87	83	91	88	76
B5S	75	77	79	76	66
C1L	133	133	137		
C2L	135	135	135	130	
C3L	117	117	117	110	
C4L	93	96	101	97	
C5L	83	83	85	83	
C1F	133	133	133		
C2F	135	135	135	120	
C3F	119	119	119	115	
C4F	103	102	108	105	
C5F	84	85	87	84	

<sup>1</sup>Only the original producer is eligible to receive advances. Tobacco graded "W" (doubtful keeping order), "No-G" (no grade), "U" (unsound) or scrap will not be accepted. The Association is authorized to deduct \$1 per hundred pounds to apply against overhead cost.

**Loan Rate—Continued**

[Dollars per hundred pounds, farm sales weight]

Grade	Length 47	Length 46	Length 45	Length 44	Length 43
C2D.....	86	86	86	84	.....
C3D.....	81	81	81	78	.....
C4D.....	74	75	76	75	.....
C5D.....	66	67	67	66	.....
C3M.....	94	95	96	92	.....
C4M.....	88	87	91	90	.....
C5M.....	71	72	76	71	.....
C3G.....	77	78	79	75	.....
C4G.....	73	74	75	71	.....
C5G.....	67	68	70	68	.....

Grade	Loan rate
X1L.....	104
X1L.....	103
X3L.....	101
X4L.....	85
X5L.....	79
X1F.....	104
X2F.....	103
X3F.....	100
X4F.....	86
X5F.....	80
X1D.....	98
X2D.....	96
X3D.....	92
X4D.....	80
X5D.....	74
X3M.....	85
X3M 45.....	77
X4M.....	73
X4M 45.....	71
X5M.....	61
X5M 45.....	60
X3G.....	85
X3G 45.....	84
X4G.....	76
X4G 45.....	73
X5G.....	65
X5G 45.....	61
N1L.....	52
N1D.....	49
N1G.....	52
N2.....	10

\* N2 is not eligible for price support.

All written submissions will be made available for public inspection from 8:15 a.m. to 4:45 p.m. Monday through Friday in Room 3741—South Building, USDA, 14th and Independence Avenue, SW, Washington, D.C. 20013.

This amendment is being published under emergency procedures as authorized by Executive Order 12044 and Secretary's Memorandum No. 1955 without a full 60-day comment period. It has been determined by Jerome F. Sitter, Director, Price Support and Loan Division, ASCS that an emergency exists which warrants less than a full 60-day comment period on the proposal because the grade loan rates for the 1979-80 marketing year and the status of N2 tobacco for fire-cured (type 21) tobacco should be announced prior to harvest time in late August. Accordingly, comments must be received by August 29, 1979, in order to be assured of consideration.

Note.—This proposal has been reviewed under the USDA criteria established to

implement Executive Order 12044, "Improving Government Regulations". A determination has been made that this action should not be classified "significant" under those criteria. A Draft Impact Analysis has been prepared and is available from Jerome F. Sitter, Director, Price Support and Loan Division, Room 3741—South Building, P.O. Box 2415, Washington, D.C. 20013.

Signed at Washington, D.C. on July 25, 1979.

Bob Bergland,  
*Secretary of Agriculture.*

[FR Doc. 79-23434 Filed 7-27-79; 8:45 am]

BILLING CODE 3410-05-M

**Agricultural Marketing Service**

[7 CFR Part 1099]

[Docket No. AO-183-A36]

**Milk in the Paducah, Ky., Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and To Order**

*Correction*

In FR Doc. 79-22980 appearing at page 43477 in the issue of Wednesday, July 25, 1979, make the following changes in the third column on this page 43477:

1. Under the paragraph "Date" change "August 16, 1979" to read "August 6, 1979".

2. Under the paragraph "Preliminary Statement", in the second paragraph, delete "the 10th day after publication of this decision in the Federal Register." and insert "August 6, 1979."

BILLING CODE 1505-01

**Agricultural Marketing Service**

[9 CFR Part 201]

**AGENCY:** Packers and Stockyards-AMS.  
**ACTION:** Proposed Amendment.

**SUMMARY:** The control of rates and charges at posted stockyards by the Department was reduced substantially in October of 1978 with the issuance of statement of general policy 203.17. It now is the policy of the agency to accept for filing any schedule of rates and charges proposed by a stockyard operator or market agency unless a valid complaint is filed or other compelling reasons would require a review of the proposed increased rates. Section 201.25 presently requires the submission of information as to the reasons for the proposed increase with specific and detailed data to support the proposed increase. This proposed

amendment will remove that requirement of supplying specific and detailed data in support of each proposed rate increase. The Administrator may request detailed supporting data when required for proper enforcement of the Packers and Stockyards Act.

**DATES:** Comments must be received on or before September 28, 1979.

**ADDRESS:** Send comments to Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250. All comments received may be reviewed in the Hearing Clerk's office, Room 1077—South Agriculture Building, 14th and Independence Avenue, S.W., Washington, D.C. 20250.

**FOR FURTHER INFORMATION CONTACT:** Jack W. Brinckmeyer, Livestock Marketing Division, Agricultural Marketing Service, USDA, Washington, D.C. 20250, 202-447-4366.

**SUPPLEMENTARY INFORMATION:** Accordingly, it is proposed to amend § 201.25 [9 CFR 201.25] to read as follows:

§ 201.25 Information required with proposed increases in existing charges.

Each stockyard owner and market agency proposing an increase in existing charges shall forward to the Administrator at least ten (10) days before the effective date thereof the supplement, amendment, or tariff containing the proposed increase. The proposed increase will be accepted for filing effective no earlier than ten (10) days after receipt by the agency. However, if a valid complaint is filed or for other compelling reasons, the Administrator may require the furnishing of specific and detailed data on which the proposed increase is based.

Done this 23rd day of July 1979.

Chas. B. Jennings,  
*Deputy Administrator, Packers and Stockyards.*

[FR Doc. 79-23406 Filed 7-27-79; 8:45 am]

BILLING CODE 3410-02-M

**NATIONAL CREDIT UNION ADMINISTRATION**

[12 CFR Part 704]

**Corporate Central Federal Credit Union**

**AGENCY:** National Credit Union Administration.

**ACTION:** Proposed Rule.

**SUMMARY:** This Part contains those regulations governing the operations of

and requirements for Corporate Central Federal Credit Unions where such operations and requirements differ from those of natural person credit unions. Existing regulations for corporate central Federal credit unions define the terms "Corporate Central Federal Credit Union" and "Risk Assets" (for purposes of reserve requirements) and establish a special reserve account for corporate central Federal credit unions.

The Administration's experience with corporate central credit unions has revealed a need for greater flexibility in their capital structure and more specific guidance in the areas of management and audits of books and records. The changes in this proposed rule are intended to satisfy those needs.

The management section, added by this change, provides for representation of member credit unions on the board of directors and on the credit committee of the corporate central Federal credit union by allowing appointed representatives of member credit unions to serve on their behalf. This change would also require that the annual audit be performed by a qualified independent auditor. In addition, corporate central Federal credit unions would be permitted to offer to member credit unions, daily balance share accounts not subject to the rate restrictions of Section 701.35(g) (12 CFR 701.35(g) of this Chapter.

**DATE:** Comments must be received by August 29, 1979.

**ADDRESS:** Send comments to Robert S. Monheit, Senior Attorney, Office of General Counsel, National Credit Union Administration, 2025 M Street NW., Washington, D.C. 20456.

**FOR FURTHER INFORMATION CONTACT:** Mike Fischer, Chief Accountant, Office of Examination and Insurance, telephone (202) 254-8760.

**SUPPLEMENTARY INFORMATION:** The first Corporate Central Federal Credit Union was chartered in September 1969. Since that time, 18 additional corporate centrals have been chartered by this Administration to serve the needs of credit unions serving primarily natural persons. The Administration's experience with these corporate centrals has revealed a need for greater flexibility in their capital structure and more specific guidance in the areas of management and audits of books and records.

In addition, the establishment of the Central Liquidity Facility (Facility) by Title XVIII of Public Law 95-630 has expanded the role of corporate central credit unions in that corporate centrals can, upon approval, act as agents of the

Facility. On May 4, 1979, the Administration published a proposed rule (44 FR 26115) regarding membership in and lending of the Facility. The proposed requirements of this Part in the areas of management policies, budgetary process and annual audits parallel the requirements of proposed Part 725 (12 CFR 725) in these same areas.

#### Analysis of Proposed Changes

1. The Administration proposes to permit representatives of member credit unions to serve on the board of directors and on the credit committee of the corporate central credit unions. Currently only natural person members are permitted to serve. The existing requirement denies representation to that group of members which has the predominant financial interest in the corporate central Federal credit union and which has the greatest financial risk in the event that the corporate central is mismanaged. New Sections 704.3 (a) and (b) allow a member credit union to be elected to the board or credit committee of a corporate central Federal credit union and upon election permit that member credit union to appoint a representative from its membership to serve in its behalf on the board or on the credit committee of the corporate central Federal credit union.

2. Recent examinations of corporate central Federal credit unions have disclosed a need for greater management control and direction of corporate central operations. Further, if corporate centrals are to function as liquidity sources for their member credit unions, it is essential that the corporate centrals institute policies, controls and budgetary processes necessary for projecting and managing liquidity needs. For these reasons § 704.3(c) and (d) are added to require boards of directors of corporate central Federal credit unions to establish and periodically review written management policies and establish a comprehensive budgetary process.

3. All Federal credit unions are required by § 701.12 of this Chapter (12 CFR 701.12) to have an annual audit. The supervisory committee, which is appointed by the board of directors, is charged with the responsibility of insuring that such annual audit is performed. Annual audits are performed in some instances by the supervisory committee members while in other cases the supervisory committee will retain outside auditors to perform the annual audits. In many cases, the members of the supervisory committee are not trained auditors. The Administration

has determined that, because of the complexity of the corporate central Federal credit union's operations and its critical role in the liquidity management of the entire credit union system, audits of corporate central Federal credit unions must be performed by qualified, technically competent, independent third parties. For the above reasons a new § 704.4 has been added which requires that the annual audit of a corporate central Federal credit union be performed by a duly licensed independent auditor.

4. Corporate central Federal credit unions have not had the flexibility in their capital structure to meet the needs of their members in the area of short-term, highly liquid, competitive yield instruments. If the corporate central Federal credit union is to fulfill its role in the liquidity management of the credit union system it is essential that this void be filled. To provide corporate central Federal credit unions with the necessary flexibility in their capital structure, a new § 704.5 has been added which permits corporate central Federal credit unions to offer to their credit union members Daily Balance Share Accounts. These accounts are excluded from the rate restrictions of § 701.35(g) of this Chapter (12 CFR 701.35(g)).

Accordingly, NCUA proposes to revise Part 704 to read as set forth below.

Lawrence Connell,  
Chairman.

#### PART 704—CORPORATE CENTRAL FEDERAL CREDIT UNIONS

Sec.	Scope.
704.0	Scope.
704.1	Definitions.
704.2	Corporate Central Reserve.
704.3	Management.
704.4	Annual audit.
704.5	Daily balance share account.

Authority: Sec. 111, 94 Stat. 1015 (12 U.S.C. 1761); Sec. 118, 84 Stat. 1017 (12 U.S.C. 1762); Sec. 120, 73 Stat. 635 (12 U.S.C. 1766) and Sec. 209, 84 Stat. 1104 (12 U.S.C. 1783).

#### § 704.0 Scope.

(a) This Part contains those regulations governing the operations of and requirements for Corporate Central Federal Credit Unions where such operations and requirements differ from those of natural person Federal credit unions.

(b) Part 702 of this Chapter sets forth the reserving requirements for Federal credit unions. As concerns corporate central Federal credit unions, this Part modifies the existing regular reserve structure by eliminating from outstanding loans and risk assets, when

computing the amount that must be maintained in the regular reserve, loans to member credit unions (loans to other credit unions are presently excepted from risk assets by § 700.1(j)(4)), and by creating a corporate central reserve.

(c) The regulation sets out procedures for representation on the board of directors and credit committee of corporate central Federal credit unions and for the establishment of written management policies. In addition, annual audit requirements are described and a daily balance share account for member credit unions is established which is not subject to the rate restrictions specified in § 701.35(g).

#### § 704.1 Definitions.

(a) "Corporate central Federal credit union" means a Federal credit union operated for the primary purpose of serving corporate accounts. A Federal credit union will be deemed to be a corporate central Federal credit union when its total dollar amount of outstanding corporate loans plus corporate shareholdings is equal to, or in excess of, 75 per centum of its total outstanding loans plus shareholdings.

(b) "Natural person Federal credit union" means any Federal credit union which is not a corporate central Federal credit union.

(c) "Risk assets" of a corporate central Federal credit union shall be as defined in § 700.1 of this Chapter, except, however, loans made under authority of Sections 107(5) and 107(7) of the Act by a corporate central Federal credit union to credit unions shall not be considered risk assets.

(d) "Management policies" means policies relating to the general conduct of a credit union's operations including but not limited to policies related to membership, lending, investing, borrowing, safeguarding of assets, hiring, training, and supervision of employees.

#### § 704.2 Corporate central reserve.

(a) In addition to the Regular Reserve required by § 702.2 of this Chapter, a corporate central Federal credit union shall establish and maintain a Corporate Central Reserve as described in this Section.

(b) Immediately before the payment of each dividend, the treasurer shall determine the gross earnings of the corporate central Federal credit union. From this amount there shall be transferred to a reserve to be known as the Corporate Central Reserve, as of the end of each dividend period, 2 per centum of gross earnings until the Corporate Central Reserve shall equal

1½ per centum of the corporate central Federal credit union's total assets.

(c) Whenever the Corporate Central Reserve falls below 1½ per centum of total assets it shall be replenished by regular transfers of 2 per centum of gross earnings or by contributions in such amounts as may be needed to maintain the Corporate Central Reserve at 1½ per centum of total assets, whichever is less.

(d) Charges may be made against the Corporate Central Reserve to the same extent and in the same manner as those permitted to be made against the Regular Reserve pursuant to Section 702.2 of this Chapter. No other charges shall be made against the Corporate Central Reserve except as may be authorized in writing by the NCUA Board or its designee.

#### § 704.3 Management.

(a) The business affairs of the corporate central Federal credit union shall be managed by:

(1) A board of not less than five directors elected by and from the members. In the event that a member so elected is a member credit union, the board of directors of that credit union shall select and appoint a representative from its membership to serve on the board of the corporate central Federal credit union.

(2) A credit committee of not less than three members elected by and from the members. In the event that a member so elected is a member credit union, the board of directors of that credit union shall select and appoint a representative from its membership to serve on the credit committee of the corporate central Federal credit union.

(3) A supervisory committee of not less than three members nor more than five members, one of whom may be a director other than the treasurer, to be appointed by the board. Representatives of member credit unions may be appointed to supervisory committee.

(b) At their first meeting after their election, the directors shall elect from their number, a president, one or more vice presidents, a secretary, and a treasurer, who shall be the executive officers of the corporation.

(c) Management Policies: (1) The board of directors shall adopt and approve written policies that shall be reviewed at least annually.

(2) In establishing the management policies the board shall adopt such policies that will foster efficient operations in conformance with sound business practice both in the corporate central Federal credit union and among its members.

(d) The board of directors shall institute a budgetary process which addresses the areas of income and expenses, cash flow, and the sources and uses of funds and shall assess actual performance against such budgets at least quarterly.

#### § 704.4 Annual audit.

(a) The supervisory committee shall cause an annual audit to be made by an independent, duly licensed, auditor and shall submit the audit report to the Board of Directors. A summary of the audit report shall be submitted to the membership at the next annual meeting.

(b) A copy of the audit report shall be submitted to the appropriate regional office of the National Credit Union Administration within 14 days after receipt by the board of directors.

#### § 704.5 Daily balance share account.

Notwithstanding the requirements of § 701.35 of this Chapter, a corporate central Federal credit union may make available to its member credit unions a daily balance share account subject to the following terms and conditions:

(a) The dividend period for such accounts shall be daily.

(b) The board of directors, after determining through projections that adequate earnings are available, may declare dividends no more frequently than daily and no less frequently than monthly.

(c) The dividend rate on such accounts shall *not* be subject to the rate restrictions of § 701.35(g) of this Chapter.

(d) The board of directors may establish such additional terms and conditions concerning the issuance and maintenance of such accounts in conformance with the requirements of this Section and § 701.35.

[FR Doc. 79-23203 Filed 7-27-79; 8:45 am]

BILLING CODE 7535-01-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[14 CFR Parts 1, 71, 91, 105]

#### Informal Airspace Meeting

AGENCY: Federal Aviation Administration/DOT.

ACTION: Notice of Informal Airspace Meeting.

**SUMMARY:** Notice is hereby given that a public informal airspace meeting will be held to give interested person the opportunity to comment on the proposed Bradley Terminal Control Area (TCA).

**DATES:** Notice is hereby given that a public informal airspace meeting will be held by the FAA at the National Guard Auditorium, Route 75, Bradley International Airport, Windsor Locks, Connecticut, on Wednesday, September 26, 1979, at 7:00 p.m.

**SUPPLEMENTARY INFORMATION:** This proposal is addressed in full in Federal Aviation Administration (FAA) Notice 78-19, issued on December 27, 1978, and published in the Federal Register (44 FR 1322) on January 4, 1979. Any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, S.W., Washington, D.C. 20591, or by calling (202) 426-8058.

The public is invited to attend this informal airspace meeting to present facts pertinent to the safe and efficient use of navigable airspace as it relates to the proposal.

Comments may be submitted in writing at this meeting or within five days thereafter, addressed to the following: Operations, Procedures and Airspace Branch, ANE-530, Federal Aviation Administration, Air Traffic Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

For further information, contact Mr. Donald Hepler, Chief, Bradley International Airport Traffic Control Tower (ATCT), FAA, Windsor Locks, Connecticut 06096. Telephone (203) 623-4232, Office Hours 8:00 a.m. to 4:30 p.m.; Donald L. Turner, Chief, Operations, Procedures and Airspace Branch:

[FR Doc. 79-23334 Filed 7-27-79; 8:45 am]  
BILLING CODE 4910-13-M

#### [14 CFR Part 39]

[Docket No. 79-WE-17-AD]

#### Airworthiness Directives; McDonnell Douglas DC-10 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to adopt a new Airworthiness Directive (AD) that would require increased redundancy of the stall warning system on DC-10 series airplanes. The proposed AD is necessary since any of a number of single failures can result in the loss of stall warning capability of a single system.

**DATES:** Comments must be received on or before September 15, 1979.

**ADDRESSES:** Send comments on the proposal to: Department of Transportation, Federal Aviation Administration, Western Region, Attention: Regional Counsel, Airworthiness Rule Docket, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

**FOR FURTHER INFORMATION CONTACT:** Jerry J. Presba, Executive Secretary Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009; (213) 536-6351.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Interested persons are also invited to comment on the economic, environmental and energy impact that might result because of adoption of the proposed rule. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

FAA review of service experience indicates that a potentially hazardous situation may result from failure of the stall warning system in certain regimes of flight, particularly when combined with certain other possible system failures. Since any of a number of single failures can result in loss of stall warning capability of a single system, the FAA believes that a requirement for increased redundancy of the DC-10 stall warning system is necessary in the interests of safety.

Since this condition is likely to exist or develop on other airplanes of the same type design, the proposed AD would require increased redundancy of the stall warning system on DC-10 series airplanes.

#### Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend Section 39.13 of Part 39 of the Federal

Aviation Regulations (14 CFR 39.13) by adding the following new Airworthiness Directive:

**McDonnell Douglas:** Applies to Model DC-10, -10F, -30, -30F, -40 series airplanes certificated in all categories.

Compliance is required as indicated.

To reduce the probability of complete failure of the stall warning function, accomplish the following:

(a) Within 1,500 hours time in service after the effective date of this AD:

1. Install two (2) auto throttle/speed control computers, each of which receives information from both right and left angle of attack sensors and the positions of both outboard wing slat groups, in addition to other previously required inputs, in accordance with design data approved by the Chief, Aircraft Engineering Division, FAA Western Region.

2. Install a stick shaker at the First Officer's position, in addition to that previously required at the Captain's position, with both stick shakers actuated by either auto throttle/speed control computer in accordance with approved type design data.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of modifications required by this AD.

(c) Alternative inspections, modifications or other actions which provide an equivalent level of safety may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

[Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1353(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.85]

The Federal Aviation Administration had determined that this document is not significant in accordance with the criteria required by Executive Order 12044 and set forth in Department of Transportation Guidelines.

Issued in Los Angeles, California on July 17, 1979.

Leon C. Daugherty,  
Director, FAA Western Region.

[FR Doc. 79-23123 Filed 7-27-79; 8:45 am]  
BILLING CODE 4910-13-M

#### [14 CFR Part 71]

[Airspace Docket No. 79-CE-20]

#### Transition Area—Ava, Mo.; Proposed Designation

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This Notice proposes to designate a 700-foot transition area at Ava, Missouri, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Bill Martin Memorial Airport, Ava, Missouri, utilizing the Dogwood, Missouri VOR as a navigational aid.

**DATES:** Comments must be received on or before September 4, 1979.

**ADDRESSES:** Send comments on the proposal to: Federal Aviation Administration, Chief, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Chief, Operations, Procedures and Airspace Branch, Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Dwaine E. Hiland, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE-537, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106. All communications received on or before September 4, 1979, will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

**Availability of NPRM**

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106 or by calling (816)

374-3408. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) by designating a 700-foot transition area at Ava, Missouri. To enhance airport usage, a new instrument approach procedure to the Bill Martin Memorial Airport, Ava, Missouri, is being established utilizing the Dogwood, Missouri VOR as a navigational aid. The establishment of a new instrument approach procedure based on this navigational aid entails designation of transition area at Ava, Missouri, at and above 700 feet above ground level (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Accordingly, Federal Aviation Administration proposes to amend Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1979 (44 FR 442) by adding the following new transition area:

**Ava, Mo.**

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Bill Martin Memorial Airport (latitude 36°58'19" N., longitude 92°40'52" W.), and within 2 miles each side of the 107° radial of the Dogwood, Missouri VORTAC, extending from the VORTAC to the 5-mile radius areas and within 2.5 miles each side of the 133° bearing from the airport extending from the 5-mile radius area to 6 miles Southeast. (Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.65 of the Federal Aviation Regulations (14 CFR 11.65).)

The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so

minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Kansas City, Missouri, on July 19, 1979.

John E. Shaw,  
Acting Director, Central Region.

[FR Doc. 79-23337 Filed 7-27-79; 8:45 am]  
BILLING CODE 4910-13-M

**[14 CFR Part 71]**

[Airspace Docket No. 79-CE-22]

**Transition Area—Tekamah, Nebr.; Proposed Designation**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This Notice proposes to designate a 700-foot transition area at Tekamah, Nebraska, to provide controlled airspace for aircraft executing a new instrument approach procedure to the Tekamah, Nebraska Airport, utilizing a VOR being installed on the airport by the City as a navigational aid.

**DATES:** Comments must be received on or before September 4, 1979.

**ADDRESSES:** Send comments on the proposal to: Federal Aviation Administration, Chief, Operations, Procedures and Airspace Branch, Air Traffic Division, ACE-530, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

The official docket may be examined at the Office of the Regional Counsel, Central Region, Federal Aviation Administration, Room 1558, 601 East 12th Street, Kansas City, Missouri.

An informal docket may be examined at the Office of the Chief, Operations, Procedures and Airspace Branch, Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Benny J. Kirk, Airspace Specialist, Operations, Procedures, and Airspace Branch, Air Traffic Division, ACE-538, FAA, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3408.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons may participate in the proposed rule making by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number, and be submitted in duplicate to the Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, 601

East 12th Street, Kansas City, Missouri 64106. All communications received on or before September 4, 1979, will be considered before action is taken on the proposed amendment. The proposal contained in this Notice may be changed in light of the comments received. All comments received will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons.

#### Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Operations, Procedures and Airspace Branch, 601 East 12th Street, Kansas City, Missouri 64106 or by calling (816) 374-3408. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for further NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

#### The Proposal

The FAA is considering an amendment to Subpart G, § 71.181 of the Federal Aviation Regulations (14 CFR 71.181) by designating a 700-foot transition area at Tekamah, Nebraska. To enhance airport usage, a new instrument approach procedure to the Tekamah, Nebraska Airport is being established utilizing a VOR being installed on the airport as a navigational aid. The establishment of a new instrument approach procedure based on this navigational aid entails designation of a transition area at Tekamah, Nebraska at and above 700 feet above ground level (AGL) within which aircraft are provided air traffic control service. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under Instrument Flight Rules (IFR) and other aircraft operating under Visual Flight Rules (VFR).

Accordingly, Federal Aviation Administration proposes to amend Subpart G, 71.181 of the Federal Aviation Regulations (14 CFR 71.181) as republished on January 2, 1979, (44 FR 442) by adding the following new transition area:

#### Tekamah, Nebr.

That airspace extending upward from 700 feet above the surface within a 5 mile radius of the Tekamah Airport (latitude 41° 45' 50" N, longitude 96° 10' 38" W) and within 3 miles each side of the 135°T bearing from the Tekamah VOR (latitude 41° 45' 35" N, longitude 96° 10' 42" W) extending from the 5 mile radius area to 8½ miles southeast of the VOR.

(Sec. 307(a), Federal Aviation Act of 1958 as amended (49 U.S.C. 1348); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.65 of the Federal Aviation Regulations (14 CFR 11.65)).

The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Kansas City, Missouri, on July 19, 1979.

John E. Shaw,  
Acting Director, Central Region.

(FR Doc. 79-23338 Filed 7-27-79; 2:45 am)  
BILLING CODE 4910-13-M

### CIVIL AERONAUTICS BOARD

[14 CFR Parts 221, and 399]

[EDR-386/PSDR-62, Docket No. 36202,  
Dated: July 24, 1979]

#### Change in Statutory Notice Requirements for Tariff Filings and in Rules and Policies for Considering Requests To File Tariffs on Less Than Statutory Notice

**AGENCY:** Civil Aeronautics Board.  
**ACTION:** Proposed rules.

**SUMMARY:** The Board is proposing to relax its requirements for advance notice of proposed tariff changes to permit carriers to more quickly implement rate and fare changes, particularly rate and fare reductions. The changes, which are intended to remove unnecessary regulatory obstacles to a more competitive and dynamic pricing system, will reduce to 25 days the statutory notice period for tariff filings which match price reductions offered by other carriers, and will considerably expand the tariff filings that we will allow on less than statutory notice. We believe these changes will offer significant benefits to the public by allowing carriers' pricing options to more closely approximate those available to unregulated companies.<sup>1</sup>

<sup>1</sup>Trans World Airlines, Inc., in Docket 34695, requested that the Board clarify its policies relating to advance notice requirements for tariff filings and

**DATES:** Comments due by: August 29, 1979.

Comments and other relevant information received after these dates will be considered by the Board only to the extent practicable.

**ADDRESSES:** Twenty copies of comments should be sent to Docket 36202, Docket Section, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C., as soon as they are received.

**FOR FURTHER INFORMATION CONTACT:** Norman D. Schwartz, Chief, Legal Analysis Division, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; 202-673-5056.

**SUPPLEMENTARY INFORMATION:** Recent amendments to the Federal Aviation Act, specifically the Cargo Deregulation Act of 1977 (Pub. L. 95-163) and the Airline Deregulation Act of 1978 (Pub. L. 95-504), have substantially lessened the degree of regulation of the air transportation industry, and have placed much greater emphasis on competition and the needs of the marketplace to determine the type, quality and quantity of air transportation services provided. Indeed, the Airline Deregulation Act provides for the total elimination of domestic route regulation after 1981 and domestic passenger fare regulation after 1982.

We believe these statutory changes and the additional competition that now exists in the industry necessitate a comprehensive review of our rules and policies for granting special tariff permission requests to file tariff changes on short notice. Additionally, section 403(c)(1) of the Federal Aviation Act was recently amended by the Airline Deregulation Act to specifically provide that the Board may establish an alternative statutory notice requirement of not less than 25 days to allow an air carrier to match the fares and charges specified in other air carriers' proposed tariffs. While the Congress left to the Board the discretion to establish or not establish the alternative notice, we view the inclusion of the provision as an indication that the Congress wanted us to at least review the desirability of establishing a shorter statutory filing period for competitive matching filings.

for allowing tariff filings on less than statutory notice. In light of our action here to comprehensively review such policies, we are dismissing Trans World Airlines' application in Docket 34695.

Up to now, the statutory notice requirement has been the same for matching filings as for other filings. Also, while the Board has long had the authority to waive the statutory notice requirements and permit the filing of tariffs on as little as one day's notice, our policies in this area have required that most substantive filings be made on statutory notice. We believe these policies should be reviewed, in light of the more competitive conditions now existing in the industry, with a view toward reducing the advance notice requirements and allowing the carriers greater flexibility to change their tariffs on short notice, particularly to offer reduced fares and rates to the travelling and shipping public.

The imposition of any advance notice requirement is in itself, of course, a restriction imposed by regulation. Absent such a requirement, air carriers could implement rate changes of their choosing, without any advance notice, as unregulated companies can do.<sup>2</sup> However, the Board continues to exercise significant jurisdiction over airline rates and fares, and we must for now, require significant advance notice on at least some filings to fully exercise that jurisdiction. Nevertheless, our jurisdiction over domestic fares and rates has already been lessened, and in light of the generally more competitive conditions that now exist in both domestic and international markets, we believe our policy regarding special tariff permission requests should be liberalized to permit carriers more latitude to change their tariffs on short notice. Such a policy change will permit the carriers' pricing actions to more closely approximate what they will be able to do in the unregulated environment toward which the industry is moving and will tend to restrict the advance notice requirement to those tariff filings for which it serves a real purpose.

The Airline Deregulation Act established zones of reasonableness for domestic and overseas passenger fares within which, with limited exceptions, the Board can no longer find fares to be unjust and unreasonable. Furthermore, our power to suspend rates within these zones has been removed. This eliminates the major rationale for requiring advance notice of the effective date of tariff changes, *i.e.*, to give the Board and the public an opportunity to review the filing and to prevent the fares from going into effect pending a

<sup>2</sup>For domestic freight shipments, the carriers already have this capability since they are exempt from the Board's tariff filing requirements for such shipments.

determination of lawfulness. As a matter of policy, given these relatively well-defined zones, we see no necessity to require that tariff filings proposing fare increases or reductions within the zones be made on statutory notice. While short notice reduces the tariff filing requirement, it in no way reduces the effectiveness of section 403 as an aid to the Board in fulfilling its obligation under the Act to determine the lawfulness of rates in appropriate circumstances. As a matter of fact, permitting short notice filings may well tend to reduce the incidence of a highly undesirable and anti-competitive practice which results from long notice periods, *i.e.*, price signalling. Of course, we do not intend to require short notice filings, and we recognize that, just as price signalling exists generally in the marketplace, it will continue in some degree with regard to airline prices. However, to the extent carriers avail themselves of the opportunity, the pro-competitive policies of section 102 will be furthered and public benefits will result. Thus, we believe we should generally grant short notice for such tariffs. Further, with respect to tariffs proposing fare reductions, we see no necessity to require statutory notice for filings which are clearly acceptable under the Board's current fare suspension policies, whether or not the fares are within the zones. When a carrier decides to offer lower fares that do not present significant questions of lawfulness, we do not believe the public interest is served by our arbitrarily requiring that the fares be deferred for the 30 or 60 days statutory notice period, as the case may be. Thus, we tentatively conclude that we should grant short notice requests to offer new or innovative low fares that are clearly acceptable under the Board's current policies, whether or not the proposed fares are within the defined zones. We recognize that granting short notice where controversy may exist as to the acceptability of the tariff may raise questions of adequate notice to potential complainants in certain cases. We in general, would not expect short notice requests for fares within the zone which fall into this category. We do, however, solicit comments on the advisability of including a requirement for telegraphic notice to competing carriers of short notice requests outside the zone of reasonableness.

Tariffs that present serious questions of lawfulness will continue to be required to be filed on full statutory notice to allow complaints, answers and full review by the Board. Also, we will undoubtedly receive special tariff

permission requests to file tariffs, in which the fares proposed may present possible questions as to their lawfulness and on which we will want to receive public comment, but which may not require the full statutory period for review by the Board. In such circumstances, we anticipate employing a procedure in which we will ask the carrier to file its tariff on statutory notice to allow for formal complaints, and to request special tariff permission to advance the effective date of the tariff.<sup>3</sup> If, upon review of the complaints, or in the absence of complaints, the Board determines that the fares should be permitted, we will permit the carrier to advance the effective date.<sup>4</sup> If the issues are not sufficiently clear after the initial review, we will let the statutory period continue to run and issue an order, as we do today, either permitting the fares or suspending them.

We believe significant public benefits can accrue through our permitting carriers to file fare reductions on short notice, since it will considerably reduce the time required to make low fares available to travelers and should encourage more competitive pricing. We are somewhat more concerned about allowing increases on short notice, since fare increases may not offer the same competitive spur or the same type of immediate, readily apparent public benefit. However, we are seeking to minimize the advance notice requirements to the extent feasible; and, where the statute establishes zones within which increases are presumed to be lawful, it seems only fair to permit carriers to enjoy the same latitude on upward fare adjustments within the zone that we propose to allow them on downward fare adjustments. Also, the ability to react quickly to cost increases may lessen carriers' incentives to consider service cuts. Nevertheless, we will appreciate specific comment regarding our tentative proposal to permit certain fare increases on short notice.

In light of our proposed more liberal policies for granting special tariff permission applications to offer reduced fares, we do not believe we should continue our present policy of not granting special tariff permission applications to match reduced fares that have been filed on statutory notice. Such a policy may be desirable if almost all fare reductions are filed on statutory

<sup>3</sup>We will require that such special tariff permission applications be served upon all certificated and foreign route carriers serving the market(s) involved.

<sup>4</sup>When this procedure is employed, we will endeavor to act on the special tariff permission requests within 15 days after the tariff is filed.

notice, since it serves to give an advantage to the initiator who is required to give advance notice of his plans; however, if our basic policies are to be generally receptive to the filing of low fares on short notice, there is little rationale for maintaining a policy that specifically precludes short notice for a low fare proposal that just happens to match one filed earlier on statutory notice. Thus, under our proposed policies, we will consider such requests in the same way as any other request to introduce reduced fares on short notice. In a similar vein, we also tentatively conclude that we should implement the alternate statutory notice provision the Congress recently provided for in the Act by reducing to 25 days the statutory filing period for matching tariffs. Thus, where carriers choose to file lower fares on statutory notice, other carriers will be able to match the fares for the same effective date using the alternative statutory notice procedure.<sup>5</sup> In this interim period prior to total deregulation of rate filings, the reduction to 25 days for matching tariffs will afford the carriers an opportunity to, in some measure, simulate the free market. It will give a matching carrier five days in which to match the competitors price to be effective the same day. After the fifth day, 30 days notice will be required. While this does not give complete market freedom, it will more closely simulate free market conditions than does the strict 30 days filings requirement. However, if the initiating carrier wants greater assurance of a competitive edge in offering reduced fares, it will have the option of seeking to initiate its proposal on short notice.

We believe these proposed changes will strike a better balance between our need for advance notice and the need to encourage competitiveness in the air transportation system. We expect these changes to result in policies and procedures that will permit us to properly discharge our statutory responsibilities in connection with tariff filings that present real questions of lawfulness, without unnecessarily restricting carriers' rate flexibility in connection with tariff filings that do not present such questions. We believe the public will benefit from our permitting the carriers to exercise, to the extent possible, the kinds of competitive pricing options that are available to unregulated companies. Further,

<sup>5</sup>The alternative statutory notice will apply only to filings that match competition as defined in § 221.165(d)(iv) of our Economic Regulations. In other words, "matching" filings must be those that decrease fares or increase the value of service; filings that increase fares or decrease the value of service are specifically excluded.

particularly in the case of domestic transportation, such policies should help smooth the transition to the already legislated termination of economic regulation.

We are aware of complaints by travel agents that frequent changes in fares on short notice can be disruptive to their operations and, eventually, their customers. In general, we believe that it is the carrier's responsibility to ensure that notice of new fares is adequately disseminated to its agents, the length of regulatory notice notwithstanding. We welcome any comments as to the effect of our proposed policies on the travel agent industry.

Accordingly, we tentatively find and conclude that we should adopt the following:

#### Proposed Rules

The Board proposes to amend Part 221 of its Economic Regulations (14 CFR Part 221) and Part 399 of the Policy Statements (14 CFR Part 399) as set forth below.

#### PART 221—CONSTRUCTION, PUBLICATION, FILING AND POSTING OF TARIFFS OF AIR CARRIERS AND FOREIGN AIR CARRIERS

Amend §§ 221.160 and 221.190 as follows:

1. Amend paragraph (a) of § 221.160 to read as follows:

##### § 221.160 Required notice.

(a) *Statutory notice required.* Unless otherwise authorized by the Board, or otherwise provided in a bilateral agreement between the United States and the Government of a foreign country, all tariffs, supplements, and loose-leaf tariff pages and all fares, rates, charges, ratings, routings, rules, amendments and other tariff provisions therein (including initial rates, fares, charges, and tariff provisions) as required by this part shall be filed with the Board at least the following number of days before the date they are to become effective regardless of whether or not any changes are affected thereby:

(1) For tariffs stating a domestic passenger fare within the range of fares created by section 1002(d)(4) of the Act (49 U.S.C.A. 1482(d)(4)), at least 30 days;

(2) For all other tariffs, at least 60 days, except that matching tariffs which meet competition as described in § 221.165(d)(iv)(a) and (b) shall be filed with the Board at least 25 days before they are to become effective.

2. Add §§ 221.190(b)(5) and 221.190(b)(6) to 221.190 to read as follows:

§ 221.190 Grounds for approving or denying special tariff permission applications.

(b) \* \* \*

(5) *Filing of fares, rates and charges within well defined zones.* The establishment of clearly defined zones within which fares, rates or charges are presumed to be lawful, will constitute grounds for approving application for special tariff permissions to file fares, rates or charges within such zones on less than statutory notice. (see § 399.35)

(6) *Innovative fares, rates and charges.* The desire of carriers to offer lower fares, rates or charges to the travelling or shipping public constitutes grounds for approving applications for special tariff permission to file such fares, rates or charges on less than statutory notice, provided the proposed fares, rates or charges do not raise significant questions of lawfulness. (See § 399.35)

(c) [Reserved]

3. Delete and reserve paragraph 221.190(c) of § 221.190.

#### PART 399—STATEMENTS OF GENERAL POLICY

Add § 399.35 to read as follows:

§ 399.35 Policies applicable to special tariff permission applications to offer lower fares and rates, or to increase or reduce fares and rates within well defined zones.

It is the policy of the Board to approve carriers' requests to offer lower fares and rates to passengers and shippers on less than statutory notice, so long as the proposed fares and rates do not raise significant questions of lawfulness. Where proposed lower fares or rates appear to raise such questions (i.e., where, within jurisdictional limits, such fares or rates could reasonably be expected to be found unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial, or predatory, under current statutory or Board guidelines), the Board will require that they be filed on statutory notice. Where lower fares or rates are filed on statutory notice, the Board will use its best efforts to act upon (i.e., approve or deny) special tariff permission applications to advance the effective date of the proposed fares or rates within fifteen days after the tariff filing: *Provided*, The proponent carrier requests special tariff permission to advance the fares or rates at the same time the statutory filing is made, and provided such carrier gives immediate telegraphic notice of its special tariff permission request to all certificated

and foreign route air carriers providing service in the markets involved. With respect to fare and rate increases, it is the policy of the Board to approve carrier requests to implement higher fares or rates on less than statutory notice, absent unusual or emergency circumstances, only where the resulting fares or rates are within the statutory zones of reasonableness.

(Secs. 204, 403, 416 and 1002 of the Federal Aviation Act of 1958, as amended; 72 Stat. 743, 758, 771 and 788, as amended (49 U.S.C. 1324, 1373, 1386, 1482; and 5 U.S.C. 553))

By the Civil Aeronautics Board,  
Phyllis T. Kaylor,  
Secretary.

[FR Doc. 79-23376 Filed 7-27-79; 8:45 am]  
BILLING CODE 6320-01-M

## SECURITIES AND EXCHANGE COMMISSION

### [17 CFR Part 239]

[Release Nos. 33-6093, IC-10789; File No. S7-564]

#### Prospectuses for Variable Annuities; Withdrawal of Proposed Amendments to Forms S-5 and S-6

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Withdrawal of proposed amendments to forms.

**SUMMARY:** The Commission today withdrew proposed amendments to Forms S-5 and S-6 which would have required variable annuity prospectuses to contain certain illustrations based on hypothetical investment returns. The Commission has concluded that such illustrations should not be required at this time.

**EFFECTIVE DATE:** July 20, 1979.

**FOR FURTHER INFORMATION CONTACT:** Laura A. Boughan, Esq., Division of Investment Management, Securities and Exchange Commission, 500 N. Capitol Street, Washington, D.C. 20549, (202) 755-0237.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission today announced that it was withdrawing proposed amendments to Registration Forms S-5 and S-6 [17 CFR 239.15, 239.16] under the Securities Act of 1933 [15 U.S.C. 77a et seq.]. The amendments proposed on May 9, 1975 (Securities Act of 1933 and Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] Release Nos. 5586 and 8784, respectively [40 FR 23770]), would have mandated the inclusion in all variable annuity prospectuses of standardized

illustrations based on hypothetical investment results. The illustrations were patterned after those permitted by an earlier amendment to the Commission's Statement of Policy, designated Paragraph (s) (Securities Act of 1933 and Investment Company Act of 1940 Release Nos. 5582 and 8772 respectively, April 30, 1975 [40 FR 21711]). Paragraph (s) prescribed the standard form of the illustrations and had been adopted just prior to the proposal to make such illustrations mandatory.

The Commission has recently taken two actions which have now caused it to reconsider the appropriateness and form of any type of mandatory illustrations in variable annuity prospectuses. First, on August 28, 1978, the Commission rescinded Form S-5 and adopted Form N-1, an integrated registration statement for open-end management investment companies (Securities Act of 1933 and Investment Company Act of 1940 Release Nos. 5964 and 10378, respectively [43 FR 39548]). Although Form N-1 is available for use by insurance companies offering variable annuities, it does not provide for mandatory hypothetical illustrations.

Second, on March 8, 1979, the Commission withdrew its Statement of Policy after reexamining the regulation of investment company sales literature (Securities Act of 1933 and Investment Company Act of 1940 Release Nos. 6034 and 10621, respectively [44 FR 21007]). The Commission concluded that substantial changes in the regulation of investment company sales literature were in order and took certain steps to implement those changes.

In light of the rescission of Form S-5 and the withdrawal of the Statement of Policy, the Commission has concluded that illustrations in the form originally prescribed should not be mandatory at the present time. Further, these actions substantially alter the impact of the proposed amendments. Therefore, the Commission has determined to withdraw the proposed amendments to Forms S-5 and S-6 requiring such illustrations in variable annuity prospectuses.

By the Commission,  
George A. Fitzsimmons  
Secretary.

July 20, 1979.  
[FR Doc. 79-23308 Filed 7-27-79; 8:45 am]  
BILLING CODE 8010-01-M

## DEPARTMENT OF STATE

### Agency for International Development

[22 CFR Parts 202, 205, 208, 209, 211 and 214]

#### Improvement of Government Regulations; Semiannual Agenda of Regulations

**AGENCY:** Agency for International Development.

**ACTION:** Publication of semiannual agenda of regulations (Improving Government Regulations) for public comment.

**SUMMARY:** As required by Section 2(a) of Executive Order 12044, Improving Government Regulations, and as provided in Section 6 of the Agency for International Development's final report for implementation of the Order (44 FR 1957204), April 3, 1979, the first semiannual agenda of regulations is set forth below.

**FOR FURTHER INFORMATION CONTACT:** Joseph R. Ellis, Division Chief, Room 1066, Office of Management Planning, Agency for International Development, Washington, D.C. 20523, telephone (202) 632-4030.

#### Semiannual Agenda of Regulations

This Agenda of Regulations under review by the Agency for International Development contains the complete annual schedule of regulations to be reviewed in A.I.D. in 1979 as provided in section 6 of 44 FR 19574. The following Agenda has been approved by the Acting Administrator of A.I.D.:

1. The Regulations governing A.I.D. participation in overseas shipments of supplies by voluntary nonprofit relief agencies (22 CFR Part 202) have been revised. The revised Regulations incorporate amendments contained in Section 123 of the International Development and Food Assistance Act of 1978 on Private Voluntary Organizations' (PVO) shipments eligible for reimbursement by A.I.D. of ocean freight costs. A notice will be published in the Federal Register for public comment. Inquiry regarding the regulations on PVO shipments eligible for reimbursement may be directed to:

Robert S. McClusky, Chief, Public Liaison Division, Office of Private and Voluntary Cooperation, Bureau for Private and Development Cooperation, Agency for International Development, Washington, D.C. 20523, Telephone (703) 235-1844.

2. The Regulations governing A.I.D. payments to participants in nonmilitary economic and development training

programs (22 CFR Part 205) are under review. The point of contact in A.I.D. is:

Elizabeth Borcik, Office of International Training, Bureau for Development Support, Agency for International Development, Washington, D.C. 20523, Telephone (703) 235-2352.

3. The Regulations governing A.I.D. exclusion of suppliers of commodities and of commodity-related services from eligibility for A.I.D. financing (22 CFR Part 208) are under review. The point of contact in A.I.D. is:

Daniel Cohen, Chief, Surveillance and Evaluation Division, Office of Commodity Management, Bureau for Program and Management Services, Agency for International Development, Washington, D.C. 20523, Telephone (703) 235-8979.

4. The review of Regulations governing nondiscrimination in Federally-assisted programs of A.I.D. (22 CFR Part 209) are being revised. Inquiry regarding these Regulations may be directed to:

Kenneth E. Fries, Office of the General Counsel, Agency for International Development, Washington, D.C. 20523, Telephone (202) 632-8218.

5. The Regulations governing A.I.D. transfer of food commodities for use in disaster relief and economic development (22 CFR Part 211) have been revised. Proposed revised Regulations were published at 44 FR 1123-1134 for public comment. Final revised Regulations were published at 44 FR 34034-34045 and became effective on June 13, 1979. Inquiries regarding these Regulations may be directed to:

Jessie Vogler, Office of Food for Peace, Bureau for Private and Development Cooperation, Agency for International Development, Washington, D.C. 20523, Telephone (703) 235-9214.

6. The Regulations governing A.I.D. advisory committees (22 CFR Part 214) are under review. The contact point in A.I.D. is:

Gwendolyn Joe, Division Chief, Office of Management Planning, Bureau for Program and Management Services, Room 1066, Agency for International Development, Washington, D.C. 20523, Telephone (202) 632-4030.

In accordance with the procedural steps outlined in Section 2(c) of Executive Order 12044, A.I.D. has given the public full opportunity to comment on the revision of the Regulation governing A.I.D. transfer of food commodities for use in disaster relief and economic development (22 CFR Part 211) and will give the public full opportunity to comment on proposed revisions of the other Regulations listed

above. The Agency plans to publish its next fiscal year semiannual agenda schedule in October 1979.

Dated: July 19, 1979.  
Robert H. Nooter,  
*Acting Administrator, Agency for International Development.*

[FR Doc. 79-23399 Filed 7-27-79; 8:45 am]  
BILLING CODE 4710-02-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

[26 CFR Part 1]

[LR-1386]

#### Consolidated Returns; Public Hearing on Proposed Regulations

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Public hearing on proposed regulations.

**SUMMARY:** This document provides notice of a public hearing on proposed regulations relating to the tax imposed with respect to certain accumulated earnings in the case of an affiliated group of corporations which makes a consolidated income tax return.

**DATES:** The public hearing will be held on September 19, 1979, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by September 5, 1979.

**ADDRESS:** The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-1386), Washington, D.C. 20224.

**FOR FURTHER INFORMATION CONTACT:** George Bradley or Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202-566-3935, not a toll-free call.

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is proposed regulations under section 1502 of the Internal Revenue Code of 1954. The proposed regulations appeared in the Federal Register for Monday, May 14, 1979, at page 28001 (44 FR 28001).

The rules of § 601.601. (a) (3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the

time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by September 5, 1979. Each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the Government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the Federal Register for Wednesday, November 8, 1978.

By direction of the Commissioner of Internal Revenue.

Robert A. Bley,  
*Director, Legislation and Regulations Division.*

[FR Doc. 79-23393 Filed 7-27-79; 8:45 am]  
BILLING CODE 4830-01-M

[26 CFR Parts 1 and 25]

[LR-24-75]

#### Transfer of Appreciated Property to Political Organizations

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to the treatment of certain transfers of appreciated property to political organizations. Changes to the applicable tax law were made by the Act of January 3, 1975. The regulations would provide the public with the guidance needed to comply with the statutory changes.

**DATES:** Written comments and requests for a public hearing must be delivered or mailed by September 28, 1979. The amendments are proposed to be effective with respect to transfers of appreciated property to political organizations made after May 7, 1974.

**ADDRESS:** Send comments and requests for a public hearing to: Commissioner of Internal Revenue, 1111 Constitution

Avenue, N.W., Washington, D.C. 20024  
(Attention: CC:LR:T (LR-24-75)).

**FOR FURTHER INFORMATION CONTACT:**  
Susan K. Thompson of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20024  
(Attention: CC:LR:T) (202-566-3294).

**SUPPLEMENTARY INFORMATION:**

**Background**

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 84 of the Internal Revenue Code of 1954, and to the Gift Tax Regulations (26 CFR Part 25) under section 2501 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to sections 13 and 14 of the Act of January 3, 1975 (88 Stat. 2120) and are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

**New Rules**

This notice of proposed rulemaking contains new rules applicable to transfers of appreciated property to political organizations after May 7, 1974. These transfers are governed by section 84, added to the Code in 1975.

In general, section 84 treats certain transfers of appreciated property to political organizations as sales for purposes of the income tax. The term "political organization" is defined in section 527(e)(1). The term "transfer" is defined under the new rules as any assignment, conveyance or delivery of property other than a bona fide sale for an adequate and full consideration in money or money's worth.

The transferor is taxed on the difference between the fair market value and the adjusted basis of the property. In determining the amount of gain recognized by the transferor, the income tax rules relating to a sale of property apply. Because of the recognition of gain by the transferor at the time the property is contributed, the political organization is not permitted to "tack" the holding period of the donor to its holding period for purposes of determining its own holding period. Rather, under the new rules, the holding period of the political organization begins on the day after it acquires the property.

The proposed rules conform the regulations to the exemption from gift tax of money or other property transferred to a political organization. At the same time, the proposed rules

emphasize that the gift tax continues to apply to transfers to organizations other than political organizations.

**Comments and Requests for a Public Hearing**

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

**Drafting Information**

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

**Proposed Amendments to the Regulations**

The proposed amendments to 26 CFR Parts 1 and 25 are as follows:

Paragraph 1. The following new section is inserted immediately following § 1.83-8:

**§ 1.84-1 Transfer of appreciated property to political organizations.**

(a) *Transfer defined.* A transfer after May 7, 1974, of property to a political organization (as defined in section 527(e)(1), and including a newsletter fund to the extent provided under section 527(g)) is treated as a sale of the property to the political organization if the fair market value of the property exceeds its adjusted basis. The transferor is treated as having realized an amount equal to the fair market value of the property on the date of the transfer. For purposes of this section, a transfer is any assignment, conveyance, or delivery of property other than a bona fide sale for an adequate and full consideration in money or money's worth, whether the transfer is in trust or otherwise, whether the transfer is direct or indirect and whether the property is real or personal, tangible or intangible. Thus, for example, a sale at less than fair market value (other than an ordinary trade discount), or a receipt of property by a political organization under an agency agreement entitling the

organization to sell the property and retain all or a portion of the proceeds of the sale, is a transfer within the meaning of this section. The term "transfer" also includes an illegal contribution of property.

(b) *Amount realized.* A transferor to whom this section applies realizes an amount equal to the fair market value of the property on the date of the transfer. For purposes of this section, the definition of fair market value set forth in § 1.170A-1(c) (2) and (3) is incorporated by reference.

(c) *Amount recognized.* A transferor to whom this section applies is treated as having sold the property to the political organization on the date of the transfer. Therefore, the rules of chapter 1 of subtitle A (relating to income tax) apply to the gain realized under this section as if this gain were an amount realized upon the sale of the property. These rules include those of section 55 and section 56 (relating to minimum tax for tax preference), section 306 (relating to disposition of certain stock), section 1201 (relating to the alternative tax on certain capital gains), section 1245 (relating to gain from dispositions of certain depreciable property), and section 1250 (relating to gain from dispositions of certain depreciable realty).

(d) *Holding period.* The holding period of property transferred to a political organization to which this section applies begins on the day after the date of acquisition of the property by the political organization.

Par. 2. Section 25.2501 is deleted.

**§ 25.2501 [Deleted]**

Par. 3. Section 25.2501-1 is amended by adding at the end of paragraph (a) a new subparagraph (5) to read as follows:

**§ 25.2501-1 Imposition of tax.**

(a) *In general.* \* \* \*

(5) The general rule of this paragraph (a) shall not apply to a transfer after May 7, 1974, of money or other property to a political organization for the use of that organization. However, this exception to the general rule applies solely to a transfer to a political organization as defined in section 527(e)(1) and including a newsletter fund to the extent provided under section 527(g). The general rule governs a transfer of property to an organization

other than a political organization as so defined.

\* \* \* \* \*

Jerome Kurtz,,  
Commissioner of Internal Revenue.  
[FR Doc. 79-23392 Filed 7-27-79; 8:45 am]  
BILLING CODE 4830-01-M

## DEPARTMENT OF AGRICULTURE

### Forest Service

[36 CFR 223]

#### Sale and Disposal of Timber; Public Hearing

AGENCY: Forest Service, USDA.

ACTION: Notice of Public Hearing on Proposed Rulemaking.

**SUMMARY:** As part of the proposed rulemaking procedure announced in the Federal Register on June 4, 1979, (44 FR 32005), public hearings will be held in Portland, Oregon, and Seattle, Washington, on August 15 and 16, 1979. The deadline for comments set forth in the June 4 Notice is extended.

**DATES:** Public Hearings—

Portland, Oregon—August 15, 1979  
Seattle, Washington—August 16, 1979

Written comments must be received by September 10, 1979.

**ADDRESSES:** Public Hearings—  
Commencing at 9:00 a.m.

Bonneville Power Administration Auditorium  
1002 NE Holladay, Portland, Oregon  
New Federal Office Building, Room 390 2nd  
and Marion Streets, Seattle, Washington

Send written comments to: R. Max Peterson, Chief, Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013.

**FOR FURTHER INFORMATION CONTACT:**  
George M. Leonard, Timber Management Staff, Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013 (202) 447-4051.

**SUPPLEMENTARY INFORMATION:** As noted in the June 4 Federal Register Notice, revision of 36 CFR 223.10 is contemplated. This regulation implements limitations on the sale of National Forest timber in the West for export or for use as a substitute for timber from private lands which is exported by the Purchaser. Specific issues under consideration relate to the definitions of export and substitution. Under the current regulation, Purchasers of National Forest timber may sell timber to another company, even though the second company was not able to buy the sale directly because it would constitute substitution as defined in the

Regulation. It has been suggested that the Regulation be revised to foreclose this practice. During the hearings in Portland and Seattle and through written comments, advice is sought as to the impact of making this change in the Regulation. What would be the effect on the volume of private timber exported? How would it affect log markets in the affected areas? What would be the impact on utilization? To the extent possible information is sought on the impacts of such a change (1) on direct domestic employment by initial and secondary Purchasers, (2) on the creation of new jobs by new or expanded Purchasers, (3) on revenues to the Government, (4) on the efficiency with which timber cut from lands of various ownerships is used, and (5) on the costs incurred by National Forest timber Purchasers in complying with the law. Comments are invited on the nature and scope of revisions which should be made.

Dated: July 25, 1979.  
M. Rupert Cutler,  
Assistant Secretary.  
[FR Doc. 79-23427 Filed 7-27-79; 8:45 am]  
BILLING CODE 3410-11-M

## ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1284-1]

#### Availability of Implementation Plan Revision for the Allegheny County Nonattainment Area in the Commonwealth of Pennsylvania

AGENCY: Environmental Protection Agency.

ACTION: Advance Notice of Proposed Rulemaking.

**SUMMARY:** EPA announces today that the Allegheny County Total Suspended Particulates (TSP) portion of the Pennsylvania State Implementation Plan due for submittal under the Clean Air Act Amendments of 1977 has been received. The public is invited to submit written comments. A Notice of Proposed Rulemaking describing the revision will be published in the Federal Register at a future date. The period for the submittal of written comments will extend until the publication of the Notice of Proposed Rulemaking and for an additional period of time as will be announced in the Notice of Proposed Rulemaking.

**ADDRESSES:** On June 18, 1979, the Allegheny County TSP portion of the

Pennsylvania State Implementation Plan was submitted by the County. Interested persons are invited to inspect the revised SIP submittal at one of the following locations:

U.S. Environmental Protection Agency,  
Region III, Curtis Building, 6th & Walnut  
Streets, Philadelphia, Pennsylvania 19106,  
ATTN: Ms. Patricia Sheridan.  
Bureau of Air Pollution Control, Allegheny  
County Health Department, 301 39th Street,  
Pittsburgh, PA 15201.  
Public Information Reference Unit, U.S.  
Environmental Protection Agency, 401 M  
Street, SW., Washington, D.C. 20460.

Comments should be addressed to Mr. Howard Heim, Chief, Air Programs Branch (3AH10), Air & Hazardous Materials Division, U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Philadelphia, PA 19106, ATTN: AH300bPA.

**FOR FURTHER INFORMATION CONTACT:**  
Mr. Hank Sokolowski (3AH12), U.S. Environmental Protection Agency, Region III, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106; (215) 597-8991.

**SUPPLEMENTARY INFORMATION:** Part D of Title I of the Clean Air Act, as amended, required each State to revise its State Implementation Plan (SIP) to meet specific requirements in the areas designated as nonattainment. These SIP revisions were due on January 1, 1979, and must demonstrate attainment of the national ambient air quality standards as expeditiously as practicable, but no later than December 31, 1982, or in limited instances for carbon monoxide and oxidants no later than December 31, 1987. On March 3, 1978 (43 FR 8962 [1978]) and September 12, 1978 (43 FR 40412 [1978]), the Administrator designated areas in Pennsylvania, including Allegheny County, as nonattainment for particulate matter. Allegheny County has responded by preparing an implementation plan revision (for the county) as required by the Clean Air Act. The public is invited to inspect this revision and to submit written comments on it. A description of the revision will be published in the Federal Register at a future date as part of a Notice of Proposed Rulemaking.

(42 U.S.C. 7401-7642).

Dated: July 18, 1979.  
Jack J. Schramm,  
Regional Administrator.

[FR Doc. 79-23448 Filed 7-27-79; 8:45 am]  
BILLING CODE 6560-01-M

**[40 CFR Part 52]****(FRL 1280-7)****Proposed Revision to the New York State Implementation Plan****AGENCY:** Environmental Protection Agency.**ACTION:** Proposed Rulemaking.

**SUMMARY:** The purpose of this notice is to announce receipt of five revisions to the New York State Implementation Plan (SIP), to discuss the results of the Environmental Protection Agency's (EPA's) review of these revisions, and to invite public comment on EPA's proposed determinations regarding the adequacy of these revisions. The 1977 Amendments to the Clean Air Act require that the SIP applicable to an area not in attainment of a national ambient air quality standard be revised by January 1, 1979 to provide for attainment of such standard. The five revisions received from New York State are intended to meet this requirement. They pertain to the following pollutants and generally to the following areas:

**(1) The Rochester Area**

—carbon monoxide  
—ozone

**(2) The Southern Tier (Binghamton, Elmira-Corning and Jamestown)**

—total suspended particulates  
—ozone

**(3) The Syracuse Area**

—total suspended particulates  
—carbon monoxide  
—ozone

**(4) The Capital District and Town of Catskill**

—total suspended particulates  
—carbon monoxide  
—ozone

**(5) The Utica-Rome Area**

—ozone

**DATES:** Comments must be submitted on or before September 28, 1979.

**ADDRESS:** Copies of the SIP revision are available for inspection at the following locations.

Environmental Protection Agency, Region II,  
Room 908, 26 Federal Plaza, New York,  
New York 10007.

Environmental Protection Agency, Public  
Information Reference Unit, 401 M Street,  
SW., Washington, D.C. 20460.

New York State Department of  
Environmental Conservation, 50 Wolf  
Road, Albany, New York 12233.

New York State Department of  
Environmental Conservation, 202  
Mamaroneck Avenue, White Plains, New  
York 10601.

New York State Department of  
Environmental Conservation, 317  
Washington Street, Watertown, New York  
13601.

New York State Department of  
Environmental Conservation, 7481 Henry  
Clay Blvd., Liverpool, New York 13088.

New York State Department of  
Environmental Conservation, 44 Hawley  
Street, Binghamton, New York 13901.

New York State Department of  
Environmental Conservation, Route 20 (½  
mile east of the Village of East Avon)  
Avon, New York 14414.

New York State Department of  
Environmental Conservation, 584 Delaware  
Avenue, Buffalo, New York 14202.

Written comments should be sent to:  
Eckardt C. Beck, Regional  
Administrator, Environmental Protection  
Agency—Region II, 26 Federal Plaza,  
New York, New York 10007.

**FOR FURTHER INFORMATION CONTACT:**  
William S. Baker, Chief, Air Programs  
Branch, Environmental Protection  
Agency—Region II, 26 Federal Plaza,  
New York, New York 10007 (212) 264-  
2517.

**SUPPLEMENTAL INFORMATION:****Background**

Pursuant to the requirements of Section 107(d) of the 1977 Amendments to the Clean Air Act, on January 25, 1979 the Environmental Protection Agency (EPA) published in the Federal Register at 44 FR 5119 a designation of the attainment status with respect to each national ambient air quality standard for every area within New York State. These designations represented revisions, corrections and elaborations to designations originally published in the March 3, 1978 issue of the Federal Register at 43 FR 8962. The reader is referred to the January 25, 1979 Federal Register for a detailed description of the geographic areas covered by this proposed action.

Part D of the Clean Air Act requires that, for each area designated as not meeting a national ambient air quality standard, a State Implementation Plan (SIP) revision must be developed by the state and submitted to EPA by January 1, 1979. The SIP revision must provide for attainment of the contravened standard by December 31, 1982 or, for certain pollutants, no later than December 31, 1987. The required contents of such SIP revisions are described in Part D and, more generally, in Section 110(a) of the Clean Air Act. These requirements are further discussed and elaborated upon in the April 4, 1979 issue of the Federal Register at 44 FR 20372. The reader is referred to this Federal Register notice

for a complete discussion of SIP revision requirements; these are not repeated in great detail in this notice. A supplement to the April 4 notice was published on July 2, 1979 involving, among other things, conditional approval.

EPA proposes to conditionally approve the plan where there are minor deficiencies and the State provides assurances that it will submit corrections by specified deadlines. This notice solicits comment on what items should be conditionally approved, and on the deadlines where specified in this notice. A conditional approval will mean that the restrictions on new major source construction will not apply unless the State fails to submit the necessary SIP revisions by the scheduled dates, or unless the revisions are not approved by EPA.

On March 26, 1979 the governor of the State of New York formally adopted SIP revisions intended to meet these Clean Air Act requirements for certain areas of the State designated as not meeting a national ambient air quality standard. The title of the SIP revision documents covered by this Federal Register action, the dates on which these documents were submitted to EPA and the areas, pollutants and, where applicable, standards which each document covers are:

—*New York State Air Quality Implementation Plan—Syracuse Area*—submitted March 19, 1979—covering total suspended particulates (primary and secondary standard nonattainment), carbon monoxide and ozone.

—*New York State Air Quality Implementation Plan—Southern Tier (Binghamton, Elmira-Corning, Jamestown)*—submitted April 5, 1979—covering total suspended particulates (secondary standard nonattainment) and ozone.

—*New York State Air Quality Implementation Plan—Rochester Area*—submitted April 5, 1979—covering carbon monoxide and ozone.

—*New York State Air Quality Implementation Plan—Capital District and Town of Catskill*—submitted March 19, 1979—covering total suspended particulates (secondary standard nonattainment), carbon monoxide and ozone.

—*New York State Air Quality Implementation Plan—Utica-Rome Area*—submitted March 19, 1979—covering ozone.

In addition, on May 23, May 31, June 12 and June 18, 1979 the State submitted to EPA additional information for inclusion in these SIP revision documents.

As regards the attainment of national ambient air quality standards, the SIP revision documents submitted by the State may be summarized as follows:

**Ozone/Carbon Monoxide**

• All SIP revisions demonstrate attainment of standards by 1982 as a result of expected reductions due to normal replacement of old automobiles with new ones (i.e., "vehicle turnover").

**Total Suspended Particulates**

• *Syracuse*—Attainment of primary standards by 1982 and the secondary standard in certain nonattainment areas is demonstrated as a result of expected reductions due to vehicle turnover, continuing enforcement of existing State rules and regulations, and a decline in "background" concentrations. An 18-month extension for submission of a plan addressing secondary standard nonattainment problems in the Syracuse Central Business District and the Village of Solway is requested by the State.

• *Southern Tier*—Attainment of secondary standards by 1982 is demonstrated as a result of expected reductions due to vehicle turnover and continuing enforcement of existing State rules and regulations.

• *Capital District and the Town of Catskill*—Attainment of secondary standards by 1982 is demonstrated as a result of expected reductions due to ongoing abatement actions with respect to a grain loading operation and a cement dust dump, general upgrading of a steam generating station, vehicle turnover, and continuing enforcement of existing State rules and regulations.

The remainder of this notice describes the content of the SIP revisions with respect to each of the major criterion used by EPA to evaluate approvability. The deficiencies in these revisions found by EPA and the corrective actions which should be undertaken by the State in order to make the revisions fully approvable are also discussed.

**Part D Requirements**

(1) *SIP provisions shall be adopted by the state after reasonable notice and public hearing.* The revisions were adopted by the Governor of the State of New York on March 26, 1979 after public hearings were held at the following locations on the following dates. Each public hearing was held after at least 30 days of notice.

State implementation plan	Public hearing	
	Place	Date (1979)
Capital District and Town of Catskill	Albany	Feb. 6
Utica-Rome	Utica	Feb. 7
Southern Tier	Elmira	Feb. 6
	Jamestown	Feb. 7
	Binghamton	Feb. 8

The State has provided documentation to identify that the necessary notices, public hearings and adoptions were carried out in such a manner as to be found acceptable to EPA.

(2) *The SIP revisions shall demonstrate that both primary and secondary national ambient air quality standards (NAAQS) will be attained within the nonattainment areas as expeditiously as practicable, but for primary NAAQS no later than the following final deadlines:*

- December 31, 1982, except that
- For ozone or carbon monoxide, December 31, 1987, if the state demonstrates that attainment by December 31, 1982 is impossible despite implementation of all reasonably available measures.

**Ozone/Carbon Monoxide**

The State indicates that national ambient air quality standards for ozone and carbon monoxide are or will be attained in each of the five areas by December 31, 1982. The plans demonstrate ozone attainment in the urbanized portions of the areas. Demonstrating attainment for an urbanized area is consistent with EPA policy and provides adequate technical assurance of attainment for the whole, larger area designated nonattainment, including rural areas which, due to low nitrogen dioxide levels, are not conducive to ozone formation (44 FR 20376, April 4, 1979).

It must be noted, however, that the confidence which EPA places on the State's attainment demonstrations is lowered because of questionable baseline data. Air quality data used in these demonstrations is, as recognized in the plans, not representative of worst conditions: for ozone, monitors are located in or near urban areas where ozone levels are locally depressed; for carbon monoxide, monitors are not located in potential "hot-spot" areas. Problems with the emissions data used in the State's attainment demonstrations are described under item (5) in this section under the heading, "Ozone/Carbon Monoxide."

Because of these problems, the State has committed itself to carrying out several additional programs identified in

the plans so as to provide follow-up studies of reasonable available transportation control measures for possible future implementation, to refine analytic methods, and to improve its emission inventories and its monitoring network. On the basis of these commitments, EPA proposes to approve the plans as meeting this requirement.

It should be further noted that, on January 26, 1979 (as published at 44 FR 8202, on February 8, 1979), EPA revised the ozone ambient air quality standard from 0.08 ppm to 0.12 ppm. As described in the April 4, 1979 Federal Register at 44 FR 20378, the relaxation of this standard allows some areas to be redesignated to "attainment." The State submitted, on May 2, 1979, such a request which may impact the ozone plan revision requirements discussed in this notice as regards the following counties: Alleghany, Broome, Cattaraugus, Chautauque, Chemung, Chenango, Cortland, Delaware, Fulton, Herkimer, Jefferson, Lewis Madison, Montgomery, Oneida, Oswego, Otsego, Saratoga, Schoharie, Schuyler, Steuben, Sullivan, Tioga and Tompkins. This issue will be addressed in a separate Federal Register notice.

**Total Suspended Particulates**

• *Syracuse*—In its plan the State indicated that the area in the City of Syracuse currently designated as not meeting the primary standard (44 FR 5128, January 25, 1979) will be in attainment of this standard by 1982. This conclusion is based on a diffusion model of the air quality situation in the Syracuse area and on measured downward air quality trends.

EPA's review of the State's air quality model uncovered certain questionable technical assumptions with respect to "adjustments" made to measured air quality data to account for nontraditional sources of particulate matter (e.g., construction and roadway dust). Nevertheless, air quality data trends for the years 1976 through 1978 do show substantial improvements in the measured values on which the nonattainment designation was based. The model shows that further improvements at these locations can be expected from emission reductions to result from ongoing abatement activities at specific emission sources identified in the plan. On the basis of this information, EPA is reasonable assured that the plan will provide for the attainment of primary standards by 1982.

The State does not provide the required plan for attainment of secondary standards in the Syracuse

State implementation plan	Public hearing	
	Place	Date (1979)
Rochester	Rochester	Feb. 1
Syracuse	Syracuse	Feb. 6

Central Business District and in the Village of Solvay. Rather, an 18-month extension is being requested by the State for the preparation of the secondary standard attainment plan revision for the two areas. This request is based on a demonstration that "reasonably available control technology" would not provide adequate emission reductions to meet the standard. EPA finds this extension request approvable.

With regard to the remaining designated secondary standard nonattainment areas within the City of Syracuse and the Village of East Syracuse, the State indicates based on its model that secondary standards will be attained by 1995, at the latest. EPA agrees that the secondary standard will be attained in these areas within a reasonable period of time and proposes to accept the State's demonstration.

• *Capital District and the Town of Catskill*—The State demonstrates that the two areas designated as not meeting the secondary standard (44 FR 5126, January 25, 1979) will be in attainment by 1982. The State's demonstration with respect to attainment of the 24-hour secondary standard is based on diffusion modeling analyses and is found acceptable by EPA.

• *Southern Tier*—The State demonstrated on the basis of diffusion modeling that the secondary standards for total suspended particulates will be attained in Jamestown by 1982. EPA considers the State's demonstration acceptable.

(3) *The SIP revision shall require reasonable further progress in the period before attainment, including regular, consistent reductions sufficient to assure attainment by the required date.* The State has presented tables and, in most cases, graphs depicting the change in emissions which will occur over time as the plan is implemented. EPA considers the plans to be acceptable in meeting this requirement.

(4) *The SIP revision shall provide for implementation of all reasonably available control measures as expeditiously as practicable insofar as is necessary to assure reasonable further progress and attainment by the required date. This requirement includes reasonably available transportation control measures.*

#### Ozone—Stationary Source Control Measures

For stationary sources, the 1979 ozone plan submissions for major urban areas must include, as a minimum, legally enforceable regulations to reflect the application of reasonably available

volatile organic compound control technology (RACT) to those stationary sources for which EPA has published a Control Techniques Guideline (CTG) document by January 1978, and provide for the adoption and submittal of additional legally enforceable RACT regulations on an annual basis beginning in January 1980, for those CTGs that have been published by January of the preceding year (44 FR 20376, April 4, 1979). For rural nonattainment areas (and for urban nonattainment areas demonstrating attainment by December 31, 1982), the regulations must provide, at a minimum, legally enforceable procedures for the present and future control of large volatile organic compound sources (i.e., those with 100 ton/year or more potential emissions).

To meet this requirement, the State has submitted to EPA proposed revisions to Title 6 of the New York Code of Rules and Regulations (6 NYCRR) affecting the following Parts:

- Part 200—General Provisions;
- Part 211—General Prohibitions;
- Part 212—Process and Exhaust and/or Ventilation Systems;
- Part 223—Petroleum Refineries;
- Part 226—Solvent Metal Cleaning Processes;
- Part 228—Surface Coating Processes; and
- Part 229—Gasoline Storage and Transfer.

It should be noted that these regulatory revisions have not been legally adopted by the State as yet. Also, the comments contained in this notice refer to the approvability of the State's proposed regulations only for the five upstate areas, as previously noted, despite the fact that several of the regulations are applicable Statewide. The approvability of these regulations for the metropolitan New York City and Niagara Frontier areas will be addressed in future notices. As discussed more fully under item (10) of this section, EPA has been requested by the State to propose action on these regulations in their current status. Provided that the finally adopted regulations do not substantively differ from the proposed regulations submitted at this time, EPA will not repropose action or solicit further public comment prior to final rulemaking.

Also, since no clear commitment is provided for adoption of future RACT regulations to apply to source categories for which CTGs were not published by January 1978, EPA proposed to condition its approval of the plans as follows:

• The State must submit, by January 1, 1980, adopted and legally enforceable RACT regulations for each of the following categories unless it demonstrates by certification that for a

given VOC source category there are no such sources in the State:

- vegetable oil processing
- petroleum refinery leaks
- gasoline tank trucks
- perchloroethylene dry cleaning
- pharmaceutical manufacture
- miscellaneous metal parts and products
- graphic arts
- pneumatic rubber tire manufacture
- flatwood paneling
- floating roof tanks

• The State must submit, by January 1, 1981, adopted and legally enforceable RACT regulations for each of the categories addressed by CTG documents which are issued between February 1979 and January 1980, unless it demonstrates by certification that for a given VOC source category there are no such sources in the State.

The remainder of the discussion under this item will deal with each of the submitted regulations for the control of volatile organic compounds (VOC's) from the source categories for which CTG documents had been published by January 1978. The Control Techniques Guidelines (CTG's) provide information on available air pollution control techniques, and contain recommendations of what EPA calls the "presumptive norm" for RACT. Based on the information in the CTG's, EPA believes that the submitted regulations represent RACT, except as noted below. On the points noted below, the State regulations are not supported by the information in the CTG's, and the State must provide an adequate demonstration that its regulations represent RACT, or amend the regulations to be consistent with the information in the CTG's.

#### • Part 200—General Provisions

Part 200 contains definitions of the terms used in the State's rules and general provisions which are applicable to all rules. This Part defines "attainment areas" and "nonattainment areas" which determine the geographic applicability of various Parts in the State's Code.

#### • Part 211—General Prohibitions

Part 211 contains a general prohibition against polluting the air and regulates visible emissions. It also contains a new section (Section 211.4) which prohibits the use of VOC's to liquify asphalt used for paving purposes except under certain circumstances.

The State has included an exemption for cutback asphalt used in the manufacture of asphalt emulsions with low VOC content (less than 15% by weight). In describing RACT for this source category, EPA did not deem this

exemption necessary. However, the State determined otherwise because of certain application problems for emulsions with no VOC content and the inability of some asphalt manufacturers to produce solvent-free emulsions. However, this is a general exemption not restricted to specific applications justified by the State. Therefore, EPA is proposing to conditionally approve this regulatory provision provided the State commits to minimizing the solvent content in all future emulsified asphalt usage. On or before September 1, 1979, the State shall submit to EPA an enforceable procedure for carrying out this objective.

• Part 212—Process and Exhaust and/or Ventilation Systems

Part 212 contains general limits applicable to process sources for which there are no specific regulations. When revisions to existing regulations or new rules are promulgated, it is therefore necessary for the State to amend this Part by exempting those processes covered by the revised or new rule. Such a step was taken with regard to the sources addressed by the regulations discussed under this item.

• Part 223—Petroleum Refineries

In its revision of Part 223 the State has combined into a single rule various emission standards applicable to petroleum refinery air pollution sources. Many of these standards existed previously in other Parts of the State's Code.

Of importance to the SIP revisions discussed in this notice is the further fact that the proposed regulation address the control of VOC's from refinery vacuum producing systems, wastewater separators, and process unit turnarounds. This Part requires all non-condensable vapors from any vacuum producing system to be piped to a firebox or incinerator, or compressed and added to refinery fuel gas. It would require all forebays and separator sections which recover 200 gallons per day or more of VOC's to be covered. It would also require all processing units to be depressurized to 5 psig and the VOC's vented to a recovery system, fuel gas system, or flared when the unit is being shut-down, inspected, repaired, or started-up.

This Part allows the regulated sources until June 1, 1982, or such later date as determined by an Order of the Commissioner of the Department of Environmental Conservation (upon submission of appropriate justification) to achieve compliance with its VOC emission limitation provisions. The length of time allowed for compliance is

considered by EPA to be generous for these types of sources. However, since the State has demonstrated attainment of the ozone standard by December 31, 1982 with emission reductions from both stationary and mobile strategies and has addressed reasonable further progress requirements, EPA proposes to find this Part acceptable.

• Part 226—Solvent Metal Cleaning Processes

Part 226 is a new rule with Statewide applicability directed at controlling the emissions of VOC's from solvent metal cleaning (degreasing) operations. The rule contains three main sections: "General Requirements," "Equipment Specifications," and "Operating Requirements."

Section 226.2, General Requirements, requires solvents to be stored in covered containers and disposed of properly, equipment to be maintained properly, operating procedures to be posted, equipment covers to be closed when not in use, and records of solvent consumption to be kept. Section 226.3, Equipment Specification, lists the equipment required for each of three types of degreasers: cold cleaning, open top vapor, and conveyORIZED degreasers. In the CTG document for Solvent Metal Cleaning, two levels of control for each type of degreaser were identified. The State has selected control requirements composed of those contained in the first (less stringent) level plus elements of those contained in the second (more stringent) level. Section 226.4, Operating Requirements, addresses the correct operation of degreasing units to minimize emissions.

The requirements for controlling solvent metal cleaning operations meet the recommended control levels contained within the guidance. However, this rule contains provisions which exempt methyl chloroform and methylene chloride from control. These exemptions were included by the State because these two compounds do not have an effect on atmospheric ozone formation. Therefore, the State believes that they should not be regulated under a rule that is concerned with reducing ambient ozone levels. However, under 6 NYCRR Part 212, Process and Exhaust and/or Ventilation Systems, methyl chloroform and methylene chloride emissions from metal cleaning processes can be controlled if it is determined by the State that these two compounds have "toxic properties" (Section 212.8(k)).

EPA does not agree with this limited interpretation of regulatory objective. While it is true that these volatile

organic compounds do not appreciably affect ambient ozone levels, they are potentially harmful. Both methyl chloroform and methylene chloride have identified as mutagenic in bacterial and mammalian cell test systems, a circumstance which raises the possibility of human mutagenicity and carcinogenicity.

Furthermore, methyl chloroform is considered one of the slower reacting VOC's which eventually migrates to the stratosphere where it is suspected of contributing to the depletion of the ozone layer. Since stratospheric ozone is the principal absorber of ultraviolet light, the depletion could lead to an increase of ultraviolet light penetration resulting in a worldwide increase in skin cancer.

With the possible exemption of these compounds, some sources, particularly existing degreasers, may be encouraged to utilize methyl chloroform in place of other more photochemically reactive degreasing solvents. Such substitution has already resulted in the use of methyl chloroform in amounts far exceeding that of other solvents. Endorsing the use of methyl chloroform by exempting it in Part 226 can only further aggravate the problem by possibly increasing the emissions produced by existing primary degreasers and other sources.

EPA is concerned that the State has chosen this course of action without full consideration of the total environmental and health implications. While EPA does not propose to disapprove the State's SIP revisions if the State chooses to maintain these exemptions, EPA is concerned that this policy should not be interpreted as encouraging the increased use of these compounds nor compliance by substitution. EPA does not endorse such approaches. Furthermore, State officials and sources are advised that there is a strong possibility of future regulatory action to control these compounds. Sources which choose to comply with Part 226 by substitution may well be required to install control systems as a consequence of these future regulatory actions or as a requirement of Part 212.

• Part 228—Surface Coating Processes

Part 228 is a new rule applicable in areas of the State designated as "nonattainment" for ozone and is directed at controlling the emissions of VOC's from surface coating processes. Industries involved in the following activities are required to comply with this Part: large appliance coating lines, magnet wire insulation coating lines, metal furniture coating lines, metal can coating lines, fabric coating lines, vinyl

coating lines, paper coating lines, automobile assembly coating lines, and coil coating lines. This rule specifies a maximum permitted emission rate (pounds of organic solvent, minus water, per gallon of coating at application) for each source category and allows the source owner to choose the most economical method of control to meet the emission limitation specified. The various control methods available to sources are: reformulation of coatings—use of "low-solvent" coatings (water-borne, high-solids, and powder coatings), "add-on" technology to recover or destroy VOC's in exhaust gases, and modification of processes to reduce the quantity of VOC emissions. EPA proposes to find this Part acceptable.

•Part 229—Gasoline Storage and Transfer

Part 229 is a new rule applicable in areas of the State designated as "nonattainment" for ozone and is directed at controlling the emissions of VOC's from: the storage of gasoline in fixed roof tanks, the transfer of gasoline at gasoline bulk plants, and the transfer of gasoline at loading terminals. Since the State has demonstrated attainment of the ozone standard by December 31, 1982, controls are only required for sources with potential emissions of 100 tons per year or greater. Fixed roof tanks with capacities of 40,000 gallons or greater located at a source with potential VOC emissions of 100 tons per year or greater are required to be retrofitted with an internal floating roof or equivalent vapor controls. Gasoline bulk plants have two levels of control depending on whether or not they service a gasoline service station equipped with vapor controls. All bulk plants are required to have submerged filling of gasoline transport vehicles. Those servicing vapor control equipped service stations (service stations in the areas of New York State covered by this Federal Register proposal are *not* required to be so equipped) must install vapor collection, vapor balance type systems to control the gasoline vapors generated during transfer operations. Gasoline loading terminals are required to have vapor collection and vapor control systems in all cases.

Proposed Part 229 only partially addresses the control requirements for VOC emissions from fixed roof storage tanks. The CTG document addressing this source category did not limit itself only to the control of gasoline storage as does the State's proposed regulation; rather, it defined RACT for fixed roof tanks storing "petroleum liquids,"

described as those with a true vapor pressure of greater than 10.5 kilo Pascals.

The State believes that the storage of gasoline accounts for the preponderance of the VOC emission potential from this source category. If the State had demonstrated that its control of gasoline storage will eliminate 95 percent or more of the emissions that could have been eliminated if all petroleum liquids were subject to such control, according to EPA policy, the State's proposed regulation could be found fully acceptable. However, because of its limited scope without justification, EPA is proposing conditional acceptance of Part 229. On or before January 1, 1980 the State must either hold public hearings to revise Part 229 to cover all petroleum liquid storage in fixed roof tanks or provide an adequate justification for not doing so. If the State elects to revise Part 229, such revised regulation must be adopted and submitted to EPA by April 1, 1980.

•Compliance Schedules

Each of the State's proposed regulations contains a date by which an affected source must submit a schedule for achieving compliance with provisions of the regulation and a date for final compliance. Title 40 of the Code of Federal Regulations, § 51.1(q) defines acceptable "increments of progress" toward compliance which are more extensive than the two milestones included in the State's regulations. However, the State has provided written assurance to EPA that the increments of progress contained in 40 CFR 51.1(q) will be established with each source owner unless, because of the shortness of the compliance schedule, such interim milestones are not appropriate. EPA proposes to find this assurance acceptable.

*Ozone/Carbon Monoxide—  
Transportation Control Measures*

EPA finds that plans are conditionally acceptable with regard to meeting the requirement for adoption of reasonably available transportation control measures. Although attainment of the ozone and carbon monoxide standards by December 31, 1982 is demonstrated in the plans without implementation of reasonably available transportation control measures, as discussed under item (2) of this section under the heading, "Ozone/Carbon Monoxide," the State's demonstrations are based on questionable data. Therefore, certain improvements to the transportation planning elements of the State's plans

should be made for contingency purposes.

If the State's demonstration of the attainment of the ozone standard by 1982 is faulty or if new locations greatly exceeding the carbon monoxide standard are found through the planned studies discussed previously, then a revision of the current plans may be required. In order to be prepared to meet this contingency, basic data must be available, preliminary analyses of control options must have been completed and certain planning procedures must be in place.

The SIP revisions contain acceptable plans for the future examination of reasonably available transportation control measures. However, these plans should be refined to include all steps necessary for a systematic, full evaluation of these measures. Furthermore, these plans should be implemented through the on-going urban transportation planning process through new procedures designed to continue and give priority to such work. Such procedures have not been adequately identified by the State.

In this regard, the entire output of the transportation planning process must be assessed periodically for its "consistency" and "conformity" with the applicable SIP. (These assessments are required by 109(j) of Title 23 of the United States Code and Section 176(c) of the Clean Air Act.) Such assessments are important to assure that the transportation planning process gives priority to air quality concerns and that these concerns are fully integrated into the process. Criteria and procedures for making consistency and conformity assessments were to be included in the SIP revisions (43 FR 21673, May 19, 1978); they are not in the New York State plans. Approval of the SIP revisions, therefore, is conditioned on the development and submittal by July 1, 1980 of these required criteria.

*Total Suspended Particulates*

•Southern Tier Area

EPA finds that the plan for the Southern Tier Area is acceptable. Attainment of secondary standards by 1982 is demonstrated as a result of expected reductions due to vehicle turnover and continued enforcement of existing State rules and regulations, which in this context can be considered application of reasonably available control measures.

•Capital District and the Town of Catskill

EPA finds that the plan for Capital District and the Town of Catskill is

acceptable insofar as secondary standard attainment by 1982 is demonstrated through the imposition of controls on two air pollution sources, Cargill Inc. and Alpha Portland Cement Co.

• *Syracuse*—The plan to attain primary particulate matter standards and the secondary standard in certain nonattainment areas is acceptable to EPA with respect to its use of reasonably available control measures. An 18-month extension has been requested by the State to submit a secondary standard attainment plan for the remaining designated areas, the Syracuse Central Business District and the Village of Solvay. As discussed under item (2) of this section under the heading, "Total Suspended Particulates," a demonstration has been made that "reasonably available control technology" would not provide adequate emission reductions to meet the standard.

(5) *The SIP revisions shall include an accurate, current inventory of emissions that have an impact on the nonattainment area, and provide for annual updates to indicate emissions growth and progress in reducing emissions from existing sources.*

The emissions inventory data contained in the State's plan revision documents generally was not broken down in sufficient detail to depict the impact of implementing the various control strategies. Such a breakdown is necessary in order to fully evaluate a plan's approvability. However, as discussed elsewhere in this section, the State has committed itself to inventory improvements. Consequently, EPA proposes to accept the State's current data submittal on the condition that by July 1, 1981 the State submit to EPA additional emissions inventory data for the baseline year and projected attainment year in a format equivalent to that presented in the EPA document, *Workshop on Requirements for Nonattainment Area Plans, April 1978.*

#### *Ozone/Carbon Monoxide*

The inventories submitted by the State are considered acceptable insofar as they represent the best presently available information. It should be noted, however, that the data presented is not accurate with regard to mobile source emissions because the most current emission factors were not used to generate it. Also, the stationary source volatile organic compound emissions inventory is not sufficiently comprehensive for plan development purposes. Consequently, EPA accepts these inventories with the provision that

future improvements, as identified in the plans, will be completed by July 1, 1981. The mid-1981 date for the submission of improved inventories is necessary to assure that, if future plan revisions are required from the State (this contingency is discussed in this section under item (4) under the heading, "Ozone/Carbon Monoxide—Transportation Control Measures"), an accurate data base will be available.

A current, comprehensive volatile organic compound emissions inventory is also necessary for air pollution control activities aside from those associated with meeting the national ambient air quality standard for ozone. This results from the fact that a majority of the air pollutants suspected as having carcinogenic or other toxic properties are volatile organic compounds. In view of the emerging concerns regarding these pollutants, the State is encouraged to develop its inventory data on an organic species or, where necessary, a specific compound basis.

#### *Total Suspended Particulates*

EPA finds the particulate matter inventories contained in the plans acceptable. The State has provided a listing of point sources and potential emission growth has been identified through the year 1995 or 2000 for point sources approximately 7 tons per year and greater. Area source emissions are summarized by major category and area source emission growth is also identified through the year 1995 or 2000.

#### *Annual Reporting*

The State has agreed to provide annual reports to EPA on progress made in adopting control measures, growth of new and modified major sources of air pollution, changes in emissions as required to track reasonable further progress, progress in updating emission inventories and the results of ongoing air quality studies related to the plans.

EPA finds that the State's commitment with regard to Annual Reporting acceptable.

#### *Data Base Consistency*

EPA's review of the techniques and assumptions used by the State in projecting future emissions indicates that they are consistent with those used in other planning programs (e.g., water pollution abatement, housing and transportation). However, two assumptions in these projections are worthy of note:

—A significant increase in "vehicle-miles-traveled" is generally anticipated by the State. The validity of this assumption will have to be

periodically evaluated in light of gasoline supply trends and the effectiveness of fuel conservation measures contained in any State energy plan.

—A general decline in economic activity is projected by the State. If State and federal efforts to encourage economic development are successful, this assumption will also require reassessment.

(6) *The SIP revision shall expressly quantify the emissions growth allowance, if any, that will be allowed to result from new major sources or major modifications of existing sources, which may not be so large as to jeopardize reasonable further progress toward attainment by the required date. The SIP revision shall require preconstruction review permits for new major sources and major modifications of existing sources, to be issued in accordance with Section 173 of the Act.*

In order to assure that emission increases from new stationary sources or modifications of existing stationary sources will not exceed the projected "growth allowance" incorporated in the reasonable further progress demonstration, the State has submitted procedures providing for "offsetting" of emissions from major sources or modifications and for tracking of all minor and area source emission changes. The emission "offsets" will be required in accordance with a currently proposed State regulation, 6 NYCRR Part 231, Major Facilities.

This regulation requires new major sources and major modifications located in or significantly impacting a nonattainment area to offset new emissions by providing reductions at existing sources beyond those available from control strategies in the SIP. A major source is defined as one having allowable emissions of 50 tons per year, 1000 pounds per day, or 100 pounds per hour of particulate matter, sulfur dioxide, nitrogen dioxide, carbon monoxide, or volatile organic compounds. A major modification is defined as a change to an existing source causing allowable emissions to increase by these amounts for the specified pollutants.

Additionally, these sources are required by Section 173 of the Clean Air Act to meet the "lowest achievable emissions rate" (LAER). Currently, the language of the proposed regulation (Section 231.4(b)) is unclear about requiring LAER control technology on sources locating in an area where standards are violated, regardless of whether the sources have a significant

impact (as defined in the regulation) on air quality. The State, however, has written to indicate that this requirement is, in fact, applicable to such sources and will be explicitly documented by policy guidance issued immediately and later clarified by regulatory revision. EPA approval of this regulation is, therefore, conditioned on policy guidance being issued by the State by August 1, 1979, public hearings on a clarifying revision to Part 231 being held by January 1, 1980 and the State adopting this revision by April 1, 1980.

Also, in accordance with the requirements of Section 173, the proposed regulation requires that all other major sources, owned or operated by the same agent and located in the State, must be in compliance or meeting the requirements of an approved compliance schedule.

The State procedures providing for the "offsetting" of emissions from major sources and major modifications and the tracking of all minor and area source emission changes will be implemented differently depending on the pollutant affected. For total suspended particulates and sulfur dioxide, the State will "offset" all major source emission growth; minor and area source emission growth will be tracked against the annual emissions accommodated for in the reasonable further progress demonstrations discussed under item (3) of this section. If minor and area source growth exceeds these annual emission allowances, the State will require new major sources and major modifications to obtain emission reductions not already relied upon in the plan so as to provide for reasonable further progress toward attainment of standards.

For volatile organic compounds, as is discussed under item (5) in this section, the State's emissions inventory is not sufficiently comprehensive to permit a complete assessment of the precise annual emission allowance that can be accommodated for this class of pollutants. Until this deficiency is rectified, the State will require major volatile organic compound sources to "offset" all emissions growth which occurs, including that due to minor and area sources.

On the condition indicated, EPA proposes to find the State's SIP revisions acceptable with respect to the requirement discussed under this item. However, it should be noted that Part 231 has not been legally adopted by the State as yet. As discussed more fully under item (10) of this section, EPA has been requested by the State to propose action on this regulation in its current status. Provided that the finally adopted

Part 231 is not substantively different from the proposed regulation submitted, EPA will not repropose action or solicit further public comment prior to final rulemaking.

(7) *The SIP revisions shall provide identification and commitment of the necessary resources to carry out the Part D provisions of the plan:*

These requirements were adequately addressed by the State. In its SIP revisions New York State has presented the necessary identification of an commitment to the financial and manpower resources needed to carry out the plans and their associated future studies.

(8) *The SIP revisions shall provide evidence of public, local government, and State legislative involvement and consultation in accordance with Section 174 of the Act.*

In accordance with Section 174 of the Clean Air Act the following organizations have been designated by the Governor of New York State as the "lead planning organizations" to prepare the plan revisions discussed in this notice:

- Herkimer-Oneida Counties Governmental Policy and Liaison Committee.
- Executive Committee for Transportation for Chemung County.
- Capital District Transportation Committee.
- Syracuse Metropolitan Transportation Study Policy Committee.
- Genesee Transportation Council Policy Committee.
- Binghamton Metropolitan Transportation Study Policy Committee.

#### *Public Participation and Consultation*

In general, the State identifies that the lead planning agencies designated under Section 174 of the Clean Air Act are carrying out public participation programs with the use of newspaper, radio, television, and newsletter coverage. Each plan indicates that all or most of these methods were used during the plan preparation phase. However, each plan is lacking in evidence that the process is actually involving the public and that there is an active dialogue, including appropriate feedback with the specific publics affected by an issue.

While EPA finds that the plans are acceptable in identifying a public participation process, approval is conditioned upon the State establishing procedures to initiate and document actual public involvement and feedback to the interested publics within the framework that the State has identified in the plans. These procedures shall be identified by the State by August 1, 1979 and shall be carried out in the ongoing program.

#### *Intergovernmental Involvement and Consultation*

In general, the State identifies that the lead planning agencies are carrying out the measures necessary to satisfy this requirement. Principally, this is evidenced by the membership of local governmental officials on various policy, technical and advisory committees. EPA has found that the plans, with the exception of the Southern Tier Plan, are acceptable in satisfying the intergovernmental involvement and consultation requirements.

EPA has found that the intergovernmental consultation element in the Southern Tier Plan is not satisfactory in that the Jamestown area local government is not adequately represented. Intergovernmental consultation in that area is not apparent from the plan and this matter should be clarified and participation in the SIP development process verified by August 1, 1979 in order for this requirement to be acceptable.

(9) *The SIP revisions shall provide an identification and brief analysis of the air quality, health, welfare, economic, energy, and social effects of the plan provisions chosen and the alternatives considered and a summary of the public comments on the analysis.*

EPA finds that this element is satisfactory in that the State has addressed the above criteria with regard to the air quality, social and economic acceptability for proposed transportation measures. With regard to stationary sources, no new plan provisions have been presented that would be subject to the criteria of this element.

(10) *The SIP revisions shall provide written evidence that the State and other governmental bodies have adopted the necessary requirements in legally enforceable form, and are committed to implement and enforce the appropriate elements of the SIP.*

As discussed under item (4) of this section under the Heading, "Ozone-Stationary Source Control Measures," and item (6), the State has submitted proposed regulations and has requested that EPA review and seek comments on them in their present status. Since these regulations have not been adopted as of yet, they presently are not legally enforceable.

Under State administrative procedures, these proposed regulatory revisions have been subject to public hearings and approved by the New York State Department of Environmental Conservation; a 21-day notice to legislative leaders must now be

provided followed by filing with the Secretary of New York State. The proposed regulations become effective 30 days after this filing. As a result of these adoption procedures, the proposed regulations submitted by the State should, according to State estimates, be effective on or about August 10, 1979.

In requesting EPA review of proposed regulations, the State indicated that it does not expect them to change as a result of the steps remaining prior to final adoption. If the finally adopted regulations are not substantively different from those submitted in proposed form, EPA will not repropose action on them or provide for further public comment prior to final rulemaking. Consequently, EPA urges interested members of the public to review the proposed regulations in light of Clean Air Act requirements and to submit comments during the comment period established by this notice. EPA currently is proposing to find this element of the State's SIP revisions acceptable on the condition that substantively unchanged regulations are made effective and submitted to EPA by September 1, 1979.

EPA otherwise finds this element to be generally acceptable in that the plans have been officially adopted by the Governor and include commitments by responsible agencies to implement the activities for which they are responsible. In the case of local government responsibility, resolutions are included in the plans.

#### Unfulfilled Requirements

The following summary identifies plan improvement actions which EPA has found to be necessary for full, unconditioned approval of the five New York State plan revisions. These proposed conditions of approval are discussed in the section of this Federal Register notice entitled, "Part D Requirements." The appropriate item number in this section is referenced after each proposed condition.

(1) On or before January 1, 1980 the State must submit to EPA adopted and legally enforceable regulations requiring reasonably available volatile organic compound control technology on air pollution sources in each of following categories:

- vegetable oil processing
- petroleum refinery leaks
- gasoline tank trucks
- perchloroethylene dry cleaning
- pharmaceutical manufacture
- miscellaneous metal parts and products
- graphic arts
- pneumatic rubber tire manufacture
- flatwood paneling
- floating roof tanks

On or before January 1, 1981 the State must submit to EPA adopted and legally enforceable regulations requiring reasonably available volatile organic compound control technology on air pollution sources in categories addressed by Control Technology Guideline documents issued by EPA between February 1979 and January 1980. If, for a given source category, there are no such sources in the State, in lieu of meeting these requirements, the State may so certify this fact to EPA (item (4), "Ozone-Stationary Source Control Measures").

(2) On or before September 1, 1979, the State shall submit to EPA an enforceable procedure for minimizing the solvent content in all future emulsified asphalt usage (item (4), Ozone-Stationary Source Control Measures).

(3) On or before January 1, 1980 the State must either hold public hearings to revise 6 NYCRR part 229, Gasoline Storage and Transfer, to regulate all petroleum liquid storage in fixed roof tanks or must provide EPA with an acceptable justification for not regulating the storage of petroleum liquids other than gasoline. If the State elects to revise Part 229, such revised regulation must be adopted and submitted to EPA on or before April 1, 1980 (item (4), "Ozone-Stationary Source Control Measures").

(4) On or before July 1, 1980 the State must submit to EPA criteria and procedures for making assessments of the consistency and conformity of the outputs of the transportation planning process with the SIP (item (4), "Ozone/Carbon Monoxide-Transportation Control Measures").

(5) On or before July 1, 1981 the State must submit to EPA additional emissions inventory data for the baseline year and projected attainment year indicated in each SIP revision document. Such data shall be in a format equivalent to that presented in the EPA document, *Workshop on Requirements for Nonattainment Area Plans*, April 1978 and shall be generated, in part, as a result of the emissions inventory improvement programs identified in the plans (item (5)).

(6) On or before August 1, 1979 the State must submit to EPA policy guidance issued to its appropriate offices indicating that Section 231.4(b) of 6 NYCRR should be interpreted to indicate that LAER control technology must be required on major new sources or existing sources undergoing major modification locating in an area where

standards are violated, regardless of whether the sources have a significant impact (as defined in the regulation) on air quality. On or before January 1, 1980 the State must hold public hearings to clarify Part 231 by revision to reflect this interpretation. Revised Part 231 must be adopted and submitted to EPA on or before April 1, 1980 (item 6)).

(7) On or before August 1, 1979 the State must establish procedures to initiate and document actual public involvement and feedback to the interested publics during its ongoing public participation program. Such documentation must be submitted to EPA (item (8), "Public Participation and Consultation").

(8) On or before August 1, 1979 documentation must be provided to EPA which indicates that the local government officials in Jamestown, New York have been consulted and participated in the SIP development process (item (8), "Intergovernmental Involvement and Consultation").

(8) On or before September 1, 1979 the State must certify to EPA that the following Parts of 6 NYCRR have been adopted as revised and are legally enforceable: Parts 200, 211, 212, 223, 226, 228, 229 and 231. EPA acceptance of this certification will be based on a determination that the regulations have not been substantively changed from those proposed regulations submitted as part of the plan revisions. Correction of regulatory deficiencies discussed in this action shall not be considered "substantive changes." Copies of the adopted regulations must be submitted along with the State's certification (item (10)).

#### Public Comment

Interested persons are invited to comment on any element of the subject revisions and on whether or not the proposed New York State Implementation Plan revisions meet Clean Air Act requirements. Comments received by (60 days following publication) will be considered in EPA's final decision. All comments received will be available for inspection at the Region II office of EPA at 26 Federal Plaza, Room 908, New York, New York 10007.

This notice of proposed rulemaking is issued under the authority of Sections 110, 172 and 301 of the Clean Air Act, as amended.

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 has

reviewed this package and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Dated: June 22, 1979.

Eckardt C. Beck,  
Regional Administrator, Environmental  
Protection Agency.

[FR Doc. 79-23450 Filed 7-27-79; 8:35 am]  
BILLING CODE 6560-01-M

#### [40 CFR Part 52]

[FRL 1282-7]

### Proposed Revision of the Virginia State Implementation Plan

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed Rule.

**SUMMARY:** Revisions to the Virginia State Implementation Plan (SIP) for the attainment of ozone and carbon monoxide standards have been submitted to the Environmental Protection Agency (EPA) by the Governor. The intended effect of the revisions is to meet the requirements of Part D of the Clean Air Act, as amended, "Plan Requirements For Nonattainment Areas". This Notice provides a description of the proposed SIP revisions, summarizes the Part D requirements, compares the revisions to these requirements, identifies major issues in the proposed revisions, and suggests corrective actions.

On April 4, 1979 (44 FR 20372 [1979]) EPA published a Notice entitled "General Preamble for Proposed Rulemaking on Approval of the State Implementation Plan Revisions for Nonattainment Areas". The general preamble supplements this proposal, by identifying the major considerations that will guide EPA's evaluation of the submittal. The EPA invites public comments on these revisions, the identified issues, the suggested corrections, and whether the revision should be approved or disapproved, especially with respect to the requirements of Part D of the Clean Air Act.

**DATE:** Comments must be submitted on or before August 29, 1979. On April 19, 1979 the Regional Administrator, EPA Region III, published a Notice of Availability (44 FR 23263[1979]) of the revised Virginia State Implementation Plan (SIP) for public inspection. The Regional Administrator believes that the additional 30 days now being afforded the public to comment will be sufficient. However, in the event the Regional Administrator receives a request for

additional time to submit comments, he will consider granting an extension of the present comment period for up to an additional 30 days.

**ADDRESSES:** Copies of the proposed SIP revision and the accompanying support documents are available for inspection during normal business hours at the following offices:

U.S. Environmental Protection Agency, Air Programs Branch, Curtis Building, 6th and Walnut Sts., Philadelphia, Pennsylvania 19106, Attn: Eileen M. Glen.

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M St., Southwest (Waterside Mall), Washington, D.C. 20460.  
Virginia State Air Pollution Control Board, Ninth Street Office Buildings, Room 1106, Richmond, Virginia 23219, Attn: John M. Daniel, Jr.

All comments on the proposed revisions submitted within 30 days of publication of this Notice will be considered and should be directed to: Mr. Howard R. Heim Jr., Chief, Air Programs Branch (3AH10), Air & Hazardous Materials Division, U.S. Environmental Protection Agency, Region III, Curtis Building, 6th and Walnut Sts., Philadelphia, Pennsylvania 19106, Attn: AH300VA.

**FOR FURTHER INFORMATION CONTACT:** Miss Eileen M. Glen (3AH11), U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, telephone: 215/597-8187.

#### SUPPLEMENTARY INFORMATION:

##### Background

New provisions of the Clean Air Act, enacted in August 1977, Public Law No. 95-95, require States to revise their SIPs for all areas that do not attain the National Ambient Air Quality Standards (NAAQS). The amendments required each State to submit to the Administrator, a list of the NAAQS attainment status for all areas within the State. The Administrator promulgated these lists on March 3, 1978 (43 FR 8962 [1978]) and on September 12, 1978 (43 FR 40502 [1978]). Various portions of Virginia were designated as nonattainment for ozone and carbon monoxide. As a consequence, the Commonwealth of Virginia was required to develop, adopt, and submit to EPA revisions to its SIP for those nonattainment areas by January 1, 1979. The revisions must conform to requirements of Part D of the Clean Air Act and provide for attainment of the NAAQS as expeditiously as practicable. In accordance with these requirements, Maurice B. Rowe, Secretary of Commerce and Resources, acting on

behalf of Governor John N. Dalton submitted a revised SIP on January 12, 1979.

On April 19, 1979 (44 FR 23264 [1979]), EPA published a Notice of Availability of the Commonwealth of Virginia SIP revision and invited the public to inspect the plan. As yet, no public comments have been received. EPA has reviewed the SIP revision with respect to the requirements and criteria described or referenced in the Federal Register Notice published on April 4, 1979 (44 FR 20372 [1979]). This Notice to which interested persons may refer is entitled "General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas", and is incorporated herein by reference. A summary of the criteria for approving SIP's for nonattainment areas follows.

#### Criteria for Approval

The following list summarizes the basic requirements for nonattainment area plans.

1. Evidence that the proposed SIP revisions were adopted by the State after reasonable notice and public hearing.
2. A provision for expeditious attainment of the standards.
3. A determination of the level of control needed to attain the standards by 1982 and the criteria necessary for approval of any extension beyond that date.
4. An accurate inventory of existing emissions.
5. Provisions for reasonable further progress (RFP) as defined in Section 171 of the Clean Air Act.
6. An identification of emissions growth.
7. A permit program for major new or modified sources, consistent with Section 173 of the Clean Air Act.
8. Use of Reasonably Available Control Technology (RACT) control measures as expeditiously as practicable.
9. Inspection and Maintenance (I/M) if necessary, as expeditiously as practicable.
10. Necessary transportation control measures, as expeditiously as practicable.
11. Enforceability of the regulations.
12. An identification of and commitment to the resources necessary to carry out the plan.
13. State commitments to comply with schedules.
14. Evidence of public, local government, and State involvement and consultation, and the analysis of effects.

## Ozone and Carbon Monoxide

### Description of Proposed SIP Revisions

The Commonwealth of Virginia officially submitted the revised SIP to the Regional Administrator, EPA Region III, on January 12, 1979. Plans were submitted for each designated nonattainment area. However, Virginia further sub-divided the nonattainment Hampton Roads Air Quality Control Region (AQCR) into two submittals; one for the Peninsula and another for the Southeastern Virginia area.

The SIP contains provisions for controlling volatile organic compound (VOC) emissions from stationary and mobile sources. For oxidant nonattainment areas, EPA requires the adoption of reasonably available control technology (RACT) for eleven (11) VOC source categories. The Virginia SIP regulates sources in all 11 categories: solvent metal cleaning; tank-truck gasoline loading terminals; cutback asphalt; bulk gasoline plants; gasoline service stations—Stage I controls; storage of petroleum liquids in fixed-roof tanks; surface coating of large appliances; surface coating for insulation of magnet wire; surface coating of cans, coils, paper, fabrics, automobiles, and light-duty trucks; petroleum refinery sources; and, surface coating of metal furniture.

The submittal included a discussion of the necessary transportation controls and the commitments made by State and local officials. For a summary and review of the transportation portion of the Virginia SIP, please refer to the TRANSPORTATION CONTROL MEASURES (TCM) section which follows later in this Notice.

EPA has evaluated the Commonwealth of Virginia's SIP and has communicated the results of this analysis to the Commonwealth in meetings with the Virginia State Air Pollution Control Board (VSAPCB). An official transmittal, dated April 11, 1979, outlining EPA's comments on the SIP, was delivered to the Executive Director of the VSAPCB. The following discussion which applies to both ozone and carbon monoxide, unless specifically stated otherwise, will summarize the various elements of the Virginia SIP and will briefly present what has been submitted by the Commonwealth. On the basis of EPA's review to date, this Notice will indicate those items needing corrections or clarification; thus, unless otherwise stated, the remainder of the proposed plan is considered acceptable.

1. Adoption after Reasonable Notice and Hearing—The Commonwealth of

Virginia has adequately satisfied the requirements of this section. The Commonwealth published a public notice and held public hearings concerning the provisions of the SIP on October 10, 1978 and on December 18, 1978 in accordance with the requirements of the Clean Air Act. Subsequent to these hearings, the regulations were formally adopted.

2. Attainment Dates—Based on the January 12, 1979 SIP submittal, the Commonwealth does not anticipate achieving the ozone standard by the end of 1982 for any of the designated nonattainment areas. An extension of the deadline for achieving this standard, until the end of 1987, has been requested. EPA may approve such a request provided the Commonwealth demonstrates attainment by 1982 is impossible, despite the implementation of RACT for the VOC stationary source categories and the implementation of transportation control measures, including a motor vehicle I/M program. Several requirements for RACT and the commitments for I/M are deficient in the Virginia SIP. The Commonwealth is presently developing a new SIP demonstration based on the revised .12 ppm ozone standard. This new demonstration may contain revised attainment dates for some nonattainment areas.

3. Control strategy and demonstration of attainment—The Commonwealth submittal was developed on the basis of the former .08 ppm oxidant standard. Virginia is presently developing a revised control strategy and demonstration based on the .12 ppm ozone standard.

In the following sections of this Notice there are several references to the terms "design value" and "rollback." To avoid confusion or misunderstanding, these terms are defined below:

Design Value—the level of existing air quality used as a basis for determining the amount of change of pollutant emissions necessary to attain a desired air quality level.

Rollback—a proportional model used to calculate the degree of improvement in ambient air quality needed for attainment of a national ambient air quality standard.

For the purpose of consistency, there is a need for uniform design values for ozone in both the Virginia portion of the National Capital Interstate AQCR and in the Peninsula and Southeastern Virginia urbanized areas of the Hampton Roads Intrastate AQCR. In Northern Virginia, EPA requested that the Commonwealth select an ozone design value compatible with the design

value adopted by the District of Columbia and State of Maryland in their portions of the National Capital Interstate AQCR.

EPA believes the proximity of Newport News to Norfolk necessitates a reassessment of the justification of two different design values for the Peninsula and Southeastern Virginia areas and requested Virginia to justify the use of different design values. Virginia provided an acceptable justification for these design values in a May 23, 1979 letter to EPA.

4. Emission Inventory—Virginia has submitted a 1977 emission inventory. The accuracy of the inventory cannot be evaluated since source-specific operating data, actual calculations, and methods of estimation used in developing the inventory were not submitted. This does not satisfy the requirements of Section 172(b)(4) of the Clean Air Act, as amended.

5. Reasonable Further Progress—The Commonwealth's RFP presentation is adequate for its VOC demonstration but is inadequate for the TCM portion of the proposed SIP revision.

6. Margin for Growth—Virginia has adequately incorporated growth factors and projections in the SIP. However, a tracking system for emission growth rates was not submitted. Virginia is presently developing such a tracking system which should be submitted to EPA prior to final rulemaking.

7. Preconstruction Review—Section 172(b)(6) of the Clean Air Act requires a preconstruction review permit program for major new or modified sources conforming to the requirements of Section 173. This requirement is satisfied in the Commonwealth's submittal.

8. RACT as expeditiously as practicable—Several sections of the Commonwealth's air pollution control regulations for stationary sources of hydrocarbon emissions are not supported by the information in the Control Techniques Guidelines (CTG) documents issued by EPA. The CTG's provide information on available air pollution control techniques, and contain recommendations of what EPA calls the "presumptive norm" for RACT. Based on the information in the CTG's, EPA believes that the submitted regulations represent RACT, except as noted below. On the points noted below, the State regulations are not supported by the information in the CTG's, and the State must provide an adequate demonstration that its regulations represent RACT, or amend the regulations to be consistent with the information in the CTG's.

(a) The emission limitations on surface coating operations for the Ford assembly plant in Norfolk, Virginia (Section 4.55(e) of the regulations) are not considered RACT. These requirements are less stringent than the commitments made by automobile manufacturers in other areas of the nation.

(b) The emission limit for end seal surface coating of cans (Section 4.55(f)(4)(i)), is less stringent than RACT.

(c) The gasoline bulk loading—bulk plant regulations (Section 4.56(e)), require bulk plants with a throughput equal to or greater than 4,000 gallons per day to install a vapor control system that will remove or destroy no less than fifty (50) percent by weight of VOC. This emission limit does not represent RACT.

(d) Section 4.56(d)(3)(ii) provides an exemption from Stage I controls for service stations with a throughput of less than 20,000 gallons per month. RACT requirements do not allow any exemptions without specific justification.

(e) Section 4.54(a)(4)(i) provides a general exemption for sources of VOC emissions less than 7.3 tons per year, 40 pounds per day, or 8 pounds per hour. The Commonwealth has provided no justification for this exemption. Furthermore, this exemption allows a large portion of the sources in the solvent metal cleaning industry to go uncontrolled. There are a large number of small metal cleaning operations and these sources should be regulated to meet RACT.

(f) There are several deficiencies in the asphalt paving regulations in § 4.57(b). First, an exemption to this regulation on a seasonal basis is preferable to a temperature cutoff in order to enforce this regulation more easily. Also, the inclusion of an allowable solvent content in emulsified asphalt does not satisfy the requirements of RACT. EPA guidance states that if such an emulsion is used in place of cutback asphalt, and the emulsion contains less solvent than the replaced cutback, Virginia may allow this emulsion only as an interim measure until a switch can be made to an emulsion containing five percent or less solvent. Finally, the use of cutback asphalt as a tack coat does not conform to the requirements of RACT.

(g) Virginia's SIP includes a provision which exempts methyl chloroform (1,1,1 trichloroethane) and methylene chloride from the definition of "Nonmethane." These volatile organic compounds (VOC), while not appreciably affecting ambient ozone levels, are potentially harmful. Both methyl chloroform and

methylene chloride have been identified as mutagenic in bacterial and mammalian cell test systems, a circumstance which raises the possibility of human mutagenicity and/or carcinogenicity.

Furthermore, methyl chloroform is considered one of the slower reacting VOCs which eventually migrates to the stratosphere where it is suspected of contributing to the depletion of the ozone layer. Since stratospheric ozone is the principal absorber of ultraviolet light (UV), the depletion could lead to an increase of UV penetration resulting in a worldwide increase in skin cancer.

With the exemption of these compounds, some sources, particularly existing degreasers, will be encouraged to utilize methyl chloroform in amounts far exceeding that of other solvents. Endorsing the use of methyl chloroform by exempting it in the SIP can only further aggravate the problem by increasing the emissions produced by existing primary degreasers and other sources.

The Agency is concerned that the State has chosen this course of action without full consideration of the total environmental and health implications. The Agency does not intend to disapprove the State SIP submittal if, after due consideration, the State chooses to maintain these exemptions. However, we are concerned that this policy not be interpreted as encouraging the increased use of these compounds or compliance by substitution. The Agency does not endorse such approaches. Furthermore, State officials and sources should be advised that there is a strong possibility of future regulatory action to control these compounds. Sources which choose to comply by substitution may well be required to install control systems when future regulatory actions are taken.

9. I/M, if necessary, as expeditiously as practicable—I/M programs may be required in three regions in Virginia: The Virginia portion of the National Capital Interstate AQCR, the State Capital Intrastate AQCR, and the Hampton Roads Intrastate AQCR. Although legislation to implement an I/M program is under active consideration by Virginia as a result of a Joint Resolution of the General Assembly, the Commonwealth has not yet adopted such legislation or submitted a schedule for its enactment. As noted above, Virginia's updated control strategy and demonstration designed to meet the .12 ppm ozone standard may have an impact on the I/M requirement. See discussion on I/M in both the TRANSPORTATION CONTROL MEASURES and

INSPECTION/MAINTENANCE sections, below.

10. Transportation controls, if necessary, as expeditiously as practicable—A discussion of this subject is presented in the TRANSPORTATION CONTROL MEASURES section, below.

11. Enforceability—Several sections of the regulations are deficient from an enforceability viewpoint.

(a) Virginia's "bubble concept" is outlined in Section 4.55 (b). As presently written, in order to determine the compliance status of a facility under this regulation, every process line included in the plant "bubble" would have to be subjected to a stack test. EPA believes this regulation is not specific nor clear enough to be adequately enforceable.

(b) In the proposed SIP revision, Section 4.52 of the Virginia regulations governing hydrocarbon emissions is repealed upon approval of Sections 4.54, 4.55, 4.56, and 4.57 governing volatile organic compound emissions. It is contrary to EPA policy to approve as a SIP revision, the deletion of existing regulations while a source is moving toward compliance with new regulations or, if it chooses, challenging new regulations. This is necessary because existing regulations are to remain in effect and enforceable so as to prevent a source from operating without controls or under less stringent controls.

(c) Section 4.54(e), covering incinerator and afterburner operation for compliance with Sections 4.54 through 4.57, states their operation will not be required during the months of October through April for energy conservation reasons. This is acceptable.

(d) Test methods are not specified in Sections 4.54, 4.55, 4.56, and 4.57 to determine if the control methods are achieving the required emission limitations. The use of efficiency standards for these source categories is not enforceable without prescribing test methods.

(e) EPA recommends outlining compliance schedules, by industrial or process category, in the regulations instead of issuing compliance schedules on a case-by-case basis. Under Section 120 of the Act, sources not in compliance with SIP requirements or subject to a schedule for compliance included in the SIP may be subject to non-compliance penalties.

(f) The definition of "vapor tight" is expressed only in terms of vacuum pressure. It should also be expressed in terms of positive pressure.

(g) In Section 2.30(g)(1)(vi), a definition of "minor significance" is needed.

(h) In Section 2.03(a)(1), oral consent agreements are not adequately enforceable; therefore, this section is not approvable.

(i) In Section 2.33(f)(3), all new sources subject to New Source Performance Standards (NSPS) must be tested; this section should be changed to reflect this requirement.

(j) Section 2.33(c)(1)(ii), concerning required information for new sources needs clarification.

(k) The definition of "consent order" should contain provisions, specifically increments of progress, as required under Section 113(d) of the Clean Air Act and should be in the form of a Delayed Compliance Order (DCO).

(l) The definition of "Nonattainment area" should be in accordance with Section 171 of the Clean Air Act.

(m) The use of the phrase "will be considered acceptable compliance by the Board" in the regulation needs additional clarification. This clause should be revised to clearly state that a source must meet the emission limits specified in the regulations.

12. State commitments and resources to implement and enforce adopted measures—The Commonwealth of Virginia commits itself to assign resources as required or needed to carry out the requirements of the SIP. Although this commitment is contingent upon the constraints set by the Governor and the General Assembly, as well as upon the level of Federal funding received, EPA believes it to be sufficient.

13. State commitments to comply with schedules—EPA has published and will be issuing additional Control Technique Guideline documents (CTG's) for the control of stationary source categories of volatile organic compounds. Virginia has provided a commitment to submit regulations for all appropriate stationary source categories of VOC after EPA issues such guidance documents. This commitment is sufficient.

14. Evidence of public, local government and State involvement and consultation, and the analysis of effects—During the process of the development of the Virginia submittal, legislative involvement was evidenced in hearings held by the State Air Pollution Study Commission established by the General Assembly. Appropriate involvement was also evidenced in the process of consultation with local elected officials leading to the designations of planning agencies required under Section 174 of the Clean

Air Act, and in activities under that section of the Act. In response to a request from the Section 174 agencies, the Regional Administrator met with local elected officials to discuss the requirements of the transportation components of the SIP.

Involvement of local elected officials was supplemented in several cities through the administration of a Ford Foundation Grant for this purpose by the Virginia Polytechnic Institute and the State University in cooperation with VSAPCB.

Opportunities for public involvement included: (1) seminars on the requirements of the Clean Air Act held by the Virginia Conservation Council and the Virginia Division of Industrial Development; (2) public workshops or public forums held by the Section 174 agencies during plan development; and (3) citizens advisory committees to the Section 174 agencies. The public also had access to hearings held by the State Air Pollution Study Commission and meetings and public hearings held on the SIP by the VSAPCB.

An identification and analysis of air quality, health, welfare, economic, energy, and social effects is included in Chapter 12 of the Virginia submittal. No public comments were made on this portion of the plan during the public hearings. For future submittals, a more complete and detailed analysis of these effects should be included.

#### Summary of Major Issues

Three of the above listed SIP elements contain major deficiencies: First, RACT requirements are not being met for six regulations: auto and truck surface coating, can coating, gasoline bulk plants, Stage I gasoline service stations, solvent metal cleaning, and asphalt paving. Second, the general enforceability of the VOC regulations is deficient. As stated above, the regulations should be clarified or revised to enhance their enforceability. If regulations are not enforceable, credit for reduction in emissions achieved through implementation of those regulations cannot be taken. We emphasize that Section 4.55(b) Virginia's "bubble concept" regulation, should be revised. Third, Virginia's commitment to implement the required I/M program is deficient. See the Transportation Control Measures section below, for the requirements of an acceptable commitment to an I/M program.

By letter dated April 11, 1979, these deficiencies have been communicated to the Commonwealth of Virginia with EPA's recommendation that they be rectified. The VSPACB staff has

indicated that it will correct the majority of the deficiencies per EPA's recommendations.

#### Transportation Control Measures

##### Area Profiles

As a result of the ozone and carbon monoxide nonattainment designations discussed in the Background section of this Notice, the Governor of Virginia, on March 28, 1978, designated those agencies under Section 174 of the Clean Air Act responsible for the development and implementation of transportation control measures (TCM). Under the guidance of the Virginia State Air Pollution Control Board, which is responsible for the overall SIP, as well as for planning, coordination, and general enforcement activities, the designated local agencies developed their portions of the Transportation Control Plan as discussed in the following sections.

##### Richmond Area

In response to the ozone nonattainment designation for the City of Richmond, and Chesterfield and Henrico Counties, a process of consultation among the affected governments resulted in the Governor of Virginia designating the Richmond Area Transportation Policy Committee as the agency under Section 174 of the Clean Air Act to develop the transportation portion of the Virginia Implementation Plan. Based on a work program negotiated with the State, the Richmond Section 174 agency produced a plan entitled "January 1, 1979 Transportation Control Plan Submitted through the State Implementation Plan to the Environmental Protection Agency for the Richmond, Virginia Area" (December 1978); which after notice and public hearing, was incorporated into Chapter 10 of the Virginia SIP submittal for the State Capital nonattainment area for ozone.

Using a 1977 emissions inventory provided by the State Air Pollution Control Board, a design value of .225 ppm, and rollback, the volatile organic compound (VOC) emission reductions necessary to attain the .08 ppm ozone standard by 1982 is 64%. The Richmond plan estimates that despite the implementation of all current transportation projects programmed for completion by 1982, the Federal Motor Vehicle Control Program, and stationary source RACT measures, there will only be a 36.5% reduction of emissions instead of the required 64%. Therefore, the Commonwealth has requested a five (5) year extension of the 1982 attainment

deadline. Approval of such an extension will necessitate a schedule for the implementation of an inspection and maintenance program for motor vehicles; for the implementation of currently planned transportation control measures; and for the analysis, selection, and adoption of additional appropriate transportation control measures. The Richmond Area plan was developed using the .08 ppm ozone standard and is subject to revisions using the .12 ppm statistical ozone standard. This reassessment at .12 ppm may alter the determination of the amount of emission reductions needed for attainment of the standard.

The plan commits the Richmond Section 174 agency to the assessment of transportation measures identified in Section 108 of the Clean Air Act and expresses the intention of local governing bodies to pursue decisions for the "representative implementation" of recommended transportation control measures. A program for the tasks to be performed by the Section 174 agency during the alternatives analysis (of transportation measures) is in the Fiscal Year 1980 Unified Planning Work Program and is currently being reviewed by EPA and the Department of Transportation.

#### *Southeastern Virginia*

In response to the ozone nonattainment designation for the cities of Suffolk, Portsmouth, Chesapeake, Norfolk, and Virginia Beach; a process of consultation among the affected governments resulted in the Governor's designation of the Southeastern Virginia Planning District Commission as the Section 174 agency to develop the pertinent transportation component of the Virginia SIP. In his designation letter, the Governor specified that this agency would coordinate the preparation of the plan with the Southeastern Virginia Transportation Policy Committee. Based on a work program negotiated with the State, the Southeastern Virginia Planning District Commission produced a plan entitled "Southeastern Virginia Transportation Control Plan" (November 1978) which, after notice and public hearing, was incorporated into Chapter 10 of the Virginia SIP submittal for the Southeastern Virginia nonattainment areas.

Using a 1977 emissions inventory provided by the State Air Pollution Control Board, a design value of .18 ppm, and rollback, the amount of VOC reductions necessary to attain the .08 ppm ozone standard by 1982 is 56%. The plan estimates that despite the

implementation of all transportation control measures programmed for completion by 1982, the Federal Motor Vehicle Control Program, and stationary source RACT measures, there will be only a 17.9% reduction of emissions instead of the required 56%. Therefore, the Commonwealth has requested a five (5) year extension of the 1982 attainment deadline. Approval of such an extension will necessitate a schedule for the implementation of an inspection and maintenance program for motor vehicles; for the implementation of currently planned transportation control measures; and for the analysis, selection, and adoption of additional appropriate transportation control measures. The Southeastern Virginia Area plan was developed using the .08 ppm ozone standard and is subject to revision using the .12 ppm statistical ozone standard. This reassessment at .12 ppm may alter the determination of the amount of emission reductions needed for attainment of the standard.

The plan commits the Southeastern Virginia Section 174 agency to the reassessment and local application of transportation control measures necessary for attainment, including the reasonably available measures specified in Section 108(f) of the Clean Air Act. A program for the tasks to be performed by that agency is currently being reviewed by EPA and the Department of Transportation as part of the area's Unified Planning Work Program for FY 1980. All projects included in the SIP must result in emission reductions. Projects cannot be approved as part of the SIP without such a demonstration.

#### *The Peninsula Area*

In response to the nonattainment designation for ozone in the cities of Hampton and Newport News, a process of consultation among the affected governments resulted in the Governor's designation of the Peninsula Area Transportation Policy Committee as the Section 174 agency responsible for the development of the pertinent transportation component of the Virginia SIP. Based on a work program negotiated with Virginia, that agency produced a plan entitled "Transportation Control Measures Portion of the State Implementation Plan" (November 1978) which, after notice and public hearing, was incorporated into Chapter 10 of the Virginia SIP submittal for the Peninsula nonattainment area for ozone.

Using a 1977 emissions inventory provided by the State Air Pollution Control Board, a design value of .14 ppm, and rollback, the amount of VOC

reductions necessary to attain the .08 ppm ozone standard by 1982 is 43%. The Peninsula plan estimates that, despite the implementation of all current transportation projects programmed for completion by 1982, the Federal Motor Vehicle Control Program, and stationary source RACT measures, there will only be a 30% reduction of emissions instead of the required 43%. Therefore, the Commonwealth has requested a five (5) year extension of the 1982 attainment deadline. Approval of such an extension will necessitate a schedule for the implementation of an inspection and maintenance program for motor vehicles; for the implementation of currently planned transportation control measures; and for the analysis, selection, and adoption of additional appropriate transportation control measures. The Peninsula Area plan was based on the .08 ppm ozone standard and is subject to revision using the .12 ppm statistical ozone standard. This reassessment at .12 ppm may alter the determination of the amount of emission reduction needed for attainment of the standard.

The plan commits the Peninsula Section 174 agency to the implementation of a ride-sharing program to further expand the already active ride-sharing concept in the Peninsula area. The plan identified nine (9) transportation projects to which the FY 1979 Transportation Improvement Program is also committed; these also have an air quality impact. These projects include five (5) highway widening and construction projects, three (3) intersection improvements, and a system for synchronized traffic flow.

The plan also commits the Peninsula Section 174 agency to study and adopt additional measures necessary for attainment including those specified in Section 108(f) of the Clean Air Act as well as measures to improve land use management. A program for this work is currently being reviewed by EPA and the Department of Transportation in the area's Unified Planning Work Program for FY 1980.

#### *Northern Virginia*

1. In response to the ozone nonattainment designation for the counties and cities in the Northern Virginia portion of the National Capital Interstate AQCR and a nonattainment designation for carbon monoxide in the City of Alexandria, Arlington County, and Fairfax County; a process of consultation among the affected local governments resulted in the Governor's designation of the Board of Directors of the Metropolitan Washington Council of

Governments (COG) as the Section 174 agency to develop the transportation component of the Virginia SIP for Northern Virginia. COG was also designated as the Section 174 agency by the Mayor of the District of Columbia and the then Acting Governor of Maryland. Based on a work program negotiated with the State, the Council of Governments produced a document entitled "Washington Metropolitan Air Quality Plan for Control of Photochemical Oxidants and Carbon Monoxide" which after notice and public hearing was incorporated (including appendices A through G) in Chapter 10 of the Virginia SIP submittal for the Northern Virginia nonattainment area.

Using a 1977 emissions inventory provided by the State Air Pollution Control Board and a design value of .18 ppm, the State calculated that the amount of reduction in volatile organic compound emissions necessary to attain the .08 ppm ozone standard in Northern Virginia was 57%. EPA has requested Virginia recalculate the design value using an ozone design value compatible with the value used both by the District of Columbia and the State of Maryland in their portions of the National Capital Interstate AQCR. Using the .18 ppm design value, the Commonwealth determined that it would fall short of the emissions reduction required by 1982. COG, using a .225 ppm design value, calculated that there will only be a 17% reduction of emissions by 1982. The required emission reductions with either design value, therefore are predicted to be insufficient despite implementation of transportation control measures programmed for completion by 1982, the Federal Motor Vehicle Control Program, and stationary source RACT measures. Therefore, the Commonwealth has requested a five (5) year extension of the 1982 attainment deadline. Approval of such an extension will necessitate a schedule for implementation of an inspection and maintenance program for motor vehicles; for the implementation of currently planned transportation control measures; and for the analysis, selection, and adoption of additional appropriate transportation control measures.

2. For the carbon monoxide nonattainment areas consisting of Arlington County, the City of Alexandria, and portions of Fairfax County, the Commonwealth has indicated that, by using a region-wide analysis of carbon monoxide emissions, the nonattainment areas will be in attainment by 1982. However, EPA has requested that the Commonwealth

reassess this analysis using a localized analysis for carbon monoxide "hot spots." The analysis which had been provided did not include "hot spot" sites together with appropriate transportation control measures at those sites, nor did it agree with the conclusions of the carbon monoxide "hot spot" analysis performed by the Metropolitan Washington Council of Governments.

EPA requested Virginia to clarify the rationale for determining the carbon monoxide design value and to perform an analysis of all "hot spot" sites that conclusively demonstrates the attainment/nonattainment status by 1982. EPA also requested that Virginia construct a line of reasonable further progress showing annual incremental reductions for carbon monoxide and submit it with the "hot spot" analysis. The VSAPCB has not yet submitted this analysis.

3. In preparing its plan, the Metropolitan Washington Council of Governments recommended 28 transportation measures as appropriate for consideration in the 1979 SIP submittal. These measures were selected from an initial list of 70 measures identified as having potential for reducing transportation-related emissions. COG has proposed an analysis of alternatives which will review all 70 of the measures to be considered for possible inclusion into the State Implementation Plan.

COG presented the 28 measures to the local governing bodies for endorsement and commitment actions. Fairfax City was the only jurisdiction that did not respond. The following measures have received endorsement and a degree of commitment for implementation by one or more of the jurisdictions as shown below:

(1) Continue Construction of Metrorail (Completion of presently committed 60 miles):

Arlington County  
City of Alexandria  
City of Falls Church

(2) Eliminate All-Day On-Street Non-Resident Parking Where Appropriate:

Arlington County  
City of Alexandria  
City of Falls Church

(3) Build/Designate Exclusive Lanes for High Occupancy Vehicles (Buses, etc.):

City of Alexandria

(4) Reserve Convenient Parking Spaces for Carpools/Vanpools:

Arlington County

(5) Build Additional Bicycle Lanes and Bikeways:

Arlington County  
City of Alexandria  
Fairfax County  
City of Falls Church

(6) Provide and Improve Regional and Local Ride-Share Activities:

City of Falls Church

(7) Install Additional Bicycle Storage Facilities:

City of Falls Church

(8) Encourage Specialized Bus Service:

Loudoun County

(9) Include Metrobus Information With Carpool/Vanpool Information and Vice Versa:

City of Falls Church

(10) Provide Additional Pedestrian Facilities and Eliminate Barriers:

Arlington County  
City of Alexandria  
City of Falls Church

(11) Provide Free or Discounted Transit Rides in Off-Peak Hours:

Fairfax County

(12) Improve Signalization in the Region:

Arlington County  
City of Alexandria

The extent of these commitments and other actions are detailed in Appendix E of the COG plan. Transportation projects are also identified in Chapter 10 of the Virginia SIP for Northern Virginia. More clarification and justification for the process of selecting or rejecting transportation control measures should be provided. EPA will concur in the rejection of any measure when evidence is provided justifying such action.

COG has prepared an application to develop a work program for continuing transportation and air quality planning activities which was funded by the Urban Mass Transportation Administration on March 30, 1979. This work program is expected to be completed in September 1979.

4. EPA requests a better definition of the division of planning responsibilities between the Metropolitan Washington Council of Governments and the Commonwealth of Virginia in order to eliminate the duplication of effort found in the 1979 plans, specifically in regard to emission inventories and control strategy demonstrations for carbon monoxide and ozone in the Northern Virginia area.

### Inspection/Maintenance

In the Governor's designation letter for Section 174 agencies dated March 27, 1978, he delegated the responsibility to develop I/M legislation to the State Air Pollution Study Commission created by Joint Resolution #37 of the 1978 General Assembly of Virginia. The Commission conducted numerous meetings and public hearings in the State concerning the development of an I/M program.

The Virginia Legislature does not make appropriations for capital items during the off-budget years of the biennium budget. The Commonwealth has stated that this prevented the adoption of necessary I/M programs. The biennium budget for the Commonwealth of Virginia is approved only during the General Assembly's long session, held in even numbered years. The Governor petitioned EPA on November 8, 1978 citing this fact and the fact that the upcoming 1979 short session would be in an off-budget (odd) year where major revenue intensive measures, such as would be required to implement any type of I/M program, cannot be considered. The Governor thus requested a one year extension (until June 30, 1980) so that the legal authority for I/M can be obtained during the 1980 General Assembly Session.

EPA declined the Executive Branch's request for an extension on January 3, 1979, stating that consideration of such a request was premature and that any such request must come from the co-equal Legislature. An extension request could be evaluated only after due consideration by the Legislature, a finding of insufficient opportunity to enact the necessary I/M legislation, and a confirmation of the Legislature's commitment to consider I/M legislation during the next session.

When Virginia submitted its SIP revision, it included a tentative schedule in Chapter 9 of the four major urbanized nonattainment plans for the implementation of I/M for both the contractor and private-garage approaches. This schedule, however, is based on anticipated 1980 legislative authority for the program. On March 9, 1979, the Governor submitted a letter to EPA requesting reconsideration of a one year legislative extension, and enclosed as an attachment Senate Joint Resolution #118 which continues the Air Pollution Study Commission until December 1, 1979, when it is to provide its report and recommended legislation to the Governor and to the General Assembly. EPA has not yet approved the request for an extension of the July 1, 1979 legislative deadline and

continues to request confirmation from the Commonwealth regarding the legislative commitment to an I/M program.

In addition to adequate I/M legislation being submitted, in order for eventual full approval of the SIP to be granted, it is also necessary for Virginia to submit a schedule for implementation of the program, and to provide a clear commitment to implement and enforce the I/M program and to reduce emissions 25.0 percent by 1987. This information will be required as part of the I/M legislation SIP submittal in 1980, if an extension of the July 1, 1979 legislative deadline is granted.

### General Evaluation of Transportation Control Measures

In the foregoing sections, profiles were presented of the transportation components of the plan for the four designated areas. Also covered were EPA's comments concerning the vehicle Inspection/Maintenance program as it would apply to those areas. Presented in this section are those additional major comments resulting from a general evaluation of the transportation control measures.

1. In reviewing the transportation control components of the Commonwealth's submittal, EPA solicited comments from the U.S. Department of Housing and Urban Development (HUD) and the U.S. Department of Transportation (DOT). HUD's comments to EPA were germane only to Northern Virginia and basically supported the proposed transportation control measures since they complement the objectives of the President's National Urban Policy.

With the exception of the Northern Virginia area, the U.S. DOT noted a serious discrepancy in the emissions inventory provided for the transportation control plans. The VSAPCB submittal of January 12, 1979 contains an updated emissions inventory different from the emissions inventory in the transportation control plans. EPA requests the VSAPCB clarify this issue so that EPA can conduct its final review. Another major comment made by U.S. DOT was its concern about the relative burden to reduce emissions borne by transportation sources as compared to stationary sources.

2. On April 11, 1979, EPA met with the staff of the Virginia State Air Pollution Control Board to review Virginia's submittal. General comments on the transportation portion of the plan, including the control strategy demonstrated, adoption of control measures, and commitments, were

presented to the State at that time. Comments concerning the review of the transportation components were also discussed at a meeting with the Peninsula and Southeastern Virginia Section 174 agencies staff on April 25, 1979 and with the staff of the Richmond Agency on April 30, 1979. EPA's previous meetings and comments on drafts prepared by the Metropolitan Washington Council of Governments resolved EPA's concerns regarding the plan it had prepared. EPA's comments on the Northern Virginia plan prepared by the VSAPCB were therefore directed to that agency.

3. EPA also communicated its concern to the VSAPCB regarding the absence of commitments from local officials in the Peninsula and Southeastern Virginia areas to meet the requirements of Section 172(b)(10). This item was the focal point of subsequent meetings with those Section 174 agencies. EPA was most concerned with the status of commitments to implement transportation measures. The Virginia Department of Highways and Transportation (VDH&T) related the fact that in Virginia the process for transportation commitments emanates from local governments. Projects programmed in the Transportation Improvement Program carry with them a local commitment for their implementation. Thus, local governments have a substantial voice in deciding projects to be included in the programming process. Further, Virginia has a history of adhering to the priorities articulated in the programming process. This results in a high percentage of the locally proposed transportation projects being constructed. However, EPA requests further clarification from the Commonwealth on the commitments to implement the identified TCM's and is requesting public comment on the adequacy of these commitments.

Commitments to use available funds and grants to meet basic transportation needs have been described to various degrees in the transportation components of the Virginia submittal. Most notably, endorsements and commitments have come from some transit operating agencies including the Washington Metropolitan Area Transit Authority, the Peninsula Transportation District Commission, and the Tidewater Transportation District Commission.

The Richmond area plan describes the local commitment in terms of current efforts for improving public transportation services. EPA considers these commitments adequate at this time. However, EPA will be issuing additional requirements on basic

transportation needs in the future which may require a reassessment of their adequacy.

4. EPA requested a clear description of the transportation planning and programming process. VDH&T provided EPA with a copy of the Virginia State Action Plan for EPA review and this now appears to be acceptable.

EPA also considers the procedures for determining consistency between the transportation plans and programs that are presently incorporated in the SIP to be adequate. However, criteria for determining conformity must eventually be developed in accordance with forthcoming U.S. DOT and EPA guidance on this subject.

5. EPA requested a verification that the growth projections used by the Section 174 agencies was consistent with growth projections used by State and federal agencies. The VSAPCB related in a letter dated April 23, 1979 that the Commonwealth is bound to the projections produced by the State Department of Planning and Budget in accordance with Commonwealth statutes and an Executive Order by the Governor. The latest current series is dated June 1977. (The next projection is scheduled for June 1979). In Northern Virginia, the VSAPCB has based its plan on the Commonwealth's projections. The Metropolitan Washington Council of Governments used cooperative forecasts developed by COG and member local governments. While these projections vary, those used by the Commonwealth in the proposed SIP, are acceptable.

6. All four urbanized areas requiring transportation measures have included descriptions for alternatives analysis in their FY 1980 Unified Planning Work programs which are currently under review by EPA and the U.S. Department of Transportation. The analyses of alternatives are to be included in the submittal due in July 1982. Through an amendment to its FY 1979 work program, COG has been a recipient of a Section 175 grant for the purpose of developing an acceptable description for alternative analysis as well as for the purpose of beginning initial tasks necessary for such analysis. Upon receipt of an acceptable work program from the four Virginia areas involved, EPA and U.S. DOT will initiate an offer of Section 175 grants to the appropriate agencies.

The estimated identification of resources necessary for commencing the process of alternatives analysis has been submitted by the Section 174 agencies in their FY 1980 Unified

Planning Work Program. These are currently under review.

EPA noted that Chapter 12 of the Virginia plan contains only a cursory analysis of energy, economic, environmental, and social impacts of the plan. An analytical method needs to be developed so that a more extensive assessment can be made during the analysis of alternatives. This analysis is necessary for the submittal due in July 1982.

EPA requested that programs to monitor and determine the effects of committed transportation measures and more extensive public participation and education be developed by the Section 174 agencies as elements in their work programs for alternatives analysis.

7. EPA requested and received documentation on how the emission reductions were calculated for the transportation components. The Southeastern and Peninsula areas provided citations at the April 25 meeting; Richmond provided supplemental information to EPA on May 9, 1979. This supplemental information is acceptable.

8. Provisions for reporting progress through the planning and implementation period will be preformed by the Commonwealth and the Section 174 agencies will be submitting quarterly progress reports per the requirements of their Section 175 grant.

9. The Commonwealth should review the current transportation projects for those that have a positive air quality benefit. Only measures found to have both long- and short-term benefits should be submitted as part of the SIP. The measures in the plan must include schedules, including interim milestones and commitments by responsible agencies to implement needed measures.

#### Summary of Major Issues

Presented in the following paragraphs is a synopsis of major deficiencies of the transportation components of the Virginia submittal.

1. The VOC emissions inventory in the final State submittal differs from the emissions inventories provided for the transportation components.

2. The estimation of emission reduction necessary to attain the VOC and Carbon Monoxide NAAQS has been expressed in the profiles of each nonattainment area. These may change due to a reassessment using the new ozone standard, clarification of the VOC emission inventory used by the VSAPCB, and the redetermination of ozone design values for the Northern Virginia, Peninsula, Southeastern

Virginia, and Richmond areas. The outcome of the reassessment of carbon monoxide "hot spot" analysis in Northern Virginia will determine the prospects for attainment in 1982. This reassessment and submittal must include an RFP line showing annual incremental reductions for carbon monoxide.

3. A schedule for the development of the I/M legislative package must be provided by a legislative authority before EPA can rule on the Governor's request for an extension of the July 1, 1979 legislative deadline. EPA has asked Virginia to provide the schedule of activities leading to an I/M program as set out in Chapter 9 of the Virginia SIP.

#### Conclusion

The measures proposed today, if formally approved by EPA, will be in addition to, and not in lieu of, existing SIP regulations. The present emission control regulations of any source will remain applicable and enforceable to prevent a source from operating without controls or under less stringent controls, while it is moving toward compliance with the new regulations (or, if it chooses, challenging the new regulations). Failure of a source to meet applicable pre-existing regulations will result in appropriate enforcement action, including assessment of non-compliance penalties. Furthermore, if there is any instance of delay or lapse in the applicability of enforceability of the new regulations, because of a court order or for any other reason, the pre-existing regulations will be applicable and enforceable.

The only exceptions to this rule are cases where there are conflicts between the requirements of the new regulations and the requirements of the existing regulations such that it would be impossible for sources to comply with the new regulations. In these situations, the Commonwealth may exempt sources from compliance with the pre-existing regulations. Any exemption granted would be reviewed and acted on by EPA either as part of these proposed regulations or as future SIP revisions.

The public is invited to submit, to the address stated above, comments on whether the proposed amendments to the Commonwealth of Virginia air pollution regulations should be approved as a revision of the Commonwealth's SIP. The Administrator's decision to approve or disapprove the proposed revisions will be based on the comments received and on a determination of whether the amendments meet the requirements of Part D and Section 110(a)(2) of the Clean

Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

A supplement to an April 4, 1979 Notice of Proposed Rulemaking (44 FR 20372 [1979]) was published on July 2, 1979 (44 FR 38583 [1977]) involving, among other things, conditional approval. EPA proposes to conditionally approve the plan where there are minor deficiencies and the State provides assurances that it will submit corrections on a specified schedule. This notice solicits comments on what items should be conditionally approved. A conditional approval will mean that the restrictions on new major source construction will not apply unless, (1) the State fails to submit, by dates to be scheduled, SIP revisions necessary to remedy the deficiencies or (2) the revisions are not approved by EPA.

Deficiencies in the Commonwealth's plan that are not corrected may be cause for disapproval of the proposed revisions to the SIP. However, EPA is aware that the Commonwealth is preparing revisions to the current SIP proposal that may rectify plan deficiencies.

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." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(42 U.S.C. §§ 7401-7642)

Dated: July 16, 1979.

Jack J. Schramm,  
Regional Administrator.

[FR Doc. 79-23457 Filed 7-27-79; 8:45 am]  
BILLING CODE: 6560-01-M

#### [40 CFR Part 65]

[FRL 1285-8]

### Proposed Disapproval of an Administrative Order Issued by the Pennsylvania Department of Environmental Resources to the Bethlehem Steel Corp.

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to disapprove an Administrative Order (the "Order") issued by the Pennsylvania Department of Environmental Resources ("DER") to the Bethlehem Steel Corporation. The

Order was submitted by DER for approval by EPA as an order issued under Section 113(d)(4) of the Clean Air Act (the "Act"). The Order requires the Company to install control equipment on its Bethlehem Plant blast furnaces in Bethlehem, Pennsylvania by July 31, 1980. Because the Order has been issued to a major stationary source and permits a delay in compliance with provisions of the Pennsylvania State implementation Plan ("SIP"), it must be approved by EPA before it becomes effective as a Delayed Compliance Order under the provisions of Section 113(d) of the Act. If approved by EPA, the Order will constitute part of the SIP. Furthermore, a source in compliance with an approved order issued under Section 113(d)(4) may not be sued by the Federal government under Section 113 of the Act or by a citizen under Section 304 of the Act for violations of the SIP regulations covered by the order during the period the order is in effect. The purpose of this notice is to invite public comment on EPA's proposed disapproval of the Order as a Delayed Compliance Order.

Pursuant to 40 C.F.R. Part 65, 43 FR 44522 et. seq. (September 28, 1978), EPA will make available to any interested party information concerning the basis for the proposed disapproval of the order. Such information includes the Order and attachments (a proposal for a "Blast Furnace Ambient Air Quality Sampling Study," a copy of the public notice of the State order, and Bethlehem Steel Corporation's "Justification for Determination of Facility as a New Means of Emission Limitation for Blast Furnace Cast House Emissions") and EPA's Rationale Document in support of its proposed disapproval of the Order.

**DATE:** Written comments must be received on or before August 29, 1979.

**ADDRESSEES:** Comments should be submitted to Director, Enforcement Division, EPA, Region III, Sixth & Walnut Streets, Philadelphia, Pennsylvania 19106. The Order, supporting material, EPA Rationale Document and public comments received in response to this notice may be inspected and copied (for appropriate charge) at the above address during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Watman, at the above address or telephone (215) 597-0913.

**SUPPLEMENTARY INFORMATION:** Bethlehem Steel Corporation operates an integrated steel mill at Bethlehem, Pennsylvania. The Order under consideration requires reduction of emissions from the four blast furnaces (designated B, C, D and E) at the facility,

which are subject to the emission limitations in §§ 123.1, 123.41 and 123.13 of 25 Pennsylvania Code, Chapter 123, "Standards for Contaminants."

The above-referenced regulations limit the emission of visible and fugitive particulate matter and are part of the Federally approved Pennsylvania State Implementation Plan. The Order requires installation of hoods over the iron notch and trough of blast furnaces B, C, D and E by July 31, 1980, and is based on a control program presently being implemented by Bethlehem.

Because the Order has been issued to a major stationary source of particulate emissions and permits a delay in compliance with the applicable regulations, it must be approved by EPA before it becomes effective as a Delayed Compliance Order under Section 113(d) of the clean Air Act. EPA may approve the Order only if it satisfies all of the requirements of Section 113(d).

EPA proposes disapproval of the Order as an order under Section 113(d)(4) of the Act because the following requirements have not been satisfied: (i) the provisions of Section 113(d)(1)(C) requiring interim requirements for source operation during the pendency of the order; (ii) the provisions of Section 113(d)(1)(D), requiring final compliance; (iii) the provisions of Section 113(d)(4)(A), requiring the use of a "new means" of emission limitation; and (iv) the provisions of Section 113(d)(4)(C), requiring achievement of an equivalent continuous emission reduction at lower cost or a greater continuous emission reduction at the same cost.

If the Order were to be approved by EPA as a Section 113(d)(4) order, compliance by the source with the terms of the Order would preclude Federal enforcement action under Section 113 of the Act against the source for violations of the SIP requirements covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the Order would also constitute part of the Pennsylvania SIP.

All interested persons are invited to submit written comments on the Order. Written comments received by the date specified above will be considered in EPA's final determination regarding the Order. After the public comment period, the Administrator of EPA will publish in the Federal Register the Agency's final action on the Order in 40 CFR part 65.

(42 U.S.C. 7413, 7601)

Dated: July 5, 1979.

Jack J. Schramm,  
Regional Administrator, Region III.  
[FR Doc. 79-23462 Filed 7-27-79; 8:45 am]  
BILLING CODE 6560-01-M

## FEDERAL COMMUNICATIONS COMMISSION

### [47 CFR Part 73]

[BC Docket No. 79-180; RM-3133 and RM-3159]

### FM Broadcast Stations in Athens and New Boston, Ohio, and Greenup and Vanceburg, Ky.; Proposed Changes in Table of Assignments

**AGENCY:** Federal Communications  
Commission.

**ACTION:** Notice of Proposed Rule  
Making and Order to Show Cause.

**SUMMARY:** First FM channel assignments are proposed for New Boston, Ohio, and Greenup, Kentucky. These are considered together because of the need to coordinate site selection to avoid short-spacings between the channels for those communities. Station WXTR(FM) at Athens, Ohio, is ordered to show cause why it should not shift channels to make the proposed assignments possible. Action taken herein is in response to petitions filed by New Boston Broadcasting Corp. and Greenup Broadcasting, Inc.

**DATES:** Comments must be filed on or before September 18, 1979, reply comments on or before October 8, 1979.

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

**FOR FURTHER INFORMATION CONTACT:** Louis C. Stephens, Broadcast Bureau, (202) 632-6302.

#### SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. [Athens and New Boston, Ohio, and Greenup and Vanceburg, Kentucky]; proposed rule making and order to show cause.

Adopted: July 20, 1979.

Released: July 26, 1979.

1. We invite comments on the following proposed changes for the cities listed below to the FM Table of Assignments, Section 73.202(b) of the Rules:

City	Channel No.	
	Present	Proposed
Athens, Ohio.....	252A, 288A	240A, 252A
Greenup, Kentucky.....		288A
New Boston, Ohio.....		285A
Vanceburg, Kentucky.....	285A	261A

2. Petitioner, New Boston Broadcasting Corporation, licensee of W101, a daytime-only AM station in New Boston, Ohio, seeks the assignment of FM Channel 285A to provide New Boston with its first local full-time radio service.<sup>1</sup> New Boston, population 3,325,<sup>2</sup> is surrounded on all sides by Portsmouth, Ohio.

3. Three broadcast licensees oppose the New Boston petition. Two of them, WPAY, Inc. and T/R, Inc., each the licensee of a daytime-only AM station and an FM station at Portsmouth, and the third, Ohio Valley Broadcasting Company ("Ohio Valley"), licensee of daytime-only AM radio station WKKS at Vanceburg, argue that Portsmouth's four radio stations and petitioner's daytime-only station at New Boston adequately serve the Portsmouth-New Boston communities and nearby areas. They allege, as a result, that the need for the proposed FM channel assignment to New Boston has not been demonstrated. Ohio Valley also states that it is contemplating applying for an FM station at Vanceburg on Channel 285A. If the assignment proposed here were made, it asserts that the transmitter for a Vanceburg station on the proposed substituted Channel 261A would have to be located across the Ohio River "more than 80 miles of traveling time away" in order to avoid short-spacing to Station WKDS at Winchester, Kentucky. Petitioner responds that the opposition overlooked reports that the city is in the process of reestablishing ferry service across the Ohio River at Vanceburg.

4. We believe that petitioner has made a sufficient showing to warrant consideration of its proposal.<sup>3</sup> Although New Boston is a rather small community compared to Portsmouth, it may well have separate needs which warrant assigning a Class A FM channel. We are issuing this *Notice* to consider that possibility and invite comments to establish that separate need. With respect to the transmitter access problem contemplated by Ohio Valley, we note that recent developments appear to make the transmitter site feasible. A status report as to ferry service would be useful, as would a showing that despite terrain obstacles, principal community coverage of

<sup>1</sup>This assignment would be short-spaced, but this problem could be avoided by substituting Channel 261A for unused Channel 285A at Vanceburg, Kentucky.

<sup>2</sup>Unless otherwise indicated, all population figures are taken from the 1970 U.S. Census.

<sup>3</sup>Preclusion would not occur in any community with at least 1,000 population which lacks an FM station.

Vanceburg could be obtained on Channel 261A from an available transmitter site.

5. Greenup Broadcasting, Inc., seeks the assignment of Channel 288A at Greenup, Kentucky, population 1,284. Greenup, which has no locally assigned AM or FM station, is the seat of Greenup County, 1975 population 33,800. The proposed assignment would be short-spaced to Channel 288A at Athens, Ohio, but this could be avoided by substituting Channel 240A for Channel 288A there. WATH, Inc., licensee of FM Station WXTQ, operating on Channel 288A at Athens, opposes the assignment. It alleges that his substitution would disrupt its operation and asserts that Greenup presently receives adequate service from stations located in other communities.

6. The objections advanced by WATH, Inc. do not provide adequate justification for refusing to consider the proposed channel changes at Greenup, Kentucky, and Athens, Ohio. First, in the event Station WXTQ is modified to specify the substitute channel in accordance with this proposal, the reasonable costs for this step will be borne by the permittee for the Greenup channel. And, with respect to the second objection, we note that service from outside communities is not the equivalent of that from a locally assigned station.

7. Channel 288A at Greenup would be short-spaced by 1.9 kilometers (1.2 miles) to co-channel Station WPRT-FM at Prestonburg, Kentucky, to the south and by 3.2 kilometers (2 miles) to the proposed Channel 285A at New Boston to the north. These short spacings, combined with the location of Greenup on the Ohio River, would require the Greenup transmitter to be located approximately 3.2 kilometers (2 miles) northwest of its community and the New Boston transmitter to be located at least 8 kilometers (5 miles) north of its community. In order for us to proceed with the proposal, we need a showing that suitable transmitter sites are available from which the required coverage could be provided to each of the communities of license.

8. Accordingly, we propose to amend § 73.202(b), the Table of FM Assignments, as set out in paragraph 1.

9. 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.

10. Interested parties may file comments on or before September 18, 1979, and reply comments on or before October 8, 1979.

11. Further, it is ordered, that pursuant to section 316(a) of the Communications Act of 1934, as amended, WATH, Inc. show cause why, if Channel 240A is substituted for Channel 288A at Athens, Ohio, the license of WXTQ should not be modified to specify operation on Channel 240A in lieu of Channel 288A, if the Commission determines that the public interest would be served by adopting the proposed assignments.

12. Pursuant to § 1.87 of the Commission's Rules and Regulations, the licensee of Station WXTQ may, not later than October 8, 1979, request that a hearing be held on the proposed modification. Pursuant to § 1.87(f), if the right to request a hearing is waived, WATH, Inc., may, not later than October 8, 1979, file a written statement showing with particularity why its license should not be modified or not so modified as proposed in the *Order to Show Cause*. In this case, the Commission may call on WATH, Inc. to furnish additional information, designate the matter for hearing, or issue without further proceeding, an Order modifying the license as provided in the *Order to Show Cause*. If the right to request a hearing is waived and no written statement is filed by the date referred to above, WATH, Inc. is deemed to consent to the modification as proposed in the *Order to Show Cause* and a final Order will be issued by the Commission if the channel changes referred to in paragraph 1 above are found to be in the public interest.

13. For further information concerning this proceeding, contact Louis C. Stephens, Broadcast Bureau, (202) 632-6302. 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. Shibem,  
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 Section 0.281(b)(6) of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Assignments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice or 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 Sections 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 Section 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. 79-23391 Filed 7-27-79; 8:45 am]  
BILLING CODE 6712-01-M

#### [47 CFR Part 73]

[BC Docket No. 78-368; RM-3155]

#### FM Broadcast Stations in Rio Grande City and Roma-Los Saenz, Tex.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Further Notice of Proposed Rule Making.

SUMMARY: Action taken herein proposes the deletion of an FM channel from Rio Grande City, Texas, and its assignment to Roma-Los Saenz, Texas. Petitioner, Tele View, states the proposed assignment could provide Roma-Los Saenz with its first full-time local aural broadcast service.

DATES: Comments must be filed on or before September 16, 1979, and reply comments must be filed on or before October 6, 1979.

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

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

SUPPLEMENTARY INFORMATION: In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Rio Grande City and Roma-Los Saenz, Texas); Further notice of proposed rule making.

Adopted: July 18, 1979.

Released: July 25, 1979.

1. On November 7, 1978, the Commission adopted a *Notice of Proposed Rule Making*, 43 FR 54111, proposing the assignment of FM Channel 285A to Roma-Los Saenz, Texas. Tele View ("petitioner") requested the deletion of Channel 249A from Rio Grande City, Texas, and its assignment to Roma-Los Saenz.

However, the Commission proposed Channel 285A, which was available for assignment, in order to avoid the deletion of the Rio Grande City channel. The Channel 285A assignment to Roma-Los Saenz was proposed contingent upon approval of the Mexican Government. Since then we have been advised by the Mexican authorities that the assignment of Channel 285A to Roma-Los Saenz would conflict with their proposed use of the same channel to San Rafael de las Tortillas.

2. Roma-Los Saenz (pop. 2,154) in Starr County (pop. 17,707),<sup>1</sup> is located on the Rio Grande River, approximately 129 kilometers (80 miles) south of Laredo, Texas. It has no local aural broadcast service. Rio Grande City has a population of 5,676. Channel 249A is the only FM channel assignment in Rio Grande City. It is unoccupied and unapplied for.

3. Petitioner claims that the population of Roma-Los Saenz is growing rapidly due to the legal immigration of Mexican nationals into the community. It states that the economic activities in the community are retail sales, public employment, especially in the school system, and agriculture and farm labor. It asserts that there are no AM, FM or television stations in Starr County. Petitioner states that it will apply for the channel, if assigned.

4. Channel 249A is the only channel which can be assigned to Roma-Los Saenz. Since no interest has been shown for its use at Rio Grande City, we are proposing its deletion from that community and its assignment to Roma-Los Saenz where a demand has been expressed for an FM assignment. Channel 249A could be used to bring a first local aural broadcast service to Roma-Los Saenz.

5. Accordingly, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules, with respect to the cities listed below, as follows:

City	Channel No.	
	Present	Proposed
Rio Grande City, Texas	249A	
Roma-Los Saenz, Texas		249A

16. Since Roma-Los Saenz is located within 320 kilometers (199 miles) of the United States-Mexico border, the proposed assignment of Channel 249A to that community is subject to concurrence by the Mexican Government.

<sup>1</sup>Population figures are taken from the 1970 U.S. Census.

7. The Commission's 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.

8. Interested parties may file comments on or before September 16, 1979, and reply comments on or before October 6, 1979.

9. 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, *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contract 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. Shiben,  
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 Section 0.281(b)(6) of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Assignments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only 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 Sections 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 Section 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, N.W., Washington, D.C.

[FR Doc. 79-23389 Filed 7-27-79; 8:45 am]

BILLING CODE 6712-01-M

[47 CFR Part 73]

[BC Docket No. 79-181; RM-3190]

FM Broadcast Station in Tahoe City, Calif.; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

**ACTION:** Notice of Proposed Rule Making.

**SUMMARY:** The Commission invites comments on a proposal to assign FM Channel 243 to Tahoe City, California. The Commission rejected the objection by the licensee of Station KEZC, an FM station assigned to Truckee, California, and agreed to consider the assignment proposed by the Messrs. Fox, Laufer and Loe.

**DATES:** Comments must be filed on or before September 21, 1979, and reply comments on or before October 11, 1979.

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

**FOR FURTHER INFORMATION CONTACT:** Louis C. Stephens, Broadcast Bureau (202)632-6302.

**SUPPLEMENTARY INFORMATION:** In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations, (Tahoe City, California); notice of proposed rule making.

Adopted: July 23, 1979.

Released: July 26, 1979.

1. Robert L. Fox, Ira E. Laufer and David A. Loe ("FLL"), request the assignment of Class B FM Channel 243 to the unincorporated community of Tahoe City, California. An opposition was filed by Lake Tahoe FM, Inc., ("KEZC"), licensee of Class A FM Station KEZC, assigned to Truckee, California, some 19 kilometers (12 miles) from Tahoe City.

2. Tahoe City is described as being one of the communities located adjacent to Lake Tahoe, a 33.6 kilometer (21 mile) long mountain lake on the California-Nevada border near Reno. It has a small year-round population: 1,394, according to the 1970 U.S. Census. In the summer, tourists swell the North Shore population to an estimated 75,000.

3. Neither Tahoe City nor any of the other North Shore communities bordering on Lake Tahoe has a locally-assigned AM or FM station, and FLL believes one is needed to provide a local outlet not only for Tahoe City, but also for other "North Shore" communities. FLL also indicates interest in serving the "South Shore" as well, which includes the community of South Lake Tahoe, whose population (12,921 in 1970) is much larger than Tahoe City's 1,394.

4. KEZC questions whether Tahoe City is a distinct community meeting Commission requirements for a channel assignment. KEZC indicates that the petitioner has the burden of showing that the proposed location is such a community. According to KEZC, this petitioner has failed to do so. We cannot

agree. The fact that Tahoe City is unincorporated and had only 1,394 permanent residents at the 1970 Census does not mean it does not warrant an assignment. Petitioner's showing is sufficient to establish that Tahoe City is a community. It is the location of many county offices, has schools, courts and businesses.

5. KEZC also contends that Tahoe City does not qualify for a Class B channel because it is not large enough and because the station would not provide any persons in its service area with a first or second aural broadcast service. KEZC urges that the availability of a Class A channel should be determined before consideration is given to assigning a Class B channel to Tahoe City. KEZC charges that FLL, in seeking a Class B channel, is intending to serve the more populous South Lake Tahoe area (which already has 2 locally assigned unlimited-time AM stations and 2 FM stations) rather than Tahoe City and other nearer North Shore communities.

6. We do not find in these arguments good cause for refusing to consider FLL's request, especially since a Class B assignment is necessary in order to serve the entire Lake area. Likewise, we are unpersuaded by KEZC's argument that we would be violating our policy against intermixture by assigning a Class B channel. This would be the community's first channel, so no intermixture would result.

7. The proposed channel assignment meets all co-channel and adjacent channel spacing requirements, and does not require changing any existing assignment. Lovelock, Nevada (pop. 1517), county seat of Pershing County, is the only community of over 1000 population without FM or AM assignments that would sustain preclusions as a result of the proposed assignment. Petitioner should ascertain and state whether there is another FM channel which could be assigned to Lovelock.

8. We invite comments on the proposal to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules, by adding the following:

City	Channel No.	
	Present	Proposed
Tahoe City, California		243B

9. The Commission's 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.

10. Interested parties may file comments on or before September 21, 1979, and reply comments on or before October 11, 1979.

11. For further information concerning this proceeding, contact Louis C. Stephens, Broadcast Bureau, (202) 632-6302. 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. Shiben,  
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 Section 0.281(b)(6) of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Assignments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only 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 Sections 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 Section 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, N.W., Washington, D.C.

[FR Doc. 79-23390 Filed 7-27-79; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF COMMERCE

### [50 CFR Part 280]

#### Pacific Tuna Fisheries; Proposed Rule Making and Public Hearing Notice

AGENCY: National Oceanic and Atmospheric Administration/  
Commerce.

ACTION: Proposed Regulations.

**SUMMARY:** This proposed regulation would continue the 1978 regulations in effect for 1979, under the provisions of a yellowfin tuna conservation resolution

adopted by member countries of the Inter-American Tropical Tuna Commission on July 13, 1979. The only changes being proposed are that the dates be changed to conform to the present year. However, comments are invited on all regulations.

**DATES:** Comments are invited until August 3, 1979. A public hearing will be held at 300 South Ferry Street, Room 205, Terminal Island, California, on July 25, 1979.

**FOR FURTHER INFORMATION CONTACT:** J. Gary Smith, National Marine Fisheries Service, 300 South Ferry Street, Room 201, Terminal Island, California 90731. Telephone 213-548-2518.

**ADDRESS:** Send comments to the person and address listed below.

**SUPPLEMENTARY INFORMATION:** The United States voted for the 1979 Resolution of the Inter-American Tropical Tuna Commission, which establishes a conservation regime for yellowfin tuna for the 1979 fishing season. The 1979 Resolution is identical to the 1978 Resolution except for the dates. Therefore, it is proposed to amend the 1978 regulations merely by changing the dates to reflect the appropriate years.

Before final adoption of the proposed changes in the regulations, consideration will be given to data and written comments pertaining to these regulations which are submitted to the person and address mentioned above on or before August 3, 1979.

All interested persons have already been notified of the hearing which will be held at 300 South Ferry Street, room 205, Terminal Island, California at 10:30 am, July 25, 1979. Persons intending to testify are requested to submit in writing their names and the names of the organizations represented, if any, to Mr. Smith at the address above.

(16 U.S.C. 951-961)

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

### PART 280 [Amended]

It is proposed to amend 50 CFR 280 as follows:

Strike "1977" and "1978" and substitute "1978" and "1979" as appropriate wherever those dates appear in sec. 280.6 and 280.10(c).

[FR Doc. 79-23358 Filed 7-27-79; 8:45 am]

BILLING CODE 3510-22-M

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.

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Shawnee National Forest, Saline, Pope, Gallatin, and Hardin Counties, Ill.; Intent To Prepare an Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture will prepare an environmental impact statement on the Shawnee Hills National Recreation Area proposal.

Public Law 94-518, dated October 17, 1976, directs the Secretary of Agriculture to submit a report to Congress which shall include his recommendation as to the desirability and feasibility of establishing a national recreation area within the Shawnee Hills in Saline, Pope, Gallatin, and Hardin Counties, Illinois. The study of the Shawnee Hills National Recreation Area proposal began on December 8, 1977. At this time, members of the public and Forest Service personnel met and formulated several broadly different land management alternatives for the project area. Subsequent to December 8, 1977, an effort was made over a 9 month period to involve the public in formulating additional land management alternatives. Included in this public involvement were numerous newspaper articles, television and radio interviews, and four public workshops held in Harrisburg and Golconda, Illinois. In addition, a survey was conducted within the project area in which 576 heads of households had an opportunity to voice an opinion on the issue.

Public involvement resulted in the formulation of 10 alternative land management possibilities for the project area as well as identification of principal concerns of residents. These concerns are:

1. Maintaining present rural life style
2. Displacement of present population
3. Economic stability
4. Land acquisition or control
5. Mineral development
6. Development along Ohio River
7. Trespass, litter, vandalism, crime
8. Signing, visitor information
9. Misuse of ORV's
10. Outside exploitation of area

R. Max Peterson, Forest Service Chief, is the responsible official for this environmental impact statement. The Forest Service is being assisted in preparation of the statement by an environmental consultant.

The draft environmental impact statement will be available in February 1980, and the final environmental impact statement is scheduled for completion in December 1980.

Comments on this Notice of Intent or on the Shawnee Hills, National Recreation Area proposal should be sent to David F. Jolly, Forest Supervisor, 317 E. Poplar Street, Harrisburg, IL 62946.

Dated: July 17, 1979.

J. B. Hilmon,  
Acting Chief.

[FR Doc. 79-23426 Filed 7-27-79; 8:45 am]

BILLING CODE 3410-11-M

### Federal Grain Inspection Service

#### Official Agency Designation; Aberdeen Grain Inspection, Inc., Aberdeen, S. Dak., and Proposal of Geographic Area

**AGENCY:** Federal Grain Inspection Service.

**ACTION:** Notice and Request for Comments.

**SUMMARY:** This notice announces the designation of the Aberdeen Grain Inspection, Inc., Aberdeen, South Dakota, as an official agency to perform official inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

**DATE:** Comments by September 13, 1979.

This agency has been performing official inspection services within the proposed geographic area at least since November 1978. The boundaries thereof are known by persons affected, do not impose significant new restrictions or obligations, and have limited public

affect. Therefore, the comment period shall be limited to 45 days.

**FOR FURTHER INFORMATION CONTACT:** J. T. Abshier, Director, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-8262.

**SUPPLEMENTARY INFORMATION:** The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act, the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate no later than triennially.

**Note.**—Section 7(f)(2) of the Act generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

Aberdeen Grain Inspection, Inc. (the "Agency"), 15 S. Dakota Street, P.O. Box 842, Aberdeen, South Dakota 57401, an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection services, not including official weighing.

The FGIS has conducted the required investigation of the Agency which included an onsite review of its inspection point (hereinafter "specified service point") and the Agency was deemed eligible for designation to perform official inspection services (other than appeal inspection), not including official weighing. A document designating the Agency as an official agency was signed on November 14, 1978.

Said designation also included an interim assignment of geographic area within which the official Agency will provide official inspection services. The geographic area assigned on an interim basis pending final determination in this matter is:

**Bounded:** on the North by U.S. Route 12 east to State Route 22; State Route 22

north to the Chicago Milwaukee St. Paul and Pacific Railroad line; the Chicago Milwaukee St. Paul and Pacific Railroad line east to State Route 21; State Route 21 east to State Route 49; State Route 49 south to the North Dakota-South Dakota State line; the North Dakota-South Dakota State line east to U.S. Route 83; U.S. Route 83 north to State Route 13; State Route 13 east and north to the McIntosh County line; the northern McIntosh County line east to Dickey County; the northern Dickey County line east to U.S. Route 281; U.S. Route 281 south to the North Dakota-South Dakota State line; the North Dakota-South Dakota State line east;

Bounded: on the East by the eastern South Dakota State line south to State Route 44;

Bounded: on the South by State Route 44 west to the Missouri River; the Missouri River south-southeast to the South Dakota State line; the southern South Dakota State line; and

Bounded: on the West by the western South Dakota State line; the western North Dakota State line north to U.S. Route 12.

In addition, the following locations which are outside of the foregoing contiguous geographic area and are to be serviced by the Agency shall be considered as part of the Agency's geographic area: Farmers Elevator, Guelph, North Dakota, in Dickey County; Farmers Equity Exchange and Sun Grain, New England, North Dakota, in Hettinger County; and Regent Grain Company and Regent Equity, Regent, North Dakota in Hettinger County.

An exception to this geographic area is the following location situated inside the Agency's area which has been an will continue to be serviced by Sioux City Inspection & Weighing Agency, Inc., Sioux City, Iowa; Farmers Elevator Company and Krause Mill, Inc.—Cedars Mill & Elevator, Inc., Platte, South Dakota, in Charles County.

A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspections and where the agency or one or more of its licensed inspectors is located.

In addition to the specified service point within the geographic area, the Agency will provide official inspection services not requiring a licensed inspector to all other areas within its geographic area.

Interested persons may obtain the address of the specified service point and a map of the proposed geographic area for the Agency from the Delegation and Designation Branch, Compliance Division, Federal Grain Inspection

Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-8525.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250. All materials should be received by the Director not later than September 13, 1979 (45 days after publication). All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made.

(Secs. 8, 9, 27, Pub. L. 94-582, 90 Stat. 2870, 2875, 2889 (7 U.S.C. 79, 79a, 74 note))

Done in Washington, D.C. on: July 23, 1979.

D. R. Galliard,

*Acting Administrator.*

[FR Doc. 79-23392 Filed 7-27-79; 8:45 am]

BILLING CODE 3410-02-M

### Official Agency Designation; A. E. Herron, Pittsford, N.Y., and Proposal of Geographic Area

**AGENCY:** Federal Grain Inspection Service.

**ACTION:** Notice and Request for Comments.

**SUMMARY:** This notice announces the designation of the A. E. Herron, Pittsford, New York, as an official agency to perform official inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

**DATE:** Comments by September 13, 1979.

This agency has been performing official inspection services within the proposed geographic area at least since August 1978. The boundaries thereof are known by persons affected, do not impose significant new restrictions or obligations, and have limited public affect. Therefore, the comment period shall be limited to 45 days.

**FOR FURTHER INFORMATION CONTACT:** J. T. Abshier, Director, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-8262.

**SUPPLEMENTARY INFORMATION:** The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act, the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate no later than triennially.

Note.— Section 7(f)(2) of the Act generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

A. E. Herron (the "Agency"), 34 East Park Road, Pittsford, New York 14534, an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection services, not including official weighing.

The FGIS has conducted the required investigation of the Agency which included an onsite review of its inspection point (hereinafter "specified service point") and the Agency was deemed eligible for designation to perform official inspection services (other than appeal inspection), not including official weighing. A document designating the Agency as an official agency was signed on August 31, 1978.

Said designation also included an interim assignment of geographic area within which the official Agency will provide official inspection services. The geographic area assigned on an interim basis pending final determination in this matter is:

The area within the Pittsford Township, New York.

A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspections and where the agency or one or more of its licensed inspectors is located.

In addition to the specified service point within the geographic area, the Agency will provide official inspection services not requiring a licensed

inspector to all other areas within its geographic area.

Interested persons may obtain the address of the specified service point and a map of the proposed geographic area for the Agency from the Delegation and Designation Branch, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-8525.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this Agency. All views of comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250. All materials should be received by the Director not later than September 13, 1979. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made.

(Secs. 8, 9, 27, Pub. L. 94-582, 90 Stat. 2870, 2875, 2889 (7 U.S.C. 79, 79a, 74 note))

Done in Washington, D.C. on: July 23, 1979.  
D. R. Galliard,

*Acting Administrator.*

[FR Doc. 79-23323 Filed 7-27-79; 8:45 am]

BILLING CODE 3410-02-M

#### **Official Agency Designation; Agricultural Seed Laboratories, Phoenix, Ariz., and Proposal of Geographic Area**

**AGENCY:** Federal Grain Inspection Service.

**ACTION:** Notice and Request for Comments.

**SUMMARY:** This notice announces the designation of the Agricultural Seed Laboratories, Phoenix, Arizona, as an official agency to perform official inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

**DATE:** Comments by September 13, 1979.

This agency has been performing official inspection services within the proposed geographic area at least since November 1978. The boundaries thereof are known by persons affected, do not impose significant new restrictions or obligations, and have limited public affect. Therefore, the comment period shall be limited to 45 days.

**FOR FURTHER INFORMATION CONTACT:** J. T. Abshier, Director, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-8262.

**SUPPLEMENTARY INFORMATION:** The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq*) (the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act, the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate no later than triennially.

Note.—Section 7(f)(2) of the Act generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

Agricultural Seed Laboratories (the "Agency"), 212 S. 25th Avenue, P.O. Box 6363, Phoenix, Arizona 85005, an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection services, not including official weighing.

The FGIS has conducted the required investigation of the Agency which included an onsite review of its inspection point (hereinafter "specified service point") and the Agency was deemed eligible for designation to perform official inspection services (other than appeal inspection), not including official weighing. A document designating the Agency as an official agency was signed on November 20, 1978.

Said designation also included an interim assignment of geographic area within which the official Agency will provide official inspection services. The geographic area assigned on an interim basis pending final determination in this matter is the following counties:

Maricopa County, Pinal County, and Yuma County.

A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspections and where the agency or one or more of its licensed inspectors is located.

In addition to the specified service point within the geographic area, the Agency will provide official inspection services not requiring a licensed inspector to all other areas within its geographic area.

Interested persons may obtain the address of the specified service point and a map of the proposed geographic area for the Agency from the Delegation and Designation Branch, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-8525.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this Agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250. All materials should be received by the Director not later than September 13, 1979. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made.

(Secs. 8, 9, 27, Pub. L. 94-582, 90 Stat. 2870, 2875, 2889 (7 U.S.C. 79, 79a, 74 note))

Done in Washington, D.C. on: July 23, 1979.  
D. R. Galliard,

*Acting Administrator.*

[FR Doc. 79-23327 Filed 7-27-79; 8:45 am]

BILLING CODE 3410-02-M

#### **Official Agency Designation, Chattanooga Grain Inspection Department, Chattanooga, Tenn., and Proposal of Geographic Area**

**AGENCY:** Federal Grain Inspection Service.

**ACTION:** Notice and request for Comments.

**SUMMARY:** This notice announces the designation of the Chattanooga Grain Inspection Department, Chattanooga, Tennessee, as an official agency to perform official inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

**DATE:** Comments by September 13, 1979.

This agency has been performing official inspection services within the proposed geographic area at least since October 1978. The boundaries thereof are known by persons affected, do not impose significant new restrictions or obligations, and have limited public affect. Therefore, the comment period shall be limited to 45 days.

**FOR FURTHER INFORMATION CONTACT:** J. T. Abshier, Director, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-8262.

**SUPPLEMENTARY INFORMATION:** The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act, the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate no later than triennially.

Note.—Section 7(f)(2) of the Act generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

Chattanooga Grain Inspection Department (the "Agency"), P.O. Box 5113, Chattanooga, Tennessee 37406, an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection services, not including official weighing.

The FGIS has conducted the required investigation of the Agency which included an onsite review of its inspection point (hereinafter "specified service point") and the Agency was deemed eligible for designation to perform official inspection services

(other than appeal inspection), not including official weighing. A document designating the Agency as an official agency was signed on October 15, 1978.

Said designation also included an interim assignment of geographic area within which the official Agency will provide official inspection services. The geographic area assigned on an interim basis pending final determination in this matter is:

Bounded: on the North by the Kentucky-Tennessee State line from Robertson County east to Virginia; the Virginia-Tennessee State line east to North Carolina;

Bounded: on the East by the North Carolina-Tennessee State line southwest to Georgia;

Bounded: on the South by the Georgia-Tennessee State line west to Alabama; the Alabama-Tennessee State line west to Interstate 65; and

Bounded: on the West by Interstate 65 north to Davidson County; the southern Davidson County line east then north to Robertson County; the eastern Robertson County line north to the State line.

A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspections and where the agency or one or more of its licensed inspectors is located.

In addition to the specified service point within the geographic area, the Agency will provide official inspection services not requiring a licensed inspector to all other areas within its geographic area.

Interested persons may obtain the address of the specified service point and a map of the proposed geographic area for the Agency from the Delegation and Designation Branch, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-8525.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this Agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250. All materials should be received by the Director not later than September 13, 1979 (45 days after publication). All materials submitted

pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)).

Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made.

(Secs. 8, 9, 27, Pub. L. 94-582, 90 Stat. 2870, 2875, 2889 (7 U.S.C. 79, 79a, 74 note))

Done in Washington, D.C. on: July 23, 1979.

D. R. Gallart,  
Acting Administrator.

[FR Doc. 79-23325 Filed 7-27-79; 8:45 am]  
BILLING CODE 3410-02-M

**Official Agency Designation; R. A. Gray, Owensboro, Ky., and Proposal of Geographic Area**

**AGENCY:** Federal Grain Inspection Service.

**ACTION:** Notice and Request for Comments.

**SUMMARY:** This notice announces the designation of R. A. Gray, Owensboro, Kentucky, as an official agency to perform official inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

**DATE:** Comments by September 13, 1979.

This agency has been performing official inspection services within the proposed geographic area at least since October 1978. The boundaries thereof are known by persons affected, do not impose significant new restrictions or obligations, and have limited public affect. Therefore, the comment period shall be limited to 45 days.

**FOR FURTHER INFORMATION CONTACT:** J. T. Abshier, Director, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-8262.

**SUPPLEMENTARY INFORMATION:** The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act, the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at

locations where the Administrator determines there is a need for such services. Such a designation shall terminate no later than triennially.

**Note.**—Section 7(f)(2) of the Act generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

R. A. Gray (the "Agency"), 903 Triplett Street, P.O. Box 91, Owensboro, Kentucky 42301, an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection services, not including official weighing.

The FGIS has conducted the required investigation of the Agency which included an onsite review of its inspection point (hereinafter "specified service point") and the Agency was deemed eligible for designation to perform official inspection services (other than appeal inspection), not including official weighing. A document designating the Agency as an official agency was signed on October 20, 1978.

Said designation also included an interim assignment of geographic area within which the official Agency will provide official inspection services. The geographic area assigned on an interim basis pending final determination in this matter is:

In Indiana, the following counties: Perry and Spencer Counties;

In Kentucky, the area shall be:

Bounded: on the North by the Ohio River from Henderson County east to Breckinridge County;

Bounded: on the East by the eastern Hancock County line south to Ohio County; the eastern Ohio County line south-southwest to Muhlenberg County;

Bounded: on the South by the Muhlenberg County line west to the Western Kentucky Parkway; the Western Kentucky Parkway west to State Route 109; and

Bounded: on the West by State Route 109 north to State Route 814; State Route 814 north to U.S. Route Alternate 41; U.S. Route Alternate 41 north to Henderson County; the southern Henderson County line east-northeast to the Ohio River.

A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspections and where the agency or one or more of its licensed inspectors is located.

In addition to the specified service point within the geographic area, the Agency will provide official inspection services not requiring a licensed

inspector to all other areas within its geographic area.

Interested persons may obtain the address of the specified service point and a map of the proposed geographic area for the Agency from the Delegation and Designation Branch, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-8525.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this Agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250. All materials should be received by the Director not later than September 13, 1979. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made.

(Secs. 8, 9, 27, Pub. L. 94-582, 90 Stat. 2870, 2875, 2889 (7 U.S.C. 79, 79a, 74 note))

Done in Washington, D.C. on July 23, 1979.

D. R. Gallart,

Acting Administrator.

[FR Doc. 79-23328 Filed 7-27-79; 8:45 am]

BILLING CODE 3410-02-M

### Official Agency Designation; Farwell Grain Inspection Co., Inc., Farwell, Tex., and Proposal of Geographic Area

**AGENCY:** Federal Grain Inspection Service.

**ACTION:** Notice and Request for Comments.

**SUMMARY:** This notice announces the designation of the Farwell Grain Inspection Co., Inc., Farwell, Texas, as an official agency to perform official inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

**DATE:** Comments by September 13, 1979.

This agency has been performing official inspection services within the

proposed geographic area at least since September 1978. The boundaries thereof are known by persons affected, do not impose significant new restrictions or obligations, and have limited public affect. Therefore, the comment period shall be limited to 45 days.

**FOR FURTHER INFORMATION CONTACT:** J. T. Abshier, Director, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-8262.

**SUPPLEMENTARY INFORMATION:** The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act, the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate no later than triennially.

**Note.**—Section 7(f)(2) of the Act generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the administrator.

Farwell Grain Inspection Co., Inc. (the "Agency"), 112 9th Street, P.O. Box 488, Farwell, Texas 79325, an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection services, not including official weighing.

The FGIS has conducted the required investigation of the Agency which included an onsite review of its inspection point (hereinafter "specified service point") and the Agency was deemed eligible for designation to perform official inspection services (other than appeal inspection), not including official weighing. A document designating the Agency as an official agency was signed on September 25, 1978.

Said designation also included an interim assignment of geographic area within which the official Agency will provide official inspection services. The geographic area assigned on an interim basis pending final determination in this matter is:

The following counties in Texas: Bailey County; Deaf Smith County west of State Route 214; Lamb County south

of U.S. Route 70 and west of Farm to Market 303; and Parmer County.

The following counties in New Mexico: Chaves County; Curry County; DeBaca County; Eddy County; Lea County; Quay County; Roosevelt County; and Union County.

An exception to this geographic area is the following location situated inside the Agency's area which has been and will continue to be serviced by Lubbock Grain Inspection and Weighing, Inc., Lubbock, Texas: Sudan Elevator, Sudan, Texas.

A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspections and where the agency or one or more of its licensed inspectors is located.

In addition to the specified service point within the geographic area, the Agency will provide official inspection services not requiring a licensed inspector to all other areas within its geographic area.

Interested persons may obtain the address of the specified service point and a map of the proposed geographic area for the Agency from the Delegation and Designation Branch, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-8525.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this Agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250. All materials should be received by the Director not later than September 13, 1979. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made.

(Secs. 8, 9, 27, Pub. L. 94-582, 90 Stat. 2870, 2875, 2889 (7 U.S.C. 79, 79a, 74 note))

Done in Washington, D.C. on July 23, 1979.

D. R. Galliard,

Acting Administrator.

[FR Doc. 79-23324 Filed 7-27-79; 8:45 am]

BILLING CODE 3410-02-M

### Official Agency Designation, Grand Forks Grain Inspection Department, Grand Forks, N. Dak., and Proposal of Geographic Area

AGENCY: Federal Grain Inspection Service.

ACTION: Notice and Request for Comments.

**SUMMARY:** This notice announces the designation of the Grand Forks Grain Inspection Department, Grand Forks, North Dakota, as an official agency to perform official inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

**DATE:** Comments by September 13, 1979.

This agency has been performing official inspection services within the proposed geographic area at least since October 1978. The boundaries thereof are known by persons affected, do not impose significant new restrictions or obligations, and have limited public effect. Therefore, the comment period shall be limited to 45 days.

**FOR FURTHER INFORMATION CONTACT:** J. T. Abshier, Director, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250 (202) 447-8262.

**SUPPLEMENTARY INFORMATION:** The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act, the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate no later than triennially.

**Note.**—Section 7(f)(2) of the Act generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

Grand Forks Grain Inspection Department (the "Agency"), 1823 State Mill Road, P.O. Box 639, Grand Forks, North Dakota 58201, an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection services, not including official weighing.

The FGIS has conducted the required investigation of the Agency which included an onsite review of its inspection point (hereinafter "specified service point") and the Agency was deemed eligible for designation to perform official inspection services (other than appeal inspection), not including official weighing. A document designating the Agency as an official agency was signed on October 15, 1978.

Said designation also included an interim assignment of geographic area within which the official Agency will provide official inspection services. The geographic area assigned on an interim basis pending final determination in this matter is:

Bounded: on the North by the North Dakota State line;

Bounded: on the East by the North Dakota State line south to State Route 200;

Bounded: on the South by State Route 200 west-northwest to the western Traill County line; the western Traill County line; the southern Grand Forks and Nelson County lines west; the southern Eddy County line west to U.S. Route 281; U.S. Route 281 north to State Route 15; State Route 15 west to U.S. Route 52 northwest to State Route 3; and

Bounded: on the West by State Route 3 north to State Route 60; State Route 60 west-northwest to State Route 5; State Route 5 west to State Route 14; State Route 14 north.

Exceptions to this geographic area are the following locations situated inside the Agency's area which have been and will continue to be serviced by: Grain Inspection, Inc., Jamestown, North Dakota:

Farmers Coop Elevator, Fessenden, North Dakota, in Wells County; and Farmers Union Elevator and Manfred Grain, Manfred, North Dakota, in Wells County.

Minot Grain Inspection, Inc., Minot, North Dakota:

Farmers Elevator Company, Bottineau, North Dakota, in Bottineau County; Farmers Feed & Grain and Farmers Union, Harvey, North Dakota, in Wells County; and Farmers Union, Rugby, North Dakota, in Pierce County.

A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspections and

where the agency or one or more of its licensed inspectors is located.

In addition to the specified service point within the geographic area, the Agency will provide official inspection services not requiring a licensed inspector to all other areas within its geographic area.

Interested persons may obtain the address of the specified service point and a map of the proposed geographic area for the Agency from the Delegation and Designation Branch, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250 (202) 447-8525.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this Agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250. All materials should be received by the Director not later than September 13, 1979 (45 days after publication). All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made.

(Secs. 8, 9, 27, Pub. L. 94-582, 90 Stat. 2870, 2875, 2889 (7 U.S.C. 79, 79a, 74 note))

Done in Washington, D.C. on July 23, 1979  
D. R. Galliard,

Acting Administrator.

[FR Doc. 79-23319 Filed 7-27-79; 8:45 am]

BILLING CODE 3410-02-M

### Official Agency Designation; North Dakota Grain Inspection Service, Inc., Fargo, N. Dak., and Proposal of Geographic Area

AGENCY: Federal Grain Inspection Service.

ACTION: Notice and Request for Comments

**SUMMARY:** This notice announces the designation of the North Dakota Grain Inspection Service, Inc., Fargo, North Dakota, as an official agency to perform

official inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

**DATE:** Comments by September 13, 1979.

This agency has been performing official inspection services within the proposed geographic area at least since October 1978. The boundaries thereof are known by persons affected, do not impose significant new restrictions or obligations, and have limited public effect. Therefore, the comment period shall be limited to 45 days.

**FOR FURTHER INFORMATION CONTACT:** J. T. Abshier, Director, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-8262.

**SUPPLEMENTARY INFORMATION:** The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act, the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at locations where the Administrator determines there is a need for such services. Such a designation shall terminate no later than triennially.

**Note.**—Section 7(f)(2) of the Act generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

North Dakota Grain Inspection Service, Inc. (the "Agency"), 1601 7th Avenue North, Fargo, North Dakota 58102, an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection services, not including official weighing.

The FGIS has conducted the required investigation of the Agency which included an onsite review of its inspection point (hereinafter "specified service point") and the Agency was deemed eligible for designation to perform official inspection services (other than appeal inspection), not including official weighing. A document designating the Agency as an official Agency was signed on October 25, 1978.

Said designation also included an interim assignment of geographic area within which the official Agency will

provide official inspection services. The geographic area assigned on an interim basis pending final determination in this matter is:

Bounded: on the North by the northern Steele County line from State Route 32 east; the eastern Steele County line south to State Route 200; State Route 200 east-southeast to the State line;

Bounded: on the East by the eastern North Dakota State line south;

Bounded: on the South by the southern North Dakota State line west to State Route 1; and

Bounded: on the West by State Route 1 north to Interstate 94; Interstate 94 east to the Soo Railroad line; the Soo Railroad line northwest to State Route 1; State Route 1 north to State Route 200; State Route 200 east to State Route 45; State Route 45 north to State Route 32; State Route 32 north.

An exception to this geographic area is the following location situated inside the Agency's area which has been and will continue to be serviced by Grain Inspection, Inc., Jamestown, North Dakota: Norway Spur and Oakes Grain, Oakes, North Dakota in Dickey County.

A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspections and where the agency or one or more of its licensed inspectors is located.

In addition to the specified service point within the geographic area, the Agency will provide official inspection services not requiring a licensed inspector to all other areas within its geographic area.

Interested persons may obtain the address of the specified service point and a map of the proposed geographic area for the Agency from the Delegation and Designation Branch, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-8525.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this Agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250. All materials should be received by the Director not later than September 13, 1979. All materials submitted pursuant to this notice will be

made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)). Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made.

(Secs. 8, 9, 27, Pub. L. 94-582, 90 Stat. 2870, 2875, 2889 (7 U.S.C. 79, 79a, 74 note).)

Done in Washington, D.C. on July 23, 1979.

D. R. Galliard,

*Acting Administrator.*

[FR Doc. 79-23320 Filed 7-27-79; 8:45 am]

BILLING CODE 3410-02-M

### Official Agency Designation; Hastings Grain Inspection, Inc., Hastings, Nebr., and Proposal of Geographic Area

**AGENCY:** Federal Grain Inspection Service.

**ACTION:** Notice and Request for Comments.

**SUMMARY:** This notice announces the designation of the Hastings Grain Inspection, Inc., Hastings, Nebraska, as an official agency to perform official inspection services under the authority of the United States Grain Standards Act, as amended. This notice also proposes a geographic area within which that agency will operate.

**DATE:** Comments by September 13, 1979.

This agency has been performing official inspection services within the proposed geographic area at least since October 1978. The boundaries thereof are known by persons affected, do not impose significant new restrictions or obligations, and have limited public affect. Therefore, the comment period shall be limited to 45 days.

**FOR FURTHER INFORMATION CONTACT:** J. T. Abshier, Director, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-8262.

**SUPPLEMENTARY INFORMATION:** The United States Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (the "Act"), has been amended to extensively modify the official grain inspection system. Pursuant to Sections 7 and 7A of the Act, the Administrator of the Federal Grain Inspection Service (FGIS) has the authority to designate any State or local governmental agency, or any person, as an official agency for the conduct of all or specified functions involved in official inspection (other than appeal inspection), weighing, and supervision of weighing of grain at

locations where the Administrator determines there is a need for such services. Such a designation shall terminate no later than triennially.

**NOTE.**—Section 7(f)(2) of the Act generally provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

Hastings Grain Inspection, Inc. (the "Agency"), 306 East Park Street, Hastings, Nebraska 68901, an existing official agency, made application to be officially designated under the Act, as amended, to perform official inspection services, not including official weighing.

The FGIS has conducted the required investigation of the Agency which included onsite reviews of its inspection points (hereinafter "specified service points") and the Agency was deemed eligible for designation to perform official inspection services (other than appeal inspection), not including official weighing. A document designating the Agency as an official agency was signed on October 25, 1978.

Said designation also included an interim assignment of geographic area within which the official Agency will provide official inspection services. The geographic area assigned on an interim basis pending final determination in this matter is:

Bounded: on the North by the northern Nebraska State line from the western Sioux County line east to the eastern Knox County line;

Bounded: on the East by the eastern and southern Knox County lines; the eastern Antelope County line; the northern Madison County line east to U.S. Route 81; U.S. Route 81 south to the southern Madison County line; the southern Madison County line; the eastern Boone, Nance, and Merrick County lines; the Platte River southwest; the eastern Hamilton County line; the northern and eastern Fillmore County lines; the southern Fillmore County line west to U.S. Route 81; U.S. Route 81 south to the southern Thayer County line;

Bounded: on the South by the southern Nebraska State line from U.S. Route 81 west to the western Dundy County line; and

Bounded: on the West by the western Dundy, Chase, Perkins, and Keith County lines; the southern and western Garden County lines; the southern Morrill County line west to U.S. Route 385; U.S. Route 385 north to the southern Box Butte County line; the southern Box Butte County line; the southern and western Sioux County lines north to the northern Nebraska State line.

In addition, the following locations which are outside of the foregoing contiguous geographic area and are to be serviced by the Agency shall be considered as part of the Agency's geographic area: Farmers Cooperative Grain Company and Wayner Mills, Inc., Columbus, Nebraska, in Platte County; and Farmers Coop and Dayton Dorn Grain Company, Big Springs, Nebraska, in Deuel County.

A specified service point for the purpose of this notice is a city, town, or other location specified by an agency for the conduct of official inspections and where the agency or one or more of its licensed inspectors is located.

In addition to the specified service points within the geographic area, the Agency will provide official inspection services not requiring a licensed inspector to all other areas within its geographic area.

Interested persons may obtain a map of the proposed geographical area and a list of specified service points for the Agency from the Delegation and Designation Branch, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250, (202) 447-8525.

Publication of this notice does not preclude future amendment of this designation consistent with the provisions and objectives of the Act.

Interested persons are hereby given opportunity to submit written views or comments with respect to the geographic area proposed for assignment to this Agency. All views and comments should be submitted in writing to the Office of the Director, Compliance Division, Federal Grain Inspection Service, United States Department of Agriculture, Washington, D.C. 20250. All materials should be received by the Director not later than September 13, 1979. All materials submitted pursuant to this notice will be made available for public inspection at the Office of the Director during regular business hours (7 CFR 1.27(b)).

Consideration will be given to the views and comments so filed with the Director and to all other information available to the U.S. Department of Agriculture before final determination of the assignment of geographic area is made.

(Secs. 8, 9, 27, Pub. L. 94-582, 90 Stat. 2870, 2875, 2889 (7 U.S.C. 79, 79a, 74 note).)

Done in Washington, D.C. on: July 23, 1979.

D. R. Galliard,

*Acting Administrator.*

[FR Doc. 79-23321 Filed 7-27-79; 8:45 am]

BILLING CODE 3410-02-M

**CIVIL AERONAUTICS BOARD****[Docket No. 36112; Order 79-7-163]****Transportes Aereos Portugueses;  
Order of Suspension and Investigation  
Regarding Transatlantic Normal  
Economy Fare Increases**

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 12th day of July 1979.

By tariff revisions filed June 20, 1979, Transportes Aereos Portugueses (TAP), has proposed a seven percent increase in normal economy fares from points in Portugal and the Azores, on the one hand, to points in the United States, on the other, to compensate for increased fuel costs.<sup>1</sup> The increases apply to both peak- and basic-season levels.

We will suspend TAP's proposed increase for the same reasons we have suspended increases in normal economy fares in other markets where restrictive aviation agreements prevent effective competition at the normal fare level.<sup>2</sup> We have repeatedly expressed our concern about the generally high level of transatlantic normal fares, and although competitive pricing now exists in a number of U.S.-Europe markets, the restrictive bilateral agreement between the United States and Portugal remains in force. Fares must still be approved by both governments, and in other respects (most notably restricted opportunities for new carrier entry) the Portuguese agreement contains none of the liberalizations of recently negotiated bilaterals such as those with Belgium, Germany and the Netherlands. We will therefore follow the same policy here as we have in most other transatlantic markets, where we recently approved increases in first-class and promotional fares but suspended increases in normal economy fares.

Accordingly, under the Federal Aviation Act of 1958, as amended, particularly sections 102, 204(a), 403, 801 and 1002(j) thereof,

1. We shall institute an investigation to determine whether the fares and provisions set forth in the attached Appendix,<sup>3</sup> and rules and regulations or practices affecting such fares and provisions, are or will be discriminatory, unduly preferential, unduly prejudicial or otherwise unlawful, and if we find them to be unlawful, to act appropriately to prevent the use of such fares, provisions or rules, regulations, or practices;

2. Pending hearing and decision by the Board, we hereby suspend the tariff provisions specified in the attached Appendix and defer their use from August 19, 1979, to and including August 18, 1980, unless otherwise ordered by the Board, and shall permit no changes to be made therein during the period of suspension except by order or special permission of the Board;

3. We shall submit this order to the President<sup>4</sup> and it shall become effective on August 19, 1979; and

4. We shall file copies of this order in the aforesaid tariffs and serve them upon Transportes Aereos Portugueses.

We shall publish this order in the Federal Register.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,<sup>4</sup>

Secretary.

[FR Doc. 79-23374 Filed 7-27-79; 8:45 am]

BILLING CODE 6320-01-M

**[Docket No. 33187]****UAL, Inc., and United Air Lines, Inc.;  
Proposed Approval**

I hereby give notice pursuant to statutory requirements of section 408(b)(2) of the Federal Aviation Act of 1958, as amended, that I intend to issue the attached order under delegated authority. Interested persons have until August 24, 1979, to file comments or request a hearing with respect to the action proposed in the order.

Dated at Washington, D.C., July 25, 1979.

Barbara A. Clark,

Director, Bureau of Domestic Aviation.

[Docket No. 33187]

**UAL, Inc., and United Air Lines, Inc.****Order of Approval**

Issued under delegated authority.

Application of UAL, Inc. and United Air Lines, Inc., for disclaimer of jurisdiction or approval under section 408, Docket 33187.

By application filed August 11, 1978, UAL, Inc. (UAL) and United Air Lines, Inc. (United) request a disclaimer of jurisdiction, or approval under section 408 of the Act, of their control of United Air Lines B.V. (B.V.).

B.V. is a wholly owned subsidiary of United (a wholly owned subsidiary of UAL) formed in 1976 for the purpose of rendering air travel-related services and information<sup>1</sup> in Europe and other foreign locations to and on behalf of United. United is now considering offering B.V.'s services to other U.S. air carriers in certain foreign locations.

<sup>1</sup> We submitted this order to the President on July 13, 1979.

<sup>2</sup> All members concurred.

<sup>3</sup> These services include airline schedules, rates, charter activities, reservation service assistance, individual and group travel in the U.S., travel agent liaison, and advertising and market research relating to air travel and tourism.

In support of their request for a disclaimer of jurisdiction, the applicants assert that B.V.'s principal business will remain the promotion of United's air transport services; that the services provided to other carriers<sup>2</sup> will be incidental to those provided to United; and that since the time spent by B.V. in providing services to other carriers will be minimal compared with that spent in performing services for United, section 408(c) will continue to render the requirements of section 408(a) and 409 inapplicable to United's direct and UAL's indirect control of B.V.

In support of their request for approval, the applicants assert that B.V. will provide representation services to U.S. regional and commuter air carriers that do not want to incur the costs associated with promoting their services through their own personnel in foreign locations. According to the applicants, a representation arrangement with B.V. will provide such carriers with an economically advantageous alternative, while permitting United to use the representation fees realized to offset part of B.V.'s operational costs. Furthermore, the applicants contend that B.V.'s activities will entail nothing more than the performance of certain types of air travel-related services which United could itself perform had it not established B.V. as a subsidiary, and that the continued control of B.V. by United and UAL will not be adverse to the public interest, jeopardize any other air carrier, affect control of United, result in creation of a monopoly or otherwise restrain competition.

No one had filed comments on the application.

We conclude that since B.V.'s corporate activities consist primarily of rendering air travel-related services and information to the public, the company is a person substantially engaged in the business of aeronautics, and that its control by United and UAL is subject to section 408(a)(6).

However, we further conclude that this transaction does not affect the control of an air carrier directly engaged in the operation of aircraft in air transportation. Neither that Attorney General, nor the Secretary of Transportation, nor any other person disclosing a substantial interest in this matter requests a hearing, and we conclude that the public interest does not require a hearing.

In view of B.V.'s proposed extension of its services in behalf of other air carriers, we cannot accept the applicants' contention, absent any further showing, that B.V. should be deemed a ground facility reasonably<sup>3</sup> incidental to the performance of the air services of its parent air carrier, United, within the meaning of section 408, and, therefore, should be exempt from the Board's

<sup>2</sup> These services, categorized as representation services, provided under contract to other carriers in certain foreign locations by B.V. will consist of B.V.'s acting as a liaison between the air carriers and local travel agents and travel organizations to promote traffic; distributing the carriers' timetables, tariffs and other materials to prospective passengers and shippers; displaying the carriers' posters, circulars, and other publicity materials at B.V.'s offices; and carrying out publicity campaigns or other sales techniques to promote the carriers' services. B.V. will not act as a sales agent for the carriers, i.e., it will not write tickets for the carriers' services.

<sup>1</sup> Eastbound fares would remain at present levels.

<sup>2</sup> See, for example, Orders 79-5-218, May 17, 1979; 78-10-143, October 20, 1978; and 78-10-61, October 5, 1978.

<sup>3</sup> Appendix filed as part of the original document.

jurisdiction and the requirements of section 408.<sup>3</sup>

B.V.'s present and proposed activities are designed to complement and augment the marketing of United's and other U.S. carriers' air transport services. In these circumstances we do not find that the affiliate relationship resulting from UAL's and United's control of B.V. is inconsistent with the public interest or that the requirements of section 408(b)(1) will be otherwise unfulfilled.

Under the Airline Deregulation Act of 1978, Board approval of a control relationship under section 408 of the Act no longer automatically confers antitrust immunity. Rather, the Board may grant immunity under section 414 only if it is required in the public interest. The applicants have not requested immunity, and our approval here will confer no antitrust immunity.

Under authority delegated by the Board in its Regulations, 14 CFR 385, we find that (1) it is in the public interest to approve the control of B.V. by United and UAL under section 408(b)(2) without a hearing;<sup>4</sup> (2) our action here is not a major federal action significantly affecting Environmental Policy Act of 1969,<sup>5</sup> and (3) all other requests in the application should be denied.

Accordingly,

1. We approve, under section 408(b)(2), the control of United Air Lines B.V. by United Air Lines, Inc. and UAL, Inc.; and

2. Except to the extent granted, we deny the relief requested in Docket 33187.

Persons wishing to petition the Board for review of this order under the Board's Regulations, 14 CFR 385.50, may file their petitions within 10 days after the date of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon the expiration of the above period unless within such period a petition for review is filed, or the Board gives notice that it will review this order on its own motion.

Barbara A. Clark,

*Director, Bureau of Domestic Aviation.*

Phyllis T. Kaylor,

*Secretary.*

[FR Doc. 79-23375 Filed 7-27-79; 8:45 am]

BILLING CODE 6320-01-M

## CIVIL RIGHTS COMMISSION

### District of Columbia Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations

<sup>3</sup>See Order 75-1-23, January 7, 1975, in which the Board approved the acquisition of BIC Guardian Services, Inc. by Braniff Airways, Inc. and Braniff International Corp.

<sup>4</sup>Notice of intent to dispose of the application without hearing has been published in the Federal Register, and a copy of such notice has been furnished to the Attorney General and the Secretary of Transportation, not later than the day following such publication, both in accordance with the requirements of section 408(b)(2) of the Act.

<sup>5</sup>From examination of the application it appears that approval will not cause any of the results set forth § 312.9 of the Board's Regulations.

of the U.S. Commission on Civil Rights, that a planning meeting of the district of Columbia Advisory Committee (SAC) of the Commission will convene at 12:00 a.m. and will end at 2:30 p.m. on August 17, 1979, at the Mid-Atlantic Regional Office, 2120 L Street, N.W., Room 510, Washington, D.C. 20037.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or 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 for the Advisory Committee to review the text of the report draft tentatively entitled, Washington DC—A Case Study in Displacement and Relocation. Recommendations for revision or deletion of parts of the report will be discussed. A general discussion of program areas for the charter period will occur.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington D.C., July 25, 1979.

John I. Binkley,

*Advisory Committee Management Officer.*

[FR Doc. 79-23429 Filed 7-27-79; 8:45 am]

BILLING CODE 6335-01-M

### Illinois Advisory Committee; Agenda and Notice of Open 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 Illinois Advisory Committee (SAC) of the Commission will convene at 10:00 a.m. and will end at 3:00 p.m., on September 24, 1979, at the Midwestern Regional Office, 230 South Dearborn Street, Room 3280, Chicago, Illinois 60604.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Midwestern Regional Office, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604.

The purpose of this meeting is to hear subcommittee reports from Housing and Employment Subcommittees, for approval and adoption.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 25, 1979.

John I. Binkley,

*Advisory Committee Management Officer.*

[FR Doc. 79-23428 Filed 7-27-79; 8:45 am]

BILLING CODE 6335-01-M

### Maine Advisory Committee; Agenda and Notice of Open 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 Maine Advisory Committee (SAC) of the Commission will convene at 7:30 p.m. and will end at 10:00 p.m., on September 6, 1979, at the Maine Teachers Association, Augusta Civic Center, Augusta, Maine.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the New England Regional Office of the Commission, 55 Summer Street, 8th Floor, Boston, Massachusetts 02110.

The purpose of this meeting is to develop program for the Maine SAC for FY-80.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 24, 1979.

John I. Binkley,

*Advisory Committee Management Officer.*

[FR Doc. 79-23431 Filed 7-27-79; 8:45 am]

BILLING CODE 6335-01-M

### Maryland Advisory Committee; Agenda and Notice of Open 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 August 15, 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, or the Mid-Atlantic Regional Office, 2120 L Street N.W., Room 510, Washington, D.C. 20037.

The purpose of this meeting is for the Advisory Committee to accept reports from its subcommittee on Administration of Justice. An outline of the subcommittee preliminary data collection on police disciplinary procedures will be discussed. Further discussion of programs for immediate consideration will continue.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., July 25, 1979.  
 John I. Binkley,  
*Advisory Committee Management Officer.*  
 [FR Doc. 79-23430 Filed 7-27-79; 8:45 am]  
 BILLING CODE 6335-01-M

## DEPARTMENT OF COMMERCE

### Bureau of the Census

#### Estimates of the Voting Age Population for 1978; Correction

In FR Doc. 79-21370, appearing on page 40859, in the issue of Thursday, July 12, 1979, in the first column, the population 18 and over for Nebraska Congressional District 2 now reading "270" should have read "370"; the population 18 and over for New Hampshire Congressional District 2 now reading "86" should have read "303".

Dated: July 24, 1979.  
 Daniel B. Levine,  
*Acting Director, Bureau of the Census.*  
 [FR Doc. 79-23340 Filed 7-27-79; 8:45 am]  
 BILLING CODE 3510-07-M

#### Mediation of a Serious Disagreement Between the State of California and Department of the Interior Under the Coastal Zone Management Act; Public Hearing Scheduled

Notice is hereby given that the California Coastal Commission (the Commission) has notified the Secretary of Commerce by letter dated June 15, 1979 (Exhibit A), of the existence of a serious disagreement between the State of California and the Department of the Interior concerning the applicability of the consistency provisions of Section 307(c)(1) of the Coastal Zone Management Act, as amended (16 U.S.C. Section 1458(c)(1)) to the Secretary of the Interior's Notice of Sale (which includes tract selection and lease stipulations) for OCS Lease Sale #48 of the California coast. The Commission has requested that the Secretary of Commerce mediate this serious disagreement pursuant to the Secretarial Mediation provisions of the Department of Commerce's consistency regulations, 15 C.F.R., Part 930, Subpart G.

On May 25, 1979, the Department of the Interior issued a negative determination pursuant to 15 C.F.R., Part 930.35(d) that none of the pre-lease activities leading to OCS Lease Sale #48 directly affect the California coastal zone and thereby no consistency determination is necessary for these activities. The Commission asserts that these pre-lease activities directly affect

the coastal zone and therefore require a consistency determination.

The Secretary of Commerce received a letter dated July 3, 1979, from Secretary Andrus of the Department of the Interior (Exhibit B), agreeing to participate in Secretarial Mediation, noting California's serious disagreement with the Department of the Interior regarding Interior's May 25, 1979, negative determination.

The mediation effort will attempt to gain agreement on whether or not the Department of the Interior's pre-lease activities regarding OCS Lease Sale #48, which include determination of tracts to be offered and choice of lease stipulations, directly affect the coastal zone and therefore require a consistency determination pursuant to Section 307(c)(1) of the Coastal Zone Management Act.

In accordance with the Secretarial Mediation provisions of the Department of Commerce's consistency regulations, (15 C.F.R., 930.113) the Secretary of Commerce has appointed a hearing officer who has scheduled a hearing on September 7, 1979, beginning at 10:00 a.m. at the U.S. Customs House, 2nd Floor, Conference Room, 300 South Ferry Street, Terminal Island, Los Angeles, California. The objective of the hearing is to secure, in a timely fashion, information related to the disagreement.

Interested parties are invited to offer information at the hearing. They should notify the Office of the General Counsel of the U.S. Department of Commerce in writing, (Room 5886, Washington, D.C. 20230) or by phone (202/377-3135) by August 31, 1979 of their desire to be heard.

A copy of public data and information relating to the serious disagreement is available for public inspection at each of the following locations:

U.S. Department of the Interior, Room 4150, Main Interior Building, C and 18th Street NW., Washington, D.C. 20240.  
 California Coastal Commission, 631 Howard Street, 4th Floor, San Francisco, California 94105.

C. L. Haslam  
*General Counsel.*  
 California Coastal Commission,  
*San Francisco, Calif., June 15, 1979.*  
 Juanita Kreps,  
*Secretary of Commerce, Washington, D.C.*

Dear Secretary Kreps: The California Coastal Commission hereby notifies you of the existence of a serious disagreement between the State of California and the Department of Interior concerning the applicability of the consistency provisions of Section 307(c)(1) of the Coastal Zone Management Act to the Secretary of Interior's Notice of Sales (which includes tract

selection and lease stipulations) for OCS Lease Sale #48 off the California Coast.

I request that you seek to mediate this serious disagreement pursuant to the Secretarial Mediation provisions of the Department of Commerce's Federal consistency regulations, 15 C.F.R. Part 930, Subpart G.

Some history concerning California's involvement in seeking application of the Federal activities consistency requirements to Outer Continental Shelf lease sales will serve to put this disagreement into perspective.

On December 5, 1978 I wrote to the President requesting that the issue of lease sale consistency with approved State coastal zone management programs be resolved prior to Lease Sale #48 scheduled for June, 1979. (Attachment 1) California's position was that the leasing of tracts must be consistent with the California Coastal Management Program. In response to that letter, the White House instructed the Departments of Commerce and Interior to attempt to resolve the issue of whether lease sales were subject to the Federal activity consistency provisions of the Coastal Zone Management Act. Unable to resolve the dispute concerning interpretation of the CZMA and the OCS Lands Act Amendments of 1978, on March 23, 1979 both Departments jointly requested an opinion from the Department of Justice's Office of Legal Counsel regarding statutory interpretation of Section 307(c)(1) of the CZMA. (Attachment 2) The joint letter noted that: "DOI will make no consistency determination in advance of Lease Sale No. 48 unless the Department of Justice determines that it is required by Section 307(c)(1) of the CZMA."

On April 20, 1979 the Department of Justice's Office of Legal Counsel agreed with your (and our) position. They issued an opinion that the Department of Interior's OCS pre-leasing activities which directly affect the coastal zone are subject to the consistency requirements of Section 307(c)(1) of the CZMA. (Attachment 3) This opinion was transmitted to State Coastal Zone Program managers by OCZM by memorandum dated May 7, 1979. (Attachment 4)

In light of the Department of Justice's resolution of the issue of consistency of pre-lease sale activities in favor of the position long espoused by the State of California, I wrote to the Secretary of Interior on May 17, 1979 (Attachment 5) to express our expectation "that the Secretary's Notice of Sale on Lease Sale #48, with its tract selections and stipulations, will contain a determination that the decision is consistent with the California Coastal Management Program, as approved by the Secretary of Commerce." We further stated that, because the Department of Interior appeared to be cooperative in responding to California's coastal resource protection concerns, we anticipated that the consistency determination could be made in a straightforward manner and offered our assistance in drafting such a determination.

Following conversations with the Department of Interior which indicated that they were prepared to find that the Notice of

Sale for Lease Sale #48 did not directly affect the coastal zone and therefore did not require a consistency determination, I wrote to the Deputy Assistant Secretary on May 24, 1979 (Attachment 6) to express California's strong disagreement with that position. Again we noted, however, that since the Notice of Sale would apparently contain tract deletions and stipulations which were consistent with the Governor's and Coastal Commission's recommendations; we did not anticipate any difficulty in concurring with the Department's consistency certification. We also made clear to the Department of Interior that, if they determined that a consistency certification was not required for the Notice of Sale, we intended to seek your mediation services to resolve this dispute.

On May 25, 1979 the Acting Assistant Secretary for Policy, Budget and Administration of the Department of Interior issued a "negative determination" under 15 CFR 930.35 (d)(1) That none of the pre-lease activities leading up to OCS Lease Sale #48 directly affect the California coastal zone and therefore do not require a consistency determination. (Attachment 7) We were, to say the least, extremely disappointed by this decision.

It is with this decision of the Department of Interior that the State of California has a serious disagreement. The Department of Interior's position is conclusory without any facts in support of its decision. It merely restates legal arguments which have already proven unsuccessful before the Department of Justice, it utilizes a definition which the Office of Coastal Zone Management is dropping from its forthcoming regulations to conform to the DOJ opinion, and it adds a contrived concept of "intervening cause" which appears nowhere in either the statute or implementing regulations. In short, we believe that the Department of Interior's position is a transparent attempt to circumvent the Department of Justice legal memorandum on this subject.

In reaching its negative determination position, Interior contends that none of the pre-lease activities listed in its letter will result in effects "unless one or more intervening events, such as exploratory drilling, development or production of oil and gas cause effects on the coastal zone." This position is clearly contrary to the position taken by the Department of Justice which noted that:

It is well possible that some of the pre-leasing activities of the Secretary of the Interior will give rise to consistency problems which cannot be reviewed at all under the paragraph (B) OCS exploration, development and production plan procedure, or for which such review comes too late.

The State of California is in agreement with the Department of Justice opinion and believes that certain pre-leasing activities, most notably the tract selection and lease stipulation activities contained in the Notice of Sale, give rise to consistency problems which cannot be addressed at the stage of consistency review of OCS exploration, or development and production plans. The Secretary's Notice of Sale is the final and critical step in the lengthy and complex

process of pre-leasing activities. If such a step is not found to directly affect the coastal zone, then the Department of Justice legal opinion and Section 307(c)(1) of the CZMA would be rendered a nullity.

The simple common sense of California's position is that the final decision to lease certain tracts (and to impose conditions and stipulations thereon) which constitute thousands of acres on the continental shelf near the California coast and between our offshore islands and the mainland is essentially approval of a massive subdivision which places the OCS tracts on an almost inevitable path toward development if hydrocarbons are found in commercial quantities during the exploration phase. The actual leasing of those OCS tracts creates new rights for private leaseholders; if petroleum resources are found, there will be inexorable pressure to exercise those rights.

As I stated in my May 24, 1979 letter to the Department of Interior:

Any activity of such a magnitude, committing thousands of acres of California's continental shelf to possible petroleum development with its attendant onshore facilities, pipelines across State submerged lands, and risks of oil spills, can have nothing less than major direct impacts on land and water uses of California's coastal zone.

Our disagreement with the Department of Interior does not at this point concern the substantive issue of whether the Notice of Sale for Lease Sale #48 is consistent with the California Coastal Management Program. Because the Department of Interior has, with some exceptions been generally responsive to the recommendations of the Governor and the Coastal Commission, we do not intend to seek an injunction to halt the lease sale until a consistency determination is submitted. However, we believe the issue of whether selection of nearshore tracts and the stipulations which will set a framework for further activities on those tracts directly affect the coastal zone and therefore require a consistency determination requires resolution through secretarial mediation.

In conclusion, the State of California seeks your assistance in mediating a resolution to this very serious disagreement which can have enormous precedent for the consistency of all federal activities, not just OCS pre-lease activities of the Department of Interior. We have urged the Department of Interior to participate in this mediation process in order to resolve this serious disagreement, and request that you add your influence in persuading them to participate. If the Department of Interior agrees to mediation, we intend to present information at the public hearing which will establish that the Notice of Sale is a pre-leasing activity which directly affects the coastal zone.

We look forward to working with you and your staff in the resolution of this matter.

Sincerely,  
Michael L. Fischer,  
Executive Director.

Exhibit B

U.S. Department of the Interior,  
Office of the Secretary,  
Washington, D.C., July 3, 1979.

Hon. Juanita M. Kreps,  
Secretary of Commerce, Washington, D.C.

Dear Secretary Kreps: In a letter dated June 18, 1979, Mr. Michael L. Fischer, Executive Director of the California Coastal Commission notified me that the State of California has a serious disagreement with this Department regarding our May 25, 1979, determination that no pre-leasing activities in preparation for OCS Sale #48 directly affect the California coastal zone. That determination is attached.

In his letter, Mr. Fischer also requested our participation in a mediation process to be established by you for the purpose of resolving this disagreement. In accordance with your Department's regulations governing Secretarial mediation (15 CFR 930.112), the Department of the Interior hereby agrees to participate in such a mediation process.

Will you please have your staff contact Deputy Assistant Secretary Heather Ross (343-4123) to make any necessary arrangements. Thank you.

Sincerely,  
Cecil D. Andrus,  
Secretary,  
U.S. Department of the Interior,  
Office of the Secretary,  
Washington, D.C., May 25, 1979.

Mr. Michael L. Fischer,  
Executive Director, California Coastal  
Commission, San Francisco, Calif.

Dear Mr. Fischer: Thank you for your recent letter to Secretary Andrus concerning the coastal zone consistency requirements and OCS Lease Sale #48. We appreciate the cooperation of the State of California in preparing for this sale of oil and gas leases, and in expediting compliance with the consistency procedures established in regulations promulgated by the National Oceanic and Atmospheric Administration (15 CFR 930).

Because of the timing of the Justice Department opinion concerning consistency of pre-lease activities, it is impossible for the California Coastal Commission to exercise its option to request a review pursuant to 930.35(b). It is also impossible for the Department of the Interior to respond to such a request in a manner that would meet the timing requirements established for the determinations under 930.34(b) or 930.35(d) unless we were to postpone the sale.

In our recent telephone conversation, you agreed to accept notification of a determination under 930.34(b) or 930.35(d) if provided on or before May 30, 1979. This is an alternative notification schedule to which we can jointly agree pursuant to the provisions of those subsections. We will therefore honor the request for a review pursuant to 930.35(b) which is implied by your letter. We do this even though it was not made within the 45-day period required by that subsection. Interior's determination is set forth below.

The Department of the Interior has reviewed the Justice Department opinion and NOAA's proposed revision to 15 CFR 930. In keeping with the Justice Department opinion, we have decided to use the plain meaning of the term "directly affecting" in Sec. 307(c)(1)

of the Coastal Zone Management Act, as amended. NOAA has previously defined activities "affecting" the coastal zone as those which cause any of the following three types of effects:

1. Changes in land or water use in the coastal zone;
2. Limitations in the range of uses of coastal zone resources;
3. Changes in the quality of coastal zone resources.

An activity affecting the coastal zone is an activity "directly" affecting the coastal zone if any of the foregoing effects results from the activity without an intervening cause.

We have also identified activities conducted by the Interior Department preceding the issuance of OCS oil and gas leases. These include:

1. Call for Nominations and Comments—A request for information indicating the interest in, and objections to the leasing of a defined area of the Outer Continental Shelf.
2. Tentative Tract Selection—The decision on tracts selected from the area subject to the Call for Nominations and Comment which will be subject to further study and analysis in an Environmental Statement, in accordance with the provisions of the National Environmental Policy Act, for specified proposed lease sale.
3. Environmental Statements—Issuing and holding public hearings on the draft and final Environmental Statements are included in this activity.
4. Consultation with Governors—The required consultations with the Governors of affected States including review of a proposed Notice of Sale of leases.
5. Final Decision—The Secretary's final decision on the location of tracts to be offered, the size and timing of the lease sale and the terms, conditions and stipulations of leases as incorporated in the Final Notice of Sale published at least 30 days prior to the sale of leases.

We have reviewed each of these activities to determine whether any have effects on the California coastal zone that would be "direct" in the plain meaning of that term given above. (We conclude that none of these pre-lease activities leading up to OCS Lease Sale No. 48 "directly affect" the California coastal zone. None of these activities will result in any of the three kinds of effects listed above unless one or more intervening events, such as exploratory drilling, development or production of oil and gas, cause effects on the coastal zone. Any such intervening event would, of course, be subject to consistency concurrence by the Coastal Commission pursuant to Sec. 307(c)(3) of the Coastal Zone Management Act, as amended. This letter is thus notification of a negative determination pursuant to 15 CFR 930.35(d)(1)—that is, that no consistency determination is necessary for these activities.)

Thank you for working with us on the matter. We look forward to continuing cooperation with your agency in the conduct of our respective programs.

Sincerely,

Heather L. Ross,  
*Acting Assistant Secretary—Policy, Budget  
and Administration.*

[FR Doc. 79-23304 Filed 7-27-79; 8:45 am]  
BILLING CODE 3510-06-M

## Industry and Trade Administration

### Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Closed Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held on Tuesday, August 14, 1979, at 1:00 p.m. in Room 15022, the Federal Building, 450 Golden Gate Avenue, San Francisco, California.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act. The Hardware Subcommittee of the Computer Systems Technical Advisory Committee was established on July 8, 1975, with the approval of the Director, Office of Export Administration, pursuant to the charter of the Committee. And, on October 16, 1978, the Assistant Secretary for Industry and Trade approved the continuation of the Subcommittee pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology (C) licensing procedures which affect the level of export controls applicable to computer systems, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates, including proposed revisions of any such multilateral controls. The Hardware Subcommittee was formed to continue the work of the Performance Characteristics and Performance Measurements Subcommittee, pertaining to (1) maintenance of the processor, performance tables and further

investigation of total systems performance; and (2) investigation of array processors in terms of establishing the significance of these devices and determining the differences in characteristics of various types of these devices.

The subcommittee will meet only in executive session to discuss matters properly classified under Executive Order 11652 or 12065, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 6, 1978, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed during the meeting should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the meeting will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy. All materials to be reviewed and discussed by the subcommittee during the meeting have been properly classified under Executive Order 11652 or 12065. All subcommittee members have appropriate security clearances.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Computer Systems Technical Advisory Committee and of any subcommittees thereof, was published in the Federal Register on September 14, 1978 (43 FR 41073).

For further information, contact Ms. Margaret A. Cornejo, Operations Division, Office of Export Administration, Industry and Trade Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202-377-2583.

Dated: July 25, 1979.

Kent Knowles,  
*Director, Office of Export Administration,  
Bureau of Trade Regulation, U.S. Department  
of Commerce.*

[FR Doc. 79-23474 Filed 7-27-79; 8:45 am]  
BILLING CODE 3510-25-M

### Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee will be held on Tuesday, August 14, 1979, at 9:00 a.m. in Room 15022, the Federal Building, 450 Golden Gate Avenue, San Francisco, California.

[The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act. The Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee was established on February 4, 1974. On July 8, 1975, the Director, Office of Export Administration, approved the reestablishment of this Subcommittee, pursuant to the charter of the Committee. And, on October 16, 1978, the Assistant Secretary for Industry and Trade approved the continuation of the Subcommittee pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which may affect the level of export controls applicable to computer systems, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates, including proposed revisions of any such multilateral controls. The Licensing Procedures Subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

The Subcommittee meeting agenda has four parts:

- (1) Opening remarks by the Subcommittee Chairman.
- (2) Presentation of papers or comments by the public.
- (3) Review of Subcommittee recommendations.

(4) Discussion and preparation of Subcommittee position paper on the qualified general/product distribution license.

The meeting will be open for public observation and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

Copies of the minutes of the meeting will be available by calling Mrs. Margaret Cornejo, Policy Planning Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202-377-2583.

For further information contact Mrs. Cornejo either in writing or by phone at the address or number shown above.

Dated: July 25, 1979.

Kent Knowles,  
Director, Office of Export Administration,  
Bureau of Trade Regulation, U.S. Department  
of Commerce.

[FR Doc. 79-23475 Filed 7-27-79; 8:45 am]  
BILLING CODE 3510-25-M

### Memory and Media Subcommittee of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Memory and Media Subcommittee of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee will be held on Tuesday, August 14, 1979, at 1:30 p.m. in Room 15461, the Federal Building, 450 Golden Gate Avenue, San Francisco, California.

The Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, January 13, 1977, and August 28, 1978, the Assistant Secretary for Administration approved the recharter and extension of the Committee, pursuant to Section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Sec. 2404(c)(1) and the Federal Advisory Committee Act. The Memory and Media Subcommittee of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee was established on December 21, 1978, with the approval of the Assistant Secretary for Industry and

Trade, pursuant to the Charter of the Committee.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to computer peripherals, components and related test equipment, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls. The Memory and Media Subcommittee was formed to study random and sequential access computer related peripheral memory devices and to provide the Committee with information to include in reports to the Department related to the Committee's charter.

The Subcommittee meeting agenda had four parts:

#### General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Subcommittee reports on:
  - a. Media
  - b. Memory
    - (1) Disc products.
    - (2) Tape equipment product.
    - (3) Core memory.
    - (4) Bubble/CCD/Semiconductor memory.
  - c. Government Activity.

#### Executive Session

4. Discussion of matters properly classified under Executive Order 11652 and 12065, dealing with the U.S. and COMCON control program and strategic criteria related thereto.

The General Session of the meeting is open to the public, at which a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Subcommittee. Written statements may be presented at any time before or after the meeting.

With respect to agenda item (4), the Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 6, 1978, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public

participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c) (1). Such matters are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of the national defense or foreign policy. All materials to be reviewed and discussed by the Subcommittee during the Executive Session of the meeting have been properly classified under Executive Order 11652 or 12065. All Subcommittee members have appropriate security clearances.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee and of any subcommittees thereof, was published in the Federal Register on September 14, 1978 (43 FR 41071).

Copies of the minutes of the General Session will be available by calling Mrs. Margaret Cornejo, Policy Planning Division, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, phone 202-377-2583.

For further information contact Mrs. Cornejo either in writing or by phone at the address or number shown above.

Dated: July 25, 1979.

**Kent Knowles,**  
Director, Office of Export Administration,  
Bureau of Trade Regulation, U.S. Department  
of Commerce.

[FR Doc. 79-23476 Filed 7-27-79; 8:45 am]  
BILLING CODE 3510-25-M

### Decision on Application for Duty Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. at 666 11th Street, N.W. (Room 735) Washington, D.C.

Docket Number: 79-00260. Applicant: Electric Power Research Institute, Inc., P.O. Box 10412, Palo Alto, California 94303. Article: Air Pollution Control Device for Coal-Fired Utility Boiler. Manufacturer: Kawasaki Heavy Industries Ltd., Japan. Intended use of Article: The article is intended to be installed in an operating pulverized coal

fired power plant for use in the study of the effect of the ammonia based catalytic reduction technology in reducing NO<sub>x</sub> emissions from such a coal fired plant.

Comments: No comments have been received with respect to this application. Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. Reasons: The National Bureau of Standards advises in its memorandum dated July 16, 1979 that the foreign article provides a unique catalyst geometry and composition. NBS further advises that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,  
Director, Statutory Import Programs Staff.

[FR Doc. 79-23293 Filed 7-27-79; 8:45 am]  
BILLING CODE 3510-25-M

### National Oceanic and Atmospheric Administration

#### Evaluation of a Possible Marine Sanctuary Site Offshore St. Thomas, U.S. Virgin Island; Availability of an Issue Paper and the Conduct of a Public Workshop

**AGENCY:** Office of Coastal Zone Management (OCZM), National Oceanic and Atmospheric Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** Pursuant to Title III of the Marine Protection, Research and Sanctuaries Act of 1972, 16 U.S.C. 1431-1434, OCZM is evaluating the possibility of designation of a Marine Sanctuary in the waters southeast of St. Thomas, U.S. Virgin Islands. As part of this evaluation, an Issue Paper has been prepared jointly with the Department of Conservation and Cultural Affairs, Government of the Virgin Islands. The Issue Paper describes the marine resources of the potential sites, the present uses, and alternative regulations

which might be imposed to preserve and restore the values of the site.

The Issue Paper is being distributed to inform interested agencies and persons of the evaluation of the site and to gather comment and further information on the area. In order to facilitate such comment and to answer questions concerning the Issue Paper and the Marine Sanctuary Program, OCZM will conduct a public workshop on August 8, 1979, at 7:00 p.m. at the Sheraton Hotel and Marina, St. Thomas, U.S. Virgin Islands. Comments on the Issue Paper are due by August 15, 1979.

Written and oral comments and information received in response to the Issue Paper and information gathered at the workshop will provide guidance in OCZM's decision whether to proceed to prepare a Draft Environmental Impact Statement on a specific proposal for a Marine Sanctuary at this site.

**DATES:** Public Workshop will be held August 8, 1979. Comments on the Issue Paper are due August 15, 1979.

**FOR FURTHER INFORMATION CONTACT:** Joann Chandler, Director, or Ed Lindelof, Project Manager, Sanctuary Programs Office, Office of Coastal Zone Management, 3300 Whitehaven Street, N.W., Washington, D.C. 20235, (202) 634-4236.

**SUPPLEMENTAL INFORMATION:** Copies of the Issue Paper may be obtained by writing to Ed Lindelof, Project Manager, Sanctuary Programs Office, OCZM, 3300 Whitehaven Street, N.W., Washington, D.C. 20235.

Dated: July 25, 1979.

S. A. Lawrence,  
Assistant Administrator for Administration.

[FR Doc. 79-23473 Filed 7-27-79; 6:45 am]  
BILLING CODE 3510-12-M

### DEPARTMENT OF DEFENSE

#### Corps of Engineers, Department of Army

#### Intent To Prepare a Draft Environmental Impact Statement Supplement (DEISS) for the proposed construction and operation of Elk Creek Lake in the Rogue River Basin, Oregon

**AGENCY:** U.S. Army Corps of Engineers (DoD).

**ACTION:** Notice of Intent to prepare a Draft Environmental Impact Statement Supplement (DEISS).

**SUMMARY:** 1. Proposed is the construction and operation of Elk Creek Lake, a component of the Rogue River Basin Project. The primary authorized

purpose of this facility is the alleviation of flooding along the Rogue River. Additional project purposes include fish and wildlife enhancement, municipal and industrial water supply, irrigation, recreation, area redevelopment, and water quality control.

2. The proposed work includes construction of an earth and rock fill dam 238 feet high on Elk Creek, about 1.7 miles upstream from its confluence with the Rogue River. The dam, which would provide 101,000 acre-feet of storage at full pool, is designed to provide flood control by regulating the release of runoff from about 98 percent (132 square miles) of the Elk Creek watershed.

3. Alternative flood control measures being considered include construction of a single-purpose flood control dam; floodplain management through zoning, purchase of development rights, and purchase of floodplain lands; construction of a system of levees to protect developed areas; management of lands within the watershed to reduce runoff; and no action.

4. The issues to be addressed in the DEISS include the impacts of the alternatives on fish and wildlife, water quality, the economic and social environment, and the cultural resources of the affected area.

These issues which were identified through public review of a previous DEISS which was filed with EPA in June 1975; preparation of a Final Environmental Impact Statement Supplement was delayed due to the need to collect additional data. Because of the length of time which has elapsed, the DEISS is being rewritten to incorporate the results of recent water quality, fishery, and cultural resources studies and to respond to the concerns raised in the review of the previous DEISS.

5. The new DEISS will be available for agency and public review in October 1979.

6. Comments and questions about the proposed action and DEISS can be addressed to: District Engineer, U.S. Army Corps of Engineers, Portland District, ATTN: NPPEN-PL-3, P.O. Box 2946, Portland, OR 97208.

Dated: July 20, 1979

Robert P. Flanagan,  
Chief, Engineering Division.

[FR Doc. 79-23294 Filed 7-27-79; 8:45 am]

BILLING CODE 3710-AR-M

### Intent To Prepare a Draft Environmental Impact Statement for Development of Natural Gas Reserves Underlying the Eastern and Central Basins of Lake Erie

AGENCY: U.S. Army Corps of Engineers (DOD), U.S. Environmental Protection Agency.

ACTION: Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. Description of the Proposed action. a. Federal permits for gas drilling will be required under Section 10 of the River and Harbor Act of 1899 (30 Stat. 1151; 33 U.S.C. 403) and Sections 402 and 404 of the Clean Water Act (91 Stat. 1600, 33 U.S.C. 1344). In anticipation of future regulatory involvement both the Corps of Engineers and the U.S. Environmental Protection Agency have engaged in a joint study to determine if the development of natural gas reserves can be accomplished in an environmentally acceptable manner. The consulting Contractor for this project is the Division of Environmental Impact Studies at Argonne National Laboratory, Argonne, IL.

b. The study, initiated in April 1977, consists of three distinct phases including an evaluation of the social, economic, and environmental issues related to gas exploration; collection and interpretation of biological, chemical, and physical field data; and the development of an Environmental Impact Statement. Investigations performed during the first phase of this study have been completed and are summarized in the document entitled "An Examination of Issues Related to U.S. Lake Erie Natural Gas Development." Interested individuals can obtain a copy of this report by contacting either of the project officials identified below. The second phase is currently underway.

2. Reasonable Alternatives: Options, presently under consideration include evaluation of the no action and indefinite delay alternatives in relation to expected gas production increases caused by rising prices and the Natural Gas Policy Act; the effect of higher prices and improved drilling technology on decisions to bring unconventional or high cost sources of gas into production; foreign imports of natural gas; extension of the existing natural gas supply; and reduction in the demand for natural gas including energy conservation.

3. Scoping: Individuals representing the U.S. Department of Energy, U.S. Department of Transportation, U.S. Fish and Wildlife Service, U.S. Department of

Commerce, Great Lakes Basin Commission, Pennsylvania Department of Environmental Resources, New York State Department of Environmental Conservation, Ohio Department of Natural Resources, and the Lake Erie Basin Committee of the League of Women Voters have participated in scoping meetings which were held on August 15, 1977, October 3, 1977, August 21, 1978, and December 14, 1978. Significant issues identified during the scoping process focused on water quality, aquatic ecology, energy availability and need, cultural resources, recreation, navigation, economics, and land use changes in the coastal zone. Public hearings will be scheduled for Toledo, OH, Cleveland, OH, Erie, PA, and Buffalo, NY prior to the release of the Draft Environmental Impact Statement. A separate public notice will be issued to agency officials and interested individuals when the exact dates and locations have been finalized.

4. Future Scoping Meetings: Additional scoping meetings are not planned at this time.

5. Availability: The Draft Environmental Impact Statement is scheduled to be released to the public for review and comment during the month of November 1979.

6. Questions on the proposed project and the Draft Environmental Impact Statement can be answered by the following individuals: Mr. Paul G. Leuchner, NCBCO-S, U.S. Army Engineer District, Buffalo, 1776 Niagara St., Buffalo, NY 14207, Tel. No. (716) 876-5454; Mr. Howard Zar, GLNPO, U.S. Environmental Protection Agency, 536 S. Clark Street, Chicago, IL 60605, Tel. No. (312) 353-3503.

Dated: July 20, 1979.

Thomas R. Braun,

Lt Col, Corps of Engineers Acting District Engineer.

[FR Doc. 79-23295 Filed 7-27-79; 8:45 am]

BILLING CODE 3710-GP-M

### DEPARTMENT OF ENERGY

#### Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meetings

In accordance with Section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act of 42 U.S.C. 6201 *et seq.* notice is hereby provided of the following meetings:

I. A meeting of the Industry Working Party (IWP) to the International Energy Agency (IEA) to be held on August 7, 1979, at the offices of the IEA, 2 rue

Andre Pascal, Paris, France, beginning at 3:00 p.m. The agenda is as follows:

1. Status of SOM and IWP activities and arrangements for future meetings.
2. Registration of Oil Market Transactions.

II. A meeting of the Industry Working Party (IWP) to the International Energy Agency (IEA) will be held on August 8, 1979, at the offices of the IEA, 2 rue Andre Pascal, Paris, France, beginning at 11:00 a.m. The Agenda for the meeting is under control of the SOM. It is expected that the IWP representatives will be asked to discuss the following subject:

1. Registration of Oil Market Transactions.

As provided in Section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting will not be open to the public.

Issued in Washington, D.C., July 25, 1979.

Robert C. Goodwin, Jr.,

*Assistant General Counsel, International Trade and Emergency Preparedness.*

[FR Doc. 79-23420 Filed 7-27-79; 8:45 am]

BILLING CODE 6450-01-M

For further information regarding these Consent Orders, please contact James C. Easterday, District Manager of Enforcement, 1655 Peachtree Street NE, Atlanta, Georgia 30309, telephone number 404-881-2661.

BILLING CODE 6450-01-M

## **Economic Regulatory Administration**

### **Action taken on Consent Orders; Agreements**

**AGENCY:** Economic Regulatory Administration.

**ACTION:** Notice of Agreements.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice that Consent Orders were entered into between the ERA and the firms listed below during the month June 1979. The Consent Orders represent agreements between the DOE and the firms which involve a reduction of the selling prices for gasoline to be in compliance with the Federal Energy pricing regulations. These Consent Orders are concerned exclusively with the consenting firm's current compliance with the Mandatory Petroleum Allocation and Price Regulations and do not address the possible non-compliance with these regulations prior to the date of the audit. These Consent Orders require consenting firms to come into compliance with legal requirements by reducing selling prices to established lawful level for each grade of gasoline sold, to properly post maximum lawful selling prices, and to properly maintain required records. All consenting firms are retailers of gasoline as defined in 10 CFR Section 212.31 of the Federal Energy guidelines.

<u>Firm Name and Address</u>	<u>Reduction in ASP to Achieve MLSP</u>	<u>Product</u>	<u>Period Covered</u>	<u>Beneficiaries of Price Reductions</u>
Northwoods Exxon N. Charleston, SC	.0190	Motor Gas	Current	Consumers/End Users
Bayfront Shell Charleston, SC	.0040	"	"	"
Bobby's Ashley Plaza Amoco Charleston, SC	.0050	"	"	"
Red Bank Texaco Charleston, SC	.0070	"	"	"
Smith's Ten Mile Shell N. Charleston, SC	.0030	"	"	"
Dorchester Exxon Charleston, SC	.0166	"	"	"
Remount Exxon N. Charleston, SC	.0196	"	"	"
Pop Floyd & Sons Texaco N. Charleston, SC	.0162	"	"	"
Cal Cherry Texaco Montgomery, AL	.0220	"	"	"
Campbells Gulf Montgomery, AL	.0300	"	"	"
Birdneck Texaco Virginia Beach, VA	.0240	"	"	"
Richland Mall Exxon Columbia, SC	.0135	"	"	"
Forest Lake Gulf Columbia, SC	.0202	"	"	"
Decker Blvd. Service Columbia, SC	.0160	"	"	"
Free's Service Columbia, SC	.0020	"	"	"
Edenwood Exxon W. Columbia, SC	.0035	"	"	"
Fort View Exxon Columbia, SC	.0126	"	"	"

<u>Firm Name and Address</u>	<u>Reduction in ASP to Achieve MLSP</u>	<u>Product</u>	<u>Period Covered</u>	<u>Beneficiaries of Price Reductions</u>
Miller Shealy's Exxon Columbia, SC	.0210	"	"	"
Peasant Gulf Montgomery, AL	.0040	"	"	"
Mont's Texaco Columbia, SC	.1420	"	"	"
Turner's Chevron W. Columbia, SC	.0350	"	"	"
East Gulf Montgomery, AL	.0360	"	"	"
Executive Park Atlanta, GA	.0437	"	"	"
Oteen Exxon Asheville, NC	.0122	"	"	"
Smoky Park Exxon Asheville, NC	.0965	"	"	"
Holiday Gulf Asheville, NC	.0447	"	"	"
West Asheville Exxon #2 Asheville, NC	.0120	"	"	"
English Village Exxon Jackson, MS	.0190	"	"	"
University Chevron Jackson, MS	.1120	"	"	"
Jackson Square Gulf Jackson, MS	.0140	"	"	"
Pearson Road Exxon Pearl, MS	.0250	"	"	"
Interstate Gulf Jackson, MS (C.O. rescinded 6/5/79)	.0100	"	"	"

Issued in Washington, D.C., on the 23rd of July 1979.

Robert D. Gerring,  
*Acting Director, Enforcement Program Operations.*

[FR Doc. 79-23423 Filed 7-27-79; 8:45 am]

BILLING CODE 6450-01-M

### Action Taken on Consent Orders; Settlements

**AGENCY:** Economic Regulatory Administration.

**ACTION:** Notice of Settlements.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives Notice that Consent Orders were entered into between the Office of Enforcement, ERA, and the firms listed below during the month of June 1979. The Consent Orders represent resolutions of outstanding compliance investigations or proceedings by the DOE and the firms which involve a sum of less than \$500,000 in the aggregate, excluding any penalties and interest. For Consent Orders involving sums of \$500,000 or more, Notice will be separately published in the Federal Register. These Consent Orders are concerned exclusively with payment of the refunded amounts to injured parties for alleged overcharges made by the specified companies during the time periods indicated below, through direct refunds or rollbacks of prices.

For further information regarding these Consent Orders, please contact James C. Easterday, District Manager of Enforcement, Southeast District, Economic Regulatory Administration, 1655 Peachtree Street, NE, Atlanta, Georgia 30309, telephone number (404) 881-2661.

Firm name and address: E. M. Bailey Distr. Co., Inc., Paducah, KY.

Settlement amount: \$77,321.61.

Product: Gasoline Middle Distillates.

Period covered: November 1, 1973—March 31, 1974.

Recipients of settlements: Joe Douglas, H. S. Wimberly, Wilbert Vault, Harper Truck, Black & Son, Proform, Anderson Speedway, J & S Oil, Shepherd Service, Meeks Oil, Mo-Go, Princeton, Dodson Oil, B & E Service, Cope & Woods, McQuady, Cagle, Bradford, DairyMerry, Holloman Oil, Lake City, Lyon County Oil, Taylor Service, West Broadway, South 6th Speedway, Marion Super Service, W. Sims, Bolte Speedway, Bill Lewis, Save Speedway, Calvert City Spdwy., Cooks Speedway, Reidland Speedway, Clinton Speedway, Lovelaceville Spdwy., Dodson Truck, Sportsman One Stop, Rex Cain, Joe Henson, Reed Crushed Stone, Brooks Bus Line, Old Hickory Clay, M. Livingston, Metzger Packing, Sunshine Dairy, Concrete

Inc., Charles Todd, Quality Constr., Paschall Truck, Federal Materials, Calloway County Road, Graves County Road, Lewis Service Sta., Reed Crushed Stone, Airco Alloy, Old Hickory Clay, Mid-South Constr., Liquid Transp., Paschall Truck, Jimar Paving, Jim Smith Constr., Deena Inc., Vanderbilt, Calloway County Rd. Dept., Portec.

For unidentified customers, a check in the amount of \$6,193.20 was submitted to the U.S. Department of Energy for handling pursuant to 10 CFR Section 205, Subpart V—Special Procedures for Distribution of Refunds.

ERA agreed that the total overcharges be reduced by \$40,193.36 for bad debts.

Firm name and address: Transit Oil Co., Inc., Louisville, KY.

Settlement amount: \$153,249.71.

Product: Gasoline Middle Distillates.

Period covered: November 1, 1973—April 30, 1974.

Recipients of settlements: Braun's Service Sta., Braun's Fuel Oil, Altsheler, Dance Oil Co., Frank Faenza, Five Star Oil, Rogers, Isaacs, Kocolene, L & N, Lausman, Mills, Miller, Murphy, Oil Transit, Price, Pyles, Remote, Pal Oil Co., Somerset, Smith, Sutton, Wilson, Wilco, Sharrer, Heads, Rigley Donnell, Haskins & Coomer, G.E.S., James Dancy, Gay Merritt, Miller Dept. Store, Harold Douglas, Irl Greenwell.

For unidentified customers rollback in the amount of \$101,832.10 plus interest is to be effected.

ERA agreed that the total overcharges be reduced by \$7,051.99 for bad debts.

Firm name and address: Manassas Ice & Fuel Co., Inc., Manassas, VA.

Settlement amount: \$118,406.02.

Product: Gasoline Middle Distillates.

Period covered: November 1, 1973—June 30, 1974.

Recipients of settlements: Prince William Co. School Board, Stafford High Sch., IBM.

For unidentified customers compromise rollback in the amount of \$93,213.52 is to be effected. Rollback in the amount of \$86,012.29 has been verified leaving a balance of \$7,201.23 to be verified.

Firm name and address: C. D. Hollingsworth & Associates, Natchez, MS.

Settlement amount: \$147,111.31.

Product: Crude Oil.

Period covered: January 1, 1974—January 31, 1977.

Recipients of settlements: Miller Oil Purchasing, Ashland Oil.

Firm name and address: Petroleum Marketers, Inc., Richmond, VA.

Settlement amount: \$452,198.37.

Product: Middle Distillates.

Period covered: November 1, 1973—February 28, 1975.

For unidentified customers refund/rollback in the amount of \$452,198.37 is to be verified.

Firm name and address: Central Oil Co., Inc., Tampa, FL.

Settlement amount: \$48,168.52.

Product: Residuals.

Period covered: November 1, 1973—March 31, 1974.

For unidentified customers refund in the amount of \$48,168.52 plus interest is to be effected.

Issued in Washington, D.C., on the 23rd day of July, 1979.

Robert D. Gerring,

*Acting Director, Enforcement Program Operations.*

[FR Doc. 79-23424 Filed 7-27-79; 8:45 am]

BILLING CODE 6450-01-M

### Jordan Gas Co., et al.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a Proposed Remedial Order which was issued to Jordan Gas Company, Jordan Gas Service, Inc., and Southern Butane Company, Inc., P.O. Box 127, Centre, Alabama 35960. This Proposed Remedial Order charges Jordan Gas Company, Jordan Gas Service, Inc., and Southern Butane Company, Inc. with pricing violations in the amount of \$130,285.24, connected with the sale of propane during the time period November 1, 1973, through March 31, 1974, in the States of Alabama and Georgia.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from James C. Easterday, District Manager of Enforcement, 1655 Peachtree Street, N.E., Atlanta, Georgia 30309, Phone: (404) 881-2661. On or before August 14, 1979, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Washington, D.C., on the 23rd day of July 1979.

Robert D. Gerring,

*Acting Director, Enforcement Program Operations.*

[FR Doc. 79-23422 Filed 7-27-79; 8:45 am]

BILLING CODE 6450-01-M

### Bonneville Power Administration

#### Revised Proposed Wholesale Power Rates and Opportunities for Public Review and Comment

##### Correction

In Federal Register Doc. 79-22239 appearing at page 41743 in the issue for July 17, 1979, make the following corrections:

(1) On page 41744, in the middle column, under the heading SUPPLEMENTARY INFORMATION, in the first sentence, the Agency abbreviation

"EPA" should be corrected to read the subagency abbreviation "BPA".

(2) On page 41746, in the first column, in the first paragraph, in the 6th through the 9th lines, delete the repeating phrase "for a system at any time that the power factor for all classes of power delivered to a purchaser at such point of delivery or".

(3) On page 41747, in the first column, under the heading, *C. Schedule IF-2—Wholesale Power Rate for Industrial Firm Power*, below the paragraph with the designation, Section 4.

*Determination of Billing Demand and Billing Energy*, the table with the heading, Annual Availability A, should be moved over to the second column so that it precedes and is part of the table with the heading, Formula for availability credit factor F, and appears in the paragraph with the designation, Section 5. *Adjustments*.

(4) On page 41753, in the first column, in the paragraph with the designation, 9.1 *Average Power Factor*, in the first sentence, the formula should be corrected to read, "Average Power Factor = Kilowatthours ÷ (Kilowatthours)<sup>2</sup> + (Reactive Kilovoltamperhours)<sup>2</sup>".

BILLING CODE 1505-01-M

#### Federal Energy Regulatory Commission

##### Advisory Committee on Revision of Rules of Practice and Procedure; Subcommittee on Review of Filing Requirements and Substantive Regulatory Requirements; Meeting

July 25, 1979.

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770), notice is hereby given that the Subcommittee on Review of Filing Requirements and Substantive Regulatory Requirements of the Advisory Committee on Revision of Rules of Practice and Procedure will continue its meeting of Tuesday, July 24, on Tuesday, July 31, 1979, 9:00 a.m. until 12:00 p.m., at the Federal Energy Regulatory Commission, North Building, 941 North Capitol St., N.E., Room 3200, Washington, D.C.

The purpose of the meeting of July 24, 1979 was to present and discuss the work which has been undertaken by individual members of the Subcommittee. The Subcommittee was unable to complete this task at its July 24 meeting. Accordingly, it recessed the meeting until 9:00 a.m., Tuesday, July 31, 1979. A public announcement of the continuation was made at the July 24 meeting.

Some of the matters being considered by the Subcommittee are also the subject of rulemaking proposals Commission Staff intends to present to the Commission in the immediate future. The Subcommittee was unable to complete its work on these matters at the July 24, 1979 meeting and therefore good cause exists to continue this meeting to Tuesday, July 31 in order to provide the Subcommittee an opportunity to complete its work before Staff makes its proposals to the Commission.

The meeting is open to the public. A transcript of the meeting will be available for public review and copying at FERC's Division of Public Information, Room 1000, 825 North Capitol St., N.E., between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday except Federal Holidays. In addition, any person may purchase a copy of the transcript from the reporter.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 79-23360 Filed 7-27-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ID-1868]

##### Charles L. Fritz; Application

July 23, 1979.

Take notice that on January 9, 1979, Charles L. Fritz filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

##### *Position, Corporation, and Classification*

Vice President, Philadelphia Electric Company, Public Utility  
Director, Philadelphia Electric Power Company, Public Utility  
Director, Susquehanna Power Company, Public Utility  
Director, Susquehanna Electric Company, Public Utility

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 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 application are on file with the

Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 79-23361 Filed 7-27-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ES79-53]

##### Commonwealth Edison Co.; Application

July 23, 1979.

Take notice that on July 16, 1979, Commonwealth Edison Company (Applicant) of Chicago, Illinois, filed an application seeking authority pursuant to Section 204 of the Federal Power Act to extend to December 31, 1980, the latest issue date and extend to December 31, 1981, the final maturity date, of up to \$500 million of short-term promissory notes. Applicant is incorporated under the laws of the State of Illinois, with its principal business office at Chicago, Illinois, and is principally engaged in the electric utility business in a service area of approximately 11,525 square miles in northern Illinois, including the City of Chicago.

The proceeds from the issuance of any notes will be added to working capital primarily for ultimate application toward the cost of gross additions to utility properties and to reimburse the Applicant's treasury for construction expenditures.

Any person desiring to be heard or to make protest with reference to the application should, on or before August 17, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the Commission's Rule of Practice and Procedure (18 CFR 1.8, 1.10). All protests filed with 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 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. The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 79-23362 Filed 7-27-79; 8:45 am]

BILLING CODE 6450-01-M

### Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

July 23, 1979.

The Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

New Mexico Department of Energy and Minerals, Oil Conservation 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. 79-12347

2. 30-025-25891

3. 103

4. Martindale Petroleum Corporation

5. Little V #1

6. Drinkard

7. Lea NM

8. 38.0 Million Cubic Feet

9. July 12, 1979

10. Getty Oil Company

1. 79-12348

2. 30-045-00000

3. 103

4. C & E Operators Inc

5. Flaherty Com #1

6. Blanco Pictured Cliffs

7. San Juan NM

8. 90.0 Million Cubic Feet

9. July 12, 1979

10. Southern Union Gathering

1. 79-12349

2. 30-045-00000

3. 103

4. C & E Operators Inc

5. Martinez-Carr Com #1

6. Blanco Pictured Cliffs

7. San Juan NM

8. .0 Million Cubic Feet

9. July 12, 1979

10. El Paso Natural Gas Company

1. 79-12350

2. 30-015-00000

3. 103

4. Maddox Energy Corporation

5. Pardue Farms 26

6. Wildcat Atuka

7. Eddy NM

8. 5400.0 Million Cubic Feet

9. July 12, 1979

10. El Paso Natural Gas Company

1. 79-12351

2. 30-041-00000

3. 103

4. El Ran Inc

5. Byron #3

6. Chaveroo

7. Roosevelt NM

8. 3600.0 Million Cubic Feet

9. July 12, 1979

10. Cities Service Company

1. 79-12352

2. 30-041-00000

3. 103

4. El Ran Inc

5. Byron #2

6. Chaveroo

7. Roosevelt NM

8. 3600.0 Million Cubic Feet

9. July 12, 1979

10. Cities Service Company

1. 79-12353

2. 30-041-00000

3. 103

4. El Ran Inc

5. Byron #1Y

6. Chaveroo

7. Roosevelt NM

8. 3600.0 Million Cubic Feet

9. July 12, 1979

10. Cities Service Company

1. 79-12354

2. 30-025-25970

3. 103

4. Martindale Petroleum Corporation

5. Mattern #1

6. Drinkard

7. Lea NM

8. 16.3 Million Cubic Feet

9. July 12, 1979

10. Getty Oil Company

1. 79-12355

2. 30-025-26145

3. 103

4. Martindale Petroleum Corporation

5. Little V #2

6. Drinkard

7. Lea NM

8. 35.1 Million Cubic Feet

9. July 12, 1979

10. Getty Oil Company

1. 79-12356

2. 30-005-00000

3. 103

4. Holly Energy Inc

5. #2 Lula

6. Buffalo Valley Penn

7. Chaves NM

8. 55.4 Million Cubic Feet

9. July 12, 1979

10. El Paso Natural Gas Company

1. 79-12357

2. 30-005-00000

3. 103

4. Stevens Oil Company

5. State Ch Com #3

6. Twin Lakes San Andres

7. Chaves NM

8. 7.0 Million Cubic Feet

9. July 12, 1979

10. Transwestern Pipeline Co

1. 79-12358

2. 30-015-00000

3. 102

4. Harvey E Yates Company

5. Loco Hills Welch #1

6.

7. Eddy NM

8. 190.0 Million Cubic Feet

9. July 12, 1979

10.

1. 79-12359

2. 30-025-00000

3. 108

4. Getty Oil Company

5. Mexico W Well No 1

6. West Monument

7. Lea NM

8. 6.0 Million Cubic Feet

9. July 12, 1979

10. Phillips Petroleum Company

1. 79-12360

2. 30-025-00000

3. 108

4. Getty Oil Company

5. Mexico W No 2

6. Eumont

7. Lea NM

8. 18.0 Million Cubic Feet

9. July 12, 1979

10. Phillips Petroleum Company

1. 79-12361

2. 30-025-00000

3. 108

4. Getty Oil Company

5. Mexico D No 1

6. Cooper Jal-Jalmat

7. Lea NM

8. 2.0 Million Cubic Feet

9. July 12, 1979

10. El Paso Natural Gas Company

1. 79-12362

2. 30-015-22000

3. 102

4. Harvey E Yates Company

5. South Empire Deep Unit #13

6. Und South Empire Morrow

7. Eddy NM

8. 900.0 Million Cubic Feet

9. July 12, 1979

10. El Paso Natural Gas Company

1. 79-12363

2. 30-025-00000

3. 108

4. Getty Oil Company

5. Baker A No 6

6. Langlie Mattix

7. Lea NM

8. 10.0 Million Cubic Feet

9. July 12, 1979

10. Northern Natural Gas Co; El Paso Natural Gas Co

1. 79-121364

2. 30-025-00000

3. 108

4. Getty Oil Company

5. Baker A No 4

6. Langlie-Mattix

7. Lea NM

8. 3.0 Million Cubic Feet

9. July 12, 1979

10. El Paso Natural Gas Co

1. 79-12365

2. 30-025-00000

3. 108

4. Getty Oil Company

5. E.F. King No 1

6. Langlie-Mattix

7. Lea NM

8. 20.0 Million Cubic Feet

9. July 12, 1979

10. El Paso Natural Gas Company

1. 79-12366

2. 30-025-00000

3. 108

4. Getty Oil Company

5. Skelly G State Well No 1  
6. Eumont  
7. Lea NM  
8. 15.0 Million Cubic Feet  
9. July 12, 1979  
10. Phillips Petroleum Company  
1. 79-12367  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. Eugene Coats No 4  
6. Langlie Mattix  
7. Lea NM  
8. 12.0 Million Cubic Feet  
9. July 12, 1979  
10. El Paso Natural Gas Company  
1. 79-12368  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. Eugene Coats No 6  
6. Jalmat  
7. Lea NM  
8. 2.0 Million Cubic Feet  
9. July 12, 1979  
10. El Paso Natural Gas Company  
1. 79-12369  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. State A No 3  
6. Eunice Monument  
7. Lea NM  
8. 10.0 Million Cubic Feet  
9. July 12, 1979  
10. Phillips Petroleum Company  
1. 79-12370  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. State J No 4  
6. Monument (Eumont-Queen)  
7. Lea NM  
8. 10.0 Million Cubic Feet  
9. July 12, 1979  
10. Warren Petroleum Corporation  
1. 79-12371  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. Eugene Coats No 1  
6. Jalmat  
7. Lea NM  
8. 1.0 Million Cubic Feet  
9. July 12, 1979  
10. El Paso Natural Gas Company  
1. 79-12372  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. L Van Etten No. 3  
6. Eunice Monument  
7. Lea NM  
8. 6.0 million cubic feet  
9. July 12, 1979  
10. Warren Petroleum Corporation  
1. 79-12373  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. J M Matkins #2  
6. Langlie Mattix  
7. Lea NM  
8. 10.0 million cubic feet  
9. July 12, 1979  
10. Phillips Petroleum Company  
1. 79-12374  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. Myers Langlie Mattix Well #116  
6. Langlie-Mattix  
7. Lea NM  
8. 10.0 million cubic feet  
9. July 12, 1979  
10. El Paso Natural Gas Company  
1. 79-12375  
2. 30-039-20086  
3. 108  
4. El Paso Natural Gas Company  
5. San Juan 27-5 Unit #110  
6. Basin-Dakota Gas  
7. Rio Arriba  
8. 25.6 million cubic feet  
9. July 12, 1979  
10. El Paso Natural Gas Company Northwest Pipeline Corp  
1. 79-12376  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. Myers Langlie-Mattix Unit #90  
6. Langlie Mattix  
7. Lea NM  
8. 2.0 million cubic feet  
9. July 12, 1979  
10. El Paso Natural Gas Company  
1. 79-12377  
2. 30-025-00000  
3. 108  
4. Reserve Oil Inc  
5. Martin 1-B  
6. Jalmat (Yates)  
7. Lea NM  
8. 3.1 million cubic feet  
9. July 12, 1979  
10. El Paso Natural Gas Co  
1. 79-12378  
2. 30-025-00000  
3. 108  
4. Reserve Oil Inc  
5. Martin 2-A  
6. Jalmat (Yates)  
7. Lea NM  
8. 11.3 million cubic feet  
9. July 12, 1979  
10. El Paso Natural Gas Co  
1. 79-12379  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. Myers Langlie Mattix Unit #88  
6. Langlie Mattix  
7. Lea NM  
8. 8.0 million cubic feet  
9. July 12, 1979  
10. El Paso Natural Gas Company  
1. 79-12380  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. Mexico W No. 5  
6. Eumont  
7. Lea NM  
8. 3.0 million cubic feet  
9. July 12, 1979  
10. Phillips Petroleum Company  
1. 79-12381  
2. 30-025-25844  
3. 103  
4. Amoco Production Company  
5. State /D/ No. 5  
6. Langlie Mattix—Queen  
7. Lea NM  
8. 54.0 million cubic feet  
9. July 12, 1979  
10. El Paso Natural Gas Co  
1. 79-12382  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. Lovington San Andres Unit Well #17  
6. Lovington San Andres  
7. Lea NM  
8. 3.0 million cubic feet  
9. July 12, 1979  
10. Phillips Petroleum Company  
1. 79-12383  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. Myers Langlie Mattix Unit #219  
6. Langlie Mattix  
7. Lea NM  
8. 8.0 million cubic feet  
9. July 12, 1979  
10. El Paso Natural Gas Company  
1. 79-12384  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. J C Johnson No. 1  
6. Langlie Mattix  
7. Lea NM  
8. 0 million cubic feet  
9. July 12, 1979  
10. Northern Natural Gas Co, El Paso Natural Gas Co  
1. 79-12385  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. Myers Langlie Mattix Unit #221  
6. Langlie Mattix  
7. Lea NM  
8. 3.0 million cubic feet  
9. July 12, 1979  
10. El Paso Natural Gas Company  
1. 79-12386  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. Myers Langlie Mattix Unit #58  
6. Langlie Mattix  
7. Lea NM  
8. 8.0 million cubic feet  
9. July 12, 1979  
10. El Paso Natural Gas Company  
1. 79-12387  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. Myers Langlie Mattix Unit #31  
6. Langlie Mattix  
7. Lea NM  
8. 3.0 million cubic feet  
9. July 12, 1979  
10. El Paso Natural Gas Company  
1. 79-12388  
2. 30-025-00000  
3. 108

4. Getty Oil Company  
5. Myers Langlie Mattix Unit #11  
6. Langlie Mattix  
7. Lea NM  
8. 2.0 million cubic feet  
9. July 12, 1979  
10. El Paso Natural Gas Company  
1. 79-12389  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. Myers Langlie-Mattix Well #78  
6. Langlie-Mattix  
7. Lea NM  
8. 2.0 million cubic feet  
9. July 12, 1979  
10. El Paso Natural Gas Company  
1. 79-12390  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. Myers Langlie-Mattix #190  
6. Langlie-Mattix  
7. Lea NM  
8. 2.0 million cubic feet  
9. July 12, 1979  
10. El Paso Natural Gas Company  
1. 79-12391  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. Myers Langlie Mattix Unit #51  
6. Langlie Mattix  
7. Lea NM  
8. 2.0 million cubic feet  
9. July 12, 1979  
10. El Paso Natural Gas Company  
1. 79-12392  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. Myers Langlie-Mattix #80  
6. Langlie-Mattix  
7. Lea NM  
8. 2.0 million cubic feet  
9. July 12, 1979  
10. El Paso Natural Gas Company  
1. 79-12393  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. Myers Langlie-Mattix Unit Well #54  
6. Langlie-Mattix  
7. Lea NM  
8. 1.0 million cubic feet  
9. July 12, 1979  
10. El Paso Natural Gas Company  
1. 79-12394  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. J. C. Johnson No. 5  
6. Langlie-Mattix  
7. Lea NM  
8. .0 million cubic feet  
9. July 12, 1979  
10. Northern Natural Gas Co., El Paso Natural Gas Co.  
1. 79-12395  
2. 30-025-22805  
3. 108  
4. Getty Oil Company  
5. J. C. Johnson No. 6  
6. Langlie Mattix
7. Lea NM  
8. .0 million cubic feet  
9. July 12, 1979  
10. Northern Natural Gas Co., El Paso Natural Gas Co.  
1. 79-12396  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. Mexico W #4  
6. Eumont  
7. Lea NM  
8. 12.0 million cubic feet  
9. July 12, 1979  
10. Phillips Petroleum Company  
1. 79-12397  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. L. Van Etten No. 2  
6. Eunice Monument  
7. Lea NM  
8. .0 million cubic feet  
9. July 12, 1979  
10. Warren Petroleum Corporation  
1. 79-12398  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. L. Van Etten Well No. 5  
6. Eunice Monument  
7. Lea NM  
8. .0 million cubic feet  
9. July 12, 1979  
10. Warren Petroleum Corporation  
1. 79-12399  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. J. V. Baker Well No. 10  
6. Drinkard  
7. Lea NM  
8. 10.0 million cubic feet  
9. July 12, 1979  
10. Northern Natural Gas Co., El Paso Natural Gas Co.  
1. 79-12400  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. J. V. Baker Well No. 9  
6. Drinkard  
7. Lea NM  
8. 10.0 million cubic feet  
9. July 12, 1979  
10. Northern Natural Gas Co., El Paso Natural Gas Co.  
1. 79-12401  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. L. Van Etten No. 7  
6. Eunice Monument  
7. Lea NM  
8. .0 million cubic feet  
9. July 12, 1979  
10. Warren Petroleum Corporation  
1. 79-12402  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. East Eumont Unit No 67  
6. Eumont  
7. Lea, NM
8. 10.0 million cubic feet  
9. July 12, 1979  
10. Warren Petroleum Corporation  
1. 79-12403  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. East Eumont Unit No 17  
6. Eumont  
7. Lea, NM  
8. 4.0 million cubic feet  
9. July 12, 1979  
10. Warren Petroleum Corporation  
1. 79-12404  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. East Eumont Unit Well No 29  
6. Eumont  
7. Lea, NM  
8. 2.0 million cubic feet  
9. July 12, 1979  
10. Warren Petroleum Corporation  
1. 79-12405  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. King D No 1  
6. Langlie-Mattix  
7. Lea, NM  
8. 10.0 million cubic feet  
9. July 12, 1979  
10. El Paso Natural Gas Company  
1. 79-12406  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. King C Well No 5  
6. Langlie Mattix  
7. Lea, NM  
8. 1.0 million cubic feet  
9. July 12, 1979  
10. Northern Natural Gas Co., El Paso Natural Gas Co.  
1. 79-12407  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. King C No 4  
6. Langlie Mattix  
7. Lea, NM  
8. 1.0 million cubic feet  
9. July 12, 1979  
10. Northern Natural Gas Co., El Paso Natural Gas Co.  
1. 79-12408  
2. 30-025-00000  
3. 108  
4. Getty Oil Company  
5. J V Baker No 11  
6. Drinkard  
7. Lea, NM  
8. 7.0 million cubic feet  
9. July 12, 1979  
10. Northern Natural Gas Co., El Paso Natural Gas Co.

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. 79-12409  
 2. 34-119-23601-0014  
 3. 108  
 4. American Exploration  
 5. Weiser #1  
 6.  
 7. Muskingum, OH  
 8. 15.0 million cubic feet  
 9. July 12, 1979  
 10. New Zane Gas Co  
 1. 79-12410  
 2. 34-151-21079-0014  
 3. 108  
 4. K-Vill Oil & Gas  
 5. L Wise #1  
 6.  
 7. Stark, OH  
 8. 9.0 million cubic feet  
 9. July 12, 1979  
 10. East Ohio Gas Company  
 1. 79-12411  
 2. 34-151-21120-0014  
 3. 108  
 4. K-Vill Oil & Gas  
 5. Hoover #3  
 6.  
 7. Stark, OH  
 8. 7.0 million cubic feet  
 9. July 12, 1979  
 10. East Ohio Gas Company  
 1. 79-12412  
 2. 34-151-21100-0014  
 3. 108  
 4. K-Vill Oil & Gas  
 5. Hoover #2  
 6.  
 7. Stark, OH  
 8. 16.0 million cubic feet  
 9. July 12, 1979  
 10. East Ohio Gas Company  
 1. 79-12413  
 2. 34-075-21631-0014  
 3. 108  
 4. John C Mason  
 5. Roman D Mast #1  
 6.  
 7. Holmes, OH  
 8. 6.0 million cubic feet  
 9. July 12, 1979  
 10. Columbia Gas Trans Corp  
 1. 79-12414  
 2. 34-075-21696-0014  
 3. 108  
 4. John C Mason  
 5. Ruth Steimel #1  
 6.  
 7. Holmes, OH  
 8. 2.0 million cubic feet  
 9. July 12, 1979  
 10.  
 1. 79-12415  
 2. 34-075-21401-0014  
 3. 108  
 4. John C Mason  
 5. Merle D Evans #1  
 6.  
 7. Holmes, OH  
 8. 15.0 million cubic feet  
 9. July 12, 1979

10. Columbia Gas Trans Corp  
 1. 79-12416  
 2. 34-075-21810-0014  
 3. 108  
 4. John C Mason  
 5. John T. Graven #1  
 6.  
 7. Holmes, OH  
 8. 10.0 million cubic feet  
 9. July 12, 1979  
 10. Columbia Gas Trans Corp  
 1. 79-12417  
 2. 34-075-21756-0014  
 3. 108  
 4. John C Mason  
 5. Ruth Steimel #3  
 6.  
 7. Holmes, OH  
 8. 2.0 million cubic feet  
 9. July 12, 1979  
 10.  
 1. 79-12418  
 2. 34-031-22419-0014  
 3. 108  
 4. John C. Mason  
 5. Roy E. Brillhart Heirs No. 1  
 6.  
 7. Coshocton, OH  
 8. 15.0 million cubic feet  
 9. July 12, 1979  
 10. Columbia Gas Trans Corp.  
 1. 79-12419  
 2. 34-031-21898-0014  
 3. 108  
 4. John C. Mason  
 5. Dean Holt No. 2  
 6.  
 7. Coshocton, OH  
 8. 2.5 million cubic feet  
 9. July 12, 1979  
 10. Ohio Cumberland Gas Co.  
 1. 79-12420  
 2. 34-031-20057-0014  
 3. 108  
 4. John C. Mason  
 5. Clarence & May Holt 6A  
 6.  
 7. Coshocton, OH  
 8. 1.5 million cubic feet  
 9. July 12, 1979  
 10. Columbia Gas Trans Corp.  
 1. 79-12421  
 2. 34-031-21740-0014  
 3. 108  
 4. John C. Mason  
 5. Phil & Jean Holt 1A  
 6.  
 7. Coshocton, OH  
 8. 1.5 million cubic feet  
 9. July 12, 1979  
 10. Columbia Gas Trans Corp.  
 1. 79-12422  
 2. 34-031-21838-0014  
 3. 108  
 4. John C. Mason  
 5. Phil & Jean Holt 2A  
 6.  
 7. Coshocton, OH  
 8. 1.5 million cubic feet  
 9. July 12, 1979  
 10. Columbia Gas Trans Corp.  
 1. 79-12423  
 2. 34-169-21538-0014

3. 108  
 4. John C. Mason  
 5. Louis C. Gruver No. 1  
 6.  
 7. Wayne, OH  
 8. 2.5 million cubic feet  
 9. July 12, 1979  
 10. Columbia Gas Trans Corp.  
 1. 79-12424  
 2. 34-169-21722-0014  
 3. 108  
 4. John C. Mason  
 5. Dan E. Yoder No. 1  
 6.  
 7. Wayne, OH  
 8. 10.0 million cubic feet  
 9. July 12, 1979  
 10. Columbia Gas Trans Corp.  
 1. 79-12425  
 2. 34-075-21874-0014  
 3. 108  
 4. John C. Mason  
 5. Ralph Straits No. 1  
 6.  
 7. Holmes, OH  
 8. 7.0 million cubic feet  
 9. July 12, 1979  
 10. Columbia Gas Trans Corp.  
 1. 79-12426  
 2. 34-075-21478-0014  
 3. 108  
 4. John C. Mason  
 5. Eli N. Nisley & Anna Helmuth No. 1  
 6.  
 7. Holmes, OH  
 8. 10.0 million cubic feet  
 9. July 12, 1979  
 10. Columbia Gas Trans Corp.  
 1. 79-12427  
 2. 34-083-21972-0014  
 3. 108  
 4. John C. Mason  
 5. Lucien Viers No. 1  
 6.  
 7. Knox, OH  
 8. 2.0 million cubic feet  
 9. July 12, 1979  
 10. Ohio Cumberland Gas Co.  
 1. 79-12429  
 2. 34-075-21893-0014  
 3. 108  
 4. John C. Mason  
 5. Virgil E. Shreiner No. 5  
 6.  
 7. Holmes, OH  
 8. 5.0 million cubic feet  
 9. July 12, 1979  
 10. Columbia Gas Trans Corp.  
 1. 79-12430  
 2. 34-169-21730-0014  
 3. 108  
 4. John C. Mason  
 5. Susie Yoder No. 1  
 6.  
 7. Wayne, OH  
 8. 5.0 million cubic feet  
 9. July 12, 1979  
 10. Columbia Gas Trans Corp.  
 1. 79-12431  
 2. 34-075-21405-0014  
 3. 108  
 4. John C. Mason  
 5. Enos Miller Unit No. 1  
 6.

7. Holmes, OH  
8. 8.0 million cubic feet  
9. July 12, 1979  
10. Columbia Gas Trans Corp.  
1. 79-12432  
2. 34-075-21571-0014  
3. 108  
4. John C. Mason  
5. Andrew M. Miller No. 1  
6.  
7. Holmes, OH  
8. 3.7 million cubic feet  
9. July 12, 1979  
10. Columbia Gas Trans Corp.  
1. 79-12433  
2. 34-075-21666-0014  
3. 108  
4. John C. Mason  
5. Eli D. Mast Unit No. 1  
6.  
7. Holmes, OH  
8. 15.0 million cubic feet  
9. July 12, 1979  
10. Columbia Gas Trans Corp.  
1. 79-12434  
2. 34-169-21606-0014  
3. 108  
4. John C. Mason  
5. Atlee D. Miller No. 1  
6.  
7. Wayne, OH  
8. 6.0 million cubic feet  
9. July 12, 1979  
10. Columbia Gas Trans Corp.  
1. 79-12435  
2. 34-031-21712-0014  
3. 108  
4. John C. Mason  
5. Clarence & May Holt No. 4-A  
6.  
7. Coshocton, OH  
8. 1.5 million cubic feet  
9. July 12, 1979  
10. Columbia Gas Trans Corp.  
1. 79-12436  
2. 34-075-21759-0014  
3. 108  
4. John C. Mason  
5. Levi D. Kline No. 1  
6.  
7. Holmes, OH  
8. 5.0 million cubic feet  
9. July 12, 1979  
10. Columbia Gas Trans Corp.  
1. 79-12437  
2. 34-075-21427-0014  
3. 108  
4. John C. Mason  
5. Davd E. Hochstetler No. 1  
6.  
7. Holmes, OH  
8. 14.0 million cubic feet  
9. July 12, 1979  
10. Columbia Gas Trans Corp.  
1. 79-12438  
2. 34-075-21800-0014  
3. 108  
4. John C. Mason  
5. Levi D. Kline No. 2  
6.  
7. Holmes, OH  
8. 5.0 million cubic feet  
9. July 12, 1979  
10. Columbia Gas Trans Corp.
1. 79-12439  
2. 34-075-21294-0014  
3. 108  
4. John C. Mason  
5. Lawrence Leppla No. 1  
6.  
7. Holmes, OH  
8. 6.0 million cubic feet  
9. July 12, 1979  
10. Columbia Gas Trans Corp.  
1. 79-12440  
2. 34-075-21412-0014  
3. 108  
4. John C. Mason  
5. Ben H. Norris No. 1  
6.  
7. Holmes, OH  
8. 2.5 million cubic feet  
9. July 12, 1979  
10. Columbia Gas Trans Corp.  
1. 79-12441  
2. 34-075-21849-0014  
3. 108  
4. John C. Mason  
5. G. R. Hipp 1A  
6.  
7. Holmes, OH  
8. 20.0 million cubic feet  
9. July 12, 1979  
10. Cincinnati Gas & Electric Co.  
1. 79-12442  
2. 34-031-21616-0014  
3. 108  
4. John C. Mason  
5. Clarence & May Holt 1A  
6.  
7. Coshocton, OH  
8. 1.5 million cubic feet  
9. July 12, 1979  
10. Columbia Gas Trans Corp.  
1. 79-12443  
2. 34-031-21627-0014  
3. 108  
4. John C. Mason  
5. Clarence & May Holt 2A  
6.  
7. Coshocton, OH  
8. 1.5 million cubic feet  
9. July 12, 1979  
10. Columbia Gas Trans Corp.  
1. 79-12444  
2. 34-075-21695-0014  
3. 108  
4. John C. Mason  
5. Ralph W. Herman No. 1  
6.  
7. Holmes, OH  
8. 5.0 million cubic feet  
9. July 12, 1979  
10. Columbia Gas Trans Corp.  
1. 79-12445  
2. 34-075-21821-0014  
3. 108  
4. John C. Mason  
5. Norman R. Seaman No. 1  
6.  
7. Holmes, OH  
8. 5.0 million cubic feet  
9. July 12, 1979  
10. Columbia Gas Trans Corp.  
1. 79-12446  
2. 34-075-21729-0014  
3. 108  
4. John C. Mason
5. Levi J. Schlabach No. 1  
6.  
7. Holmes, OH  
8. 1.0 million cubic feet  
9. July 12, 1979  
10. Columbia Gas Trans Corp.  
1. 79-12447  
2. 34-075-21822-0014  
3. 108  
4. John C. Mason  
5. Seaman Corp. No. 1  
6.  
7. Holmes, OH  
8. 10.0 million cubic feet  
9. July 12, 1979  
10. Norman R. Seaman  
1. 79-12448  
2. 34-115-20857-0014  
3. 108  
4. Cameron Brothers  
5. McInturf No. 4  
6.  
7. Morgan, OH  
8. .5 million cubic feet  
9. July 12, 1979  
10. Columbia Gas Trans Corp.  
1. 79-12449  
2. 34-105-21569-0014  
3. 108  
4. Cameron Brothers  
5. Harold Sauer #3  
6.  
7. Meigs, OH  
8. 5.0 million cubic feet  
9. July 12, 1979  
10. Columbia Gas Trans. Corp.  
1. 79-12450  
2. 34-105-21545-0014  
3. 108  
4. Cameron Brothers  
5. Harold Sauer #1  
6.  
7. Meigs, OH  
8. .0 million cubic feet  
9. July 12, 1979  
10. Columbia Gas Trans. Corp.  
1. 79-12451  
2. 34-105-21544-0014  
3. 108  
4. Cameron Brothers  
5. Harold Sauer #2  
6.  
7. Meigs, OH  
8. .0 million cubic feet  
9. July 12, 1979  
10. Columbia Gas Trans. Corp.  
1. 79-12452  
2. 34-105-21705-0014  
3. 108  
4. Cameron Brothers  
5. Harold Ramsburg #1  
6. NTR  
7. Meigs, OH  
8. 9.0 million cubic feet  
9. July 12, 1979  
10. Columbia Gas Trans. Corp.  
1. 79-12453  
2. 34-053-20293-0014  
3. 108  
4. Cameron Brothers  
5. Walter Rife #1  
6.  
7. Gallia, OH  
8. 9.0 million cubic feet

9. July 12, 1979  
 10. Columbia Gas Trans. Corp.  
 1. 79-12454  
 2. 34-099-20669-0014  
 3. 108  
 4. Dick Hart  
 5. E Dailey #1  
 6.  
 7. Mahaning, OH  
 8. 16.0 million cubic feet  
 9. July 12, 1979  
 10. East Ohio Gas Co.  
 1. 79-12455  
 2. 34-019-20765-0014  
 3. 108  
 4. MB Operating Co Inc  
 5. D & R Seaburn #1  
 6.  
 7. Carroll, OH  
 8. 5.5 million cubic feet  
 9. July 12, 1979  
 10. East Ohio Gas Co., Columbia Gas Co., Republic Steel Corp.  
 1. 79-12456  
 2. 34-019-21046-0014  
 3. 108  
 4. MB Operating Co Inc  
 5. D Michael Smith Unit #1  
 6.  
 7. Carroll, OH  
 8. 5.5 million cubic feet  
 9. July 12, 1979  
 10. East Ohio Gas Co., Columbia Gas Co., Republic Steel Corp.  
 1. 79-12457  
 2. 34-019-20879-0014  
 3. 108  
 4. MB Operating Co Inc  
 5. D & M Watkins #1  
 6.  
 7. Carroll, OH  
 8. 5.5 million cubic feet  
 9. July 12, 1979  
 10. East Ohio Gas Co., Columbia Gas Co., Republic Steel Corp.  
 1. 79-12458  
 2. 34-019-20439-0014  
 3. 108  
 4. MB Operating Co Inc  
 5. J P Williams #1  
 6.  
 7. Carroll, OH  
 8. 5.5 million cubic feet  
 9. July 12, 1979  
 10. East Ohio Gas Co., Columbia Gas Co., Republic Steel Corp.  
 1. 79-12459  
 2. 34-019-20798-0014  
 3. 108  
 4. MB Operating Co., Inc.  
 5. M & C Karlo #1  
 6.  
 7. Carroll, OH  
 8. 5.5 million cubic feet  
 9. July 12, 1979  
 10. East Ohio Gas Co., Columbia Gas Co., Republic Steel Corp.  
 1. 79-12460  
 2. 34-019-20318-0014  
 3. 108  
 4. MB Operating Co., Inc.  
 5. Lindentree #3  
 6.  
 7. Carroll, OH
8. 5.5 million cubic feet  
 9. July 12, 1979  
 10. East Ohio Gas Co., Columbia Gas Co., Republic Steel Corp.  
 1. 79-12461  
 2. 34-073-21462-0014  
 3. 108  
 4. Poston Operating Co., Inc.  
 5. Byers-Bowers #1  
 6.  
 7. Hocking, OH  
 8. 7.8 million cubic feet  
 9. July 12, 1979  
 10. Columbia Gas of Ohio  
 1. 79-12462  
 2. 34-073-21482-0014  
 3. 108  
 4. Poston Operating Co., Inc.  
 5. Byers-Bowers #3  
 6.  
 7. Hocking, OH  
 8. 7.8 million cubic feet  
 9. July 12, 1979  
 10. Columbia Gas of Ohio  
 1. 79-12463  
 2. 34-019-20965-0014  
 3. 108  
 4. MB Operating Co., Inc.  
 5. Aston-Bullock #1  
 6.  
 7. Carroll, OH  
 8. 5.5 million cubic feet  
 9. July 12, 1979  
 10. East Ohio Gas Co., Columbia Gas Co., Republic Steel Corp.  
 1. 79-12464  
 2. 34-019-21047-0014  
 3. 108  
 4. MB Operating Co., Inc.  
 5. C & L Clark Unit #1  
 6.  
 7. Carroll, OH  
 8. 5.5 million cubic feet  
 9. July 12, 1979  
 10. East Ohio Gas Co., Columbia Gas Co., Republic Steel Corp.  
 1. 79-12465  
 2. 34-019-21070-0014  
 3. 108  
 4. MB Operating Co., Inc.  
 5. C & L Clark Unit #2  
 6.  
 7. Carroll, OH  
 8. 5.5 million cubic feet  
 9. July 12, 1979  
 10. East Ohio Gas Co., Columbia Gas Co., Republic Steel Corp.  
 1. 79-12466  
 2. 34-093-20897-0014  
 3. 108  
 4. Erie Oil & Gas Co  
 5. Boy Scout #1  
 6.  
 7. Lorain, OH  
 8. 3.6 million cubic feet  
 9. July 12, 1979  
 10. Columbia Gas Transmission Corp.  
 1. 79-12467  
 2. 34-157-22412-0014  
 3. 108  
 4. Cappetro Inc  
 5. F&L Putt No 14 Cappetro No 0401  
 6.  
 7. Tusawaras, OH
8. 1.6 million cubic feet  
 9. July 12, 1979  
 10. East Ohio Gas Company  
 1. 79-12468  
 2. 34-157-22338-0014  
 3. 108  
 4. Cappetro Inc  
 5. Je Troyer No 2 Cappetro No 0202  
 6.  
 7. Tusawaras, OH  
 8. 1.6 million cubic feet  
 9. July 12, 1979  
 10. East Ohio Gas Company  
 1. 79-12469  
 2. 34-157-22337-0014  
 3. 108  
 4. Cappetro Inc  
 5. Je Troyer No 1 Cappetro No 0201  
 6.  
 7. Tusawaras, OH  
 8. 1.6 million cubic feet  
 9. July 12, 1979  
 10. East Ohio Gas Company  
 1. 79-12470  
 2. 34-157-22389-0014  
 3. 108  
 4. Cappetro Inc  
 5. L Dietz No 1 Cappetro No 0301  
 6.  
 7. Tusawaras, OH  
 8. 6.0 million cubic feet  
 9. July 12, 1979  
 10. East Ohio Gas Company  
 1. 79-12471  
 2. 34-169-20462-0014  
 3. 108  
 4. The Oxford Oil Co  
 5. Roy Maibach #2  
 6.  
 7. Wayne, OH  
 8. 1.0 million cubic feet  
 9. July 12, 1979  
 10. Columbia Gas Trans. Corp.  
 1. 79-12472  
 2. 34-169-20499-0014  
 3. 108  
 4. The Oxford Oil Co  
 5. Roy Maibach #3  
 6.  
 7. Wayne, OH  
 8. 1.0 million cubic feet  
 9. July 12, 1979  
 10. Columbia Gas Trans. Corp.  
 1. 79-12473  
 2. 34-075-21321-0014  
 3. 108  
 4. The Oxford Oil Co  
 5. Bernard Manchester #1  
 6.  
 7. Holmes, OH  
 8. 1.0 million cubic feet  
 9. July 12, 1979  
 10. Columbia Gas Trans. Corp.  
 1. 79-12474  
 2. 34-129-22221-0014  
 3. 108  
 4. The Oxford Oil Co  
 5. A R Merry #1  
 6.  
 7. Muskingum, OH  
 8. 5.0 million cubic feet  
 9. July 12, 1979  
 10. Columbia Gas Trans. Corp.

1. 79-12475  
 2. 34-129-22936-0014  
 3. 108  
 4. The Oxford Oil Co  
 5. Harold McVicker #1  
 6.  
 7. Muskingum, OH  
 8. 8.0 million cubic feet  
 9. July 12, 1979  
 10. Columbia Gas Trans. Corp.  
 1. 79-12476  
 2. 34-075-21323-0014  
 3. 108  
 4. The Oxford Oil Co  
 5. John Manchester #1  
 6.  
 7. Holmes, OH  
 8. 1.5 million cubic feet  
 9. July 12, 1979  
 10. Columbia Gas Trans. Corp.  
 1. 79-12477  
 2. 34-075-21509-0014  
 3. 108  
 4. The Oxford Oil Co.  
 5. Sam Mast No. 1  
 6.  
 7. Holmes, OH  
 8. 6.0 million cubic feet  
 9. July 12, 1979  
 10. Columbia Gas Trans. Corp.  
 1. 79-12478  
 2. 34-075-21925-0014  
 3. 108  
 4. The Oxford Oil Co.  
 5. J. L. Mathias No. 1  
 6.  
 7. Holmes, OH  
 8. 1.5 million cubic feet  
 9. July 12, 1979  
 10. Columbia Gas Trans. Corp.  
 1. 79-12479  
 2. 34-119-21935-0014  
 3. 108  
 4. The Oxford Oil Co.  
 5. Joseph Miles No. 1  
 6.  
 7. Muskingum, OH  
 8. 2.0 million cubic feet  
 9. July 12, 1979  
 10. Columbia Gas Trans. Corp.  
 1. 79-12480  
 2. 34-075-21546-0014  
 3. 108  
 4. The Oxford Oil Co.  
 5. Levi Miller No. 1  
 6.  
 7. Holmes, OH  
 8. 9.0 million cubic feet  
 9. July 12, 1979  
 10. Columbia Gas Trans. Corp.  
 1. 79-12481  
 2. 34-115-20849-0014  
 3. 108  
 4. Cameron Brothers  
 5. McInturf No. 1  
 6.  
 7. Morgan, OH  
 8. .5 million cubic feet  
 9. July 12, 1979  
 10. Columbia Gas Trans. Corp.  
 1. 79-12482  
 2. 34-115-20852-0014  
 3. 108  
 4. Cameron Brothers

5. McInturf No. 2  
 6.  
 7. Morgan, OH  
 8. .5 million cubic feet  
 9. July 12, 1979  
 10. Columbia Gas Trans. Corp.  
 1. 79-12483  
 2. 34-115-20853-0014  
 3. 108  
 4. Cameron Brothers  
 5. McInturf No. 3  
 6.  
 7. Morgan, OH  
 8. .5 million cubic feet  
 9. July 12, 1979  
 10. Columbia Gas Trans. Corp.  
 1. 79-12484  
 2. 34-099-20671-0014  
 3. 108  
 4. Dick Hart  
 5. J. Williams No. 1  
 6.  
 7. Mahoning, OH  
 8. 14.0 million cubic feet  
 9. July 12, 1979  
 10. East Ohio Gas Co.  
 1. 79-12485  
 2. 34-121-21755-0014  
 3. 108  
 4. St. Joe Petroleum (US) Corporation  
 5. E. Rayner No. 1  
 6. Undesignated  
 7. Noble, OH  
 8. 15.0 million cubic feet  
 9. July 12, 1979  
 10. Republic Steel Corporation  
 1. 79-12486  
 2. 34-059-21721-0014  
 3. 108  
 4. St. Joe Petroleum (US) Corporation  
 5. H. Harding No. 1  
 6. Undesignated  
 7. Guernsey, OH  
 8. 5.0 million cubic feet  
 9. July 12, 1979  
 10. Republic Steel Corporation  
 1. 79-12487  
 2. 34-121-21699-0014  
 3. 108  
 4. St. Joe Petroleum (US) Corporation  
 5. R. Dudley No. 1  
 6. Undesignated  
 7. Noble, OH  
 8. 11.0 million cubic feet  
 9. July 12, 1979  
 10. Republic Steel Corporation  
 1. 79-12488  
 2. 34-121-21693-0014  
 3. 108  
 4. St. Joe Petroleum (US) Corporation  
 5. Van Scyoc No. 1  
 6. Undesignated  
 7. Noble, OH  
 8. 11.0 million cubic feet  
 9. July 12, 1979  
 10. Republic Steel Corporation  
 1. 79-12489  
 2. 34-121-21702-0014  
 3. 108  
 4. St. Joe Petroleum (US) Corporation  
 5. Johnson Yeagle No. 1  
 6. Undesignated  
 7. Noble, OH  
 8. 10.0 million cubic feet

9. July 12, 1979  
 10. Republic Steel Corporation  
 1. 79-12490  
 2. 34-121-21769-0014  
 3. 108  
 4. St. Joe Petroleum (US) Corporation  
 5. S. Schockling No. 1  
 6. Undesignated  
 7. Noble, OH  
 8. 8.0 million cubic feet  
 9. July 12, 1979  
 10. Republic Steel Corporation  
 1. 79-12428  
 2. 34-169-21756-0014  
 3. 108  
 4. John C. Mason  
 5. Sam Steiner No. 1  
 6.  
 7. Wayne, OH  
 8. 10.0 million cubic feet  
 9. July 12, 1979  
 10. Columbia Gas Trans. Corp.

## Utah Division of Oil, Gas and Mining

1. Control Number (FERC/State)  
 2. API well number  
 3. Section of NGPAA  
 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. 79-12343  
 2. 43-019-30351  
 3. 103  
 4. Frank B Adams  
 5. Chris P Joulas No 1  
 6. North Cisco Springs Field  
 7. Grand, UT  
 8. 120.0 million cubic feet  
 9. July 12, 1979  
 10. Northwest Pipeline Corp  
 1. 79-12344  
 2. 43-019-30260  
 3. 108  
 4. Gililand & Fix  
 5. Paulson 23-2  
 6. Cisco  
 7. Grand, UT  
 8. 26.0 million cubic feet  
 9. July 12, 1979  
 10. Cisco Gathering System  
 1. 79-12345  
 2. 43-019-16263  
 3. 108  
 4. Gililand & Fix  
 5. Whyte-State No. 2  
 6. Cisco  
 7. Grand, UT  
 8. 11.0 million cubic feet  
 9. July 12, 1979  
 10.  
 1. 79-12346  
 2. 43-019-30410  
 3. 108  
 4. Legg Resources Ltd  
 5. Joyce State No. 1  
 6. Cisco  
 7. Grand, UT  
 8. 38.5 million cubic feet  
 9. July 12, 1979  
 10. Northwest Pipeline

## West Virginia Department of Mines, Oil and Gas Division

1. Control number (FERC/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. 79-12332
2. 47-097-21482
3. 108

4. Union Drilling Inc
5. Cecile West Hymes 1300
6. Washington District
7. Upshur, WV
8. 8.8 million cubic feet
9. July 12, 1979
10. Equitable Gas Co

1. 79-12333
2. 47-097-21384
3. 108

4. Union Drilling Inc
5. Ella V Knepp 1253
6. Meade District
7. Upshur, WV
8. 11.3 million cubic feet
9. July 12, 1979
10. Columbia Gas Transmission Corp

1. 79-12334
2. 47-001-20563
3. 108

4. Union Drilling Inc
5. Rosaltha Lan Heirs No 2 1254
6. Pleasant District
7. Barbour, WV
8. 7.9 million cubic feet
9. July 12, 1979
10. Consolidated Gas Supply Corp

1. 79-12335
2. 47-001-20494
3. 108

4. Union Drilling Inc
5. Herman J Poling Jr 1209
6. Pleasant District
7. Barbour, WV
8. 8.4 million cubic feet
9. July 12, 1979
10. Consolidated Gas Supply Corp

1. 79-12336
2. 47-097-21390
3. 108

4. Union Drilling Inc
5. Basil Hinkle 1257
6. Buckhannon District
7. Upshur, WV
8. 5.1 million cubic feet
9. July 12, 1979
10. Columbia Gas Transmission Corp

1. 79-12337
2. 47-097-21436
3. 108

4. Union Drilling Inc
5. Marjorie L Miles No 2 1278
6. Washington District
7. Upshur, WV
8. 8.7 million cubic feet
9. July 12, 1979
10. Equitable Gas Co

1. 79-12338

2. 47-097-21164
3. 108
4. Union Drilling Inc
5. Doy Helmick 1198
6. Washington District
7. Upshur, WV
8. 1.8 million cubic feet
9. July 12, 1979
10. Columbia Gas Transmission Corp

1. 79-12339
2. 47-097-21135
3. 108

4. Union Drilling Inc
5. Mae Carter 1190
6. Meade District
7. Upshur, WV
8. 6.4 million cubic feet
9. July 12, 1979
10. Columbia Gas Transmission Corp

1. 79-12340
2. 47-041-21551
3. 108

4. Union Drilling Inc
5. C W Reeder 1153
6. Courthouse District
7. Lewis, WV
8. 3.6 million cubic feet
9. July 12, 1979
10. Equitable Gas Co

1. 79-12341
2. 47-097-21435
3. 108

4. Union Drilling Inc
5. Marjorie L Miles 1276
6. Washington District
7. Upshur, WV
8. 9.7 million cubic feet
9. July 12, 1979
10. Equitable Gas Co

1. 79-12342
2. 47-097-21461
3. 108

4. Union Drilling Inc
5. Ira Hoover 1285
6. Meade District
7. Upshur, WV
8. 3.4 million cubic feet
9. July 12, 1979
10. Equitable Gas Co

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 within fifteen (15) days of the date of publication of this notice in the Federal Register.

Please reference the FERC control number in all correspondence related to these determinations.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 79-23373 Filed 7-27-79; 8:45 am]  
BILLING CODE 6450-01-M

[Docket No. ID-1871]

### Edwin Lupberger; Application

July 23, 1979.

Take notice that Edwin Lupberger on July 5, 1979 filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

#### *Position, Corporation, and Classification*

Assistant Treasurer and Assistant Secretary,  
Arkansas Power & Light Company, Electric Utility

Assistant Treasurer and Assistant Secretary,  
Arkansas-Missouri Power Company,  
Electric Utility

Assistant Treasurer and Assistant Secretary,  
Louisiana Power & Light Company, Electric Utility

Assistant Treasurer and Assistant Secretary,  
Mississippi Power & Light Company,  
Electric Utility

Assistant Treasurer and Assistant Secretary,  
New Orleans Public Service, Inc., Electric Utility

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.W., Washington, D.C. 20426, in accordance with 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 August 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 79-23363 Filed 7-27-79; 8:45 am]  
BILLING CODE 6450-01-M

[Docket No. ID-1867]

### Joseph F. Paquette, Jr.; Application

July 23, 1979.

Take notice that on June 29, 1979, Joseph F. Paquette, Jr. filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

*Position, Corporation, and Classification*

Vice President, Philadelphia Electric Company, Public Utility  
 Director, Philadelphia Electric Power Company, Public Utility  
 Director, Susquehanna Power Company, Public Utility  
 Director, Susquehanna Electric Company, Public Utility

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
*Secretary.*

[FR Doc. 79-23364 Filed 7-27-79; 8:45 am]  
 BILLING CODE 6450-01-M

**[Docket No. ID-1870]****Lucy S. Binder, Application**

July 23, 1979.

Take notice that on June 29, 1979, Lucy S. Binder filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

*Position, Corporation, and Classification*

Secretary, Philadelphia Electric Company, Public Utility  
 Secretary, Philadelphia Electric Power Company, Public Utility  
 Secretary, Susquehanna Power Company, Public Utility  
 Secretary, Susquehanna Electric Company, Public Utility

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
*Secretary.*

[FR Doc. 79-23365 Filed 7-27-79; 8:45 am]  
 BILLING CODE 6450-01-M

**[Docket No. ES79-54]****Missouri Edison Co.; Application**

July 23, 1979.

Take notice that on July 16, 1979, Missouri Edison Company (Applicant) filed an application with the Commission, pursuant to Section 204 of the Federal Power Act, seeking an order authorizing the issuance of up to \$10 million of short-term unsecured promissory notes, with final maturities not later than December 31, 1980. The Applicant is a Missouri Corporation, with its principal business office at Louisiana, Missouri and is engaged in the electric utility business in Missouri.

The proceeds will be used to finance, in part, Applicant's construction program, which calls for expenditures of approximately \$11,037,000 for 1979 and 1980.

Any person desiring to be heard or to make and protest with reference to the application should on or before August 17, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). The application is on file with the Commission and is available for public inspection.

Kenneth F. Plumb,  
*Secretary.*

[FR Doc. 79-23366 Filed 7-27-79; 8:45 am]  
 BILLING CODE 6450-01-M

**[Docket Nos. CP78-123, et al.; and CP79-57]****El Paso Natural Gas Co. and Northwest Alaskan Pipeline Co., et al.; Amendment**

July 20, 1979.

Take notice that on July 6, 1979, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP79-57 an amendment to its pending application filed in said docket pursuant to Section 7(c) of the Natural Gas Act deleting its request for certificate authorization to construct and operate certain facility additions to its interstate pipeline

system and reaffirming its request for a certificate of public convenience and necessity authorizing the transportation of natural gas for Pacific Interstate Transmission Company (Pacific) pursuant to the gas transportation agreement, dated August 18, 1978, as recently amended on June 11, 1979, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

El Paso's application in this proceeding requested certificate authorization (1) to construct and operate certain additional facilities on its interstate pipeline transmission system and (2) to transport and deliver up to 240,000 Mcf of gas per day for Pacific from a point of receipt at the existing interconnection between the systems of El Paso and Northwest Pipeline Corporation (Northwest) near Ignacio, Colorado, to an existing point of delivery on the Arizona-California boundary near Topock, Arizona. The proposed transportation service was to be performed pursuant to the transportation agreement of August 18, 1978.

The amendment states that El Paso and Pacific have executed an amendatory agreement, dated June 11, 1979, amending the transportation agreement to provide for the transportation of a specified contract quantity, for building of facility additions and modifications and for the rates to be paid for services provided by El Paso. Pursuant to the transportation agreement, as amended, El Paso would transport such quantities of natural gas as Pacific shall cause Northwest to tender to El Paso each day, up to Pacific's contract quantity of 230,000 Mcf per day at the existing interconnection of El Paso's and Northwest's systems at Ignacio. El Paso would deliver 95 percent of the transportation quantities received from Northwest for Pacific's account at an existing delivery point to Southern California Gas Company (SoCal) near Topock.

El Paso indicates that its obligation to transport gas under the transportation agreement, as amended, is subject to available capacity in its interstate pipeline transmission system after moving its own flowing gas supplies, including its storage supplies. El Paso would periodically evaluate its capacity to transport natural gas for the account of Pacific and other shippers in light of its anticipated flowing gas supplies. The transportation agreement, as amended, provides that Pacific has the option (1) to authorize El Paso to seek all necessary regulatory authorizations to construct and operate facility additions and/or

modifications to transport natural gas for Pacific, or (2) to instruct El Paso not to make such additions and/or modifications for Pacific. In the latter event, El Paso's obligation to transport natural gas under the transportation agreement, as amended, through any of El Paso's facilities, other than incremental ones previously constructed for transportation for Pacific under the transportation agreement, as amended, is on a best efforts basis.

In the event El Paso is authorized by Pacific to seek necessary regulatory authorizations to construct and operate facility additions required in the San Juan Triangle and/or on the San Juan Mainline system, Pacific agrees to pay El Paso an amount equal to the product of 95 percent of the contract quantity times the rate in effect and reflected from time to time as the San Juan Triangle Facilities Demand Charge, as set forth on Sheet No. 1-D.2 of El Paso's FERC Gas Tariff, Third Revised Volume No. 2, or superseding tariff, plus an amount equal to the higher of: (i) the rate in effect and reflected from time to time as the Mainline Transmission Charge-California, as set forth in said Sheet No. 1-D.2, or superseding tariff, for each Mcf transported; or (ii) the product of 95 percent of the contract quantity, times the rate in effect and reflected from time to time as the San Juan Mainline Facilities Demand Charge, as set forth in said Sheet No. 1-D.2, or superseding tariff. Absent Pacific authorizing El Paso to seek all necessary authorizations to construct and operate the facility additions required in the San Juan Triangle and/or on the San Juan Mainline system, Pacific has agreed to pay El Paso, as compensation for the use of El Paso's mainline transmission system in the transportation and delivery of gas from the Ignacio point to the Topock point, for each Mcf of transportation gas delivered by El Paso at the Arizona-California boundary, the rate in effect and reflected from time to time as the Mainline Transmission Charge-California, as set forth in said Sheet No. 1-D.2, to superseding tariff.

El Paso determined that the available capacity in its San Juan Triangle facilities is inadequate to transport both its own flowing gas supplies and the quantities of gas scheduled to be tendered to El Paso for the account of certain shippers, including Pacific. Subsequent to such capacity evaluation, El Paso filed for certificate authorization in Docket No. CP79-337 to construct and operate certain pipeline, compression and meter facility additions on its

existing San Juan Triangle facilities and on its San Juan Mainline system, in Colorado, New Mexico and Arizona. Said application accommodates the facility requirements to transport gas for both Pacific and certain other shippers and thereby eliminates the need to request authorization to build facilities for each shipper separately.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before August 14, 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. Persons having heretofore filed need not do so again.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-23367 Filed 7-27-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket Nos. CP78-389; CP78-259]

**Rocky Mountain Natural Gas Co., Inc., and RMNG Gathering Co.; Petition To Amend**

July 19, 1979.

Take notice that on June 25, 1979, Rocky Mountain Natural Gas Company, Inc. (Rocky Mountain) and RMNG Gathering Co. (RMNG), 1600 Sherman Street, Denver, Colorado 80203 (Petitioners), filed in Docket Nos. CP78-389 and Docket No. CP78-259 a petition to amend the order of October 4, 1978, issued in the instant dockets pursuant to Section 7(c) of the Natural Gas Act so as to authorize RMNG and Rocky Mountain to exchange an increased volume of gas from additional acreage in the Great Divide Area of Moffat County, Colorado, all as more fully set forth in the application on file with the Commission and open to public inspection.

Pursuant to the order of October 4, 1978, RMNG and Rocky Mountain were granted authorization to exchange up to 5,000 Mcf of natural gas per day with

Northwest Pipeline Corporation (Northwest) pursuant to the terms of a gas transportation and exchange agreement dated January 27, 1978, as amended June 6, 1978, between Rocky Mountain and RMNG. Petitioners state that Northwest is presently delivering certain volumes of natural gas, which it is gathering in the Great Divide Area, to Rocky Mountain for transportation and exchange at a point of interconnection with Rocky Mountain's Big Hole pipeline in Moffat County for subsequent utilization in Rocky Mountain's intrastate utility system. RMNG then redelivers thermally equivalent volumes of gas to Northwest at the Bar X exchange meter station, an existing point of interconnection between RMNG's South Canyon Gathering System and Northwest's mainline, it is stated.

Petitioners request authorization to exchange up to 10,000 Mcf of natural gas per day from additional acreage in the Great Divide Area with Northwest pursuant to the terms of two additional amendments dated November 20, 1978, and March 12, 1979; to the gas transportation and exchange agreement dated January 27, 1978, as amended. Petitioners indicate that such additional gas is anticipated to be purchased and or gathered by Northwest in the Great Divide Area.

The increased volumes of gas proposed to be exchanged herein would enable Northwest expeditiously to make available to its mainline system the volumes of natural gas currently available to Northwest and anticipated to be available to Northwest in the future in the area covered by the amended transportation and exchange agreement, it is said.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 10, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a

petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 79-23368 Filed 7-27-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ID-1869]

**Shields L. Daltroff; Application**

July 23, 1979.

Take notice that on June 29, 1979, Shields L. Daltroff filed an application pursuant to Section 305(b) of the Federal Power Act to hold the following positions:

*Position, Corporation, and Classification*

Vice President, Philadelphia Electric Company, Public Utility  
Director, Philadelphia Electric Power Company, Public Utility  
Director, Susquehanna Power Company, Public Utility  
Director, Susquehanna Electric Company, Public Utility

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before August 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 application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 79-23368 Filed 7-27-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-377]

**Tennessee Gas Pipeline Co.; Application**

July 16, 1979.

Take notice that on June 21, 1979, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP79-377 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural

gas for Southern Natural Gas Company (Southern), all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant requests authorization to transport, to the extent its operating conditions permit, up to 2,000 Mcf of natural gas per day for Southern pursuant to the terms of a transportation agreement dated June 15, 1979, between Applicant and Southern whereby Applicant would receive the gas from Southern at the outlet of Shell Oil Company's East Bay Central Facilities in the South Pass Block 24 Field, Plaquemines Parish, Louisiana, and would transport such volumes to the tailgate of the Yscloskey Processing Plant, St. Bernard Parish, Louisiana, where the gas would be exchanged for delivery to Southern at an existing point of delivery at the Patterson Gasoline Plant in St. Mary Parish or at the upstream side of Southern's meter located at the tailgate of such plant.

The application states that the gas which Applicant proposes to transport would be purchased by Southern from Shell Oil Company, SONAT Exploration Company and The Offshore Company from reserves produced from Mississippi Canyon area, Blocks 150, 151, 194, and 195, offshore Louisiana (Mississippi Canyon block 194 Field) and that initial production of these reserves would consist of low pressure casinghead gas which would be delivered onshore through the producers' two-phase pipeline and made available for sale to Southern at the outlet of the East Bay Central Facilities.

Applicant would charge Southern for the proposed transportation service a monthly volume charge equal to 3.36 cents per Mcf, with provision for a minimum bill based on the transportation quantity. Applicant states that Southern would provide it with 1.2 percent of the volumes of gas that Applicant receives for transportation to compensate for Applicant's fuel and use requirements.

Southern has advised Applicant that it would require its assistance in transporting this gas until the earlier of the date on which Southern is capable of taking delivery of Mississippi Canyon Block 194 Field gas through new offshore facilities to be constructed in the vicinity of the field or Southern's producers' cease the sale of gas to Southern at the point of receipt by Applicant. Applicant states that the proposed transportation service would be beneficial to Southern in that it would provide it with immediately

available gas supplies for its system supply.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 7, 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 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. 79-23370 Filed 7-27-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-391]

**Transcontinental Gas Pipe Line Corp.; Application**

July 19, 1979.

Take notice that on July 2, 1979, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP79-391 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of natural gas from the state of Georgia

to the states of North and South Carolina, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco seeks authorization to transport up to 9,000 dekatherms equivalent of natural gas per day for United Cities Gas Company (UCGC). UCGC's Georgia Division (Georgia) is a Rate Schedule CD-1 customer of Transco, taking deliveries at the Gainesville Meter Station in Oconee County, Georgia. UCGC's North Carolina and South Carolina Division (Carolina) is a Rate Schedule CD-2 customer of Transco, taking deliveries at the Gaffney Meter Station in Cherokee County, South Carolina and the Mill Spring Meter Station in Polk County, North Carolina.

UCGC has advised Transco that due to varying load demands on its Georgia and Carolina systems, it would be desirable to make Georgia gas available to Carolina on occasions, and similarly to make Carolina gas available to Georgia on other occasions. In order to accomplish this, UCGC has requested Transco to transport quantities of gas between the two divisions under Transco's Rate Schedule T. Under such rate schedule, UCGC would pay Transco an initial charge of 10.0 cents per dekatherms equivalent of gas for all quantities transported downstream from Georgia to Carolina, and Transco will retain 1.2 percent of the transportation quantities for compressor fuel and line loss make-up. For all quantities transported upstream from Carolina to Georgia UCGC would pay Transco an initial charge of 5.0 cents per dekatherm.<sup>1</sup>

Any person desiring to be heard or to make any protest with reference to said application should on or before August 10, 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. 79-23371 Filed 7-27-79; 8:45 am]  
BILLING CODE 6450-01-M

[Docket No. CP76-118]

#### U-T Offshore System; Informal Settlement Conference

July 23, 1979.

Take notice that an informal settlement conference will be held in the captioned docket on August 8, 1979 in Room 8402, 825 North Capitol Street, N.E., Washington, D.C., 20426 at 10:00 a.m.

Customers and other interested persons will be permitted to attend the above-mentioned informal conference 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. 79-23372 Filed 7-27-79; 8:45 am]  
BILLING CODE 6450-01-M

#### ENVIRONMENTAL PROTECTION AGENCY

[FRL 1284-8; OPP-180330]

#### California Department of Food and Agriculture; Crisis Exemption To Use Fenvalerate and Permethrin To Control Heliothis Species on Corn

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

ACTION: Notice of temporary crisis exemption.

SUMMARY: EPA gives notice that the California Department of Food and Agriculture (hereafter referred to as "California") availed itself of a crisis exemption to use permethrin and fenvalerate to control *Heliothis* species on 9,000 acres of corn in Imperial and Riverside Counties, California.

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: California reported that about 9,000 acres of corn are grown in Imperial and Riverside Counties and all of them are susceptible to attack by *Heliothis* spp. This corn is valued at \$3,800,000, and according to California, a loss of fifty percent might occur without a control program. California claimed that no currently registered pesticide gives adequate control of this pest.

California's program used the products Amush and Pydrin at a rate of 0.1-0.2 pound active ingredient in not less than 30 gallons of water when applied by ground, or 5 gallons of water by aircraft, per acre. A maximum of 16,000 pounds of permethrin or fenvalerate were to be applied in a maximum of ten applications-made at 3- to 7-day intervals. Applications were to be made by or under the supervision of a State-certified applicator. A two-day pre-harvest interval was to be observed. Treated fields were not to be rotated to any crop except cotton or corn within 60 days. If Pydrin was used, the fields were not to be rotated to any root crop within twelve months. Label precautions were to be observed to prevent hazards to fish, aquatic invertebrates, bees, and contamination of water. Since treatment was expected to be required for more than fifteen days, California submitted a

<sup>1</sup>All quantities transported from Georgia to Carolina will have been purchased by Georgia, and all quantities transported from Carolina to Georgia will have been purchased by Carolina.

request for a specific exemption for continuation of this program.

(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: July 23, 1979.

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

[FR Doc. 79-23451 Filed 7-27-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1285-1; OPP-180336]

**California Department of Health Services; Issuance of Specific Exemption To Use DDT To Suppress Flea Vectors of Plague**

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

**ACTION:** Issuance of a specific exemption.

**SUMMARY:** EPA has granted a specific exemption to the California Department of Health Services (hereafter referred to as the "Applicant") to use no more than fifty pounds of DDT for the suppression of flea populations in areas in the foothills and mountains of California, where flea populations vectoring plague on wild rodents may endanger the public health. The specific exemption expires on December 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:** On June 11, 1979, the Applicant's Vector Biology and Control Section informed EPA that the State had availed itself of a crisis exemption to use 92 pounds of 10 percent DDT to control plague vector fleas in Los Angeles County on June 8 and 9, 1979. A human case of plague had occurred in a residential area and there was insufficient time to wait for a specific exemption, according to the Applicant. Since the Applicant anticipated that the need for the use of DDT would continue for longer than fifteen days, the Applicant requested a specific exemption to continue the program.

The Applicant reported that there had been an earlier case of plague in a

recreational area in Riverside County. The Applicant also reported that the plague surveillance program indicates that the potential exists for a plague outbreak in northern California in 1979.

According to the Applicant, carbaryl, the only pesticide registered for plague vector control, has a record of doubtful efficacy in some California situations. Evidence indicates carbaryl dust to be reasonably efficacious in controlling fleas of the ground squirrel (*Spermophilus beecheyi*) but to be undependable in controlling fleas of chipmunks and other rodents of similar habits. The Applicant also stated that DDT is available and is of demonstrated efficacy against fleas of wild rodents.

The program conducted under this exemption will be essentially the same as the 1978 treatment. The material (DDT dust) will be applied by hand-operated dusters directly into rodent burrows, or applied through the use of bait dust stations at a maximum rate of 0.06 pound of actual DDT per acre. The areas treated will have to meet the following criteria; (1) without flea control, the public health would be endangered, and (2) the situation would be such as to give rise to a reasonable doubt about the anticipated efficacy of carbaryl. All applications will be made under the supervision of personnel of the Applicant's Vector Biology and Control Section.

This application was endorsed by Dr. Allen M. Barnes, Chief, Plague Branch, Center for Disease Control (CDC), Fort Collins, Colorado, U.S. Department of Health, Education, and Welfare. According to Dr. Barnes, the plague potential for 1979 is unknown and unpredictable at this time. Dr. Barnes stated that the issuance of this exemption was advisable so that the Applicant might be prepared for an epizootic outbreak of the plague bacillus among wild rodents.

The Fish and Wildlife Service, U.S. Department of the Interior, supports this use of DDT with certain reservations regarding application in the presence of endangered species. These reservations have been incorporated into the conditions of the specific exemption.

The final cancellation order for DDT (published in the Federal Register on July 7, 1972, p. 13369) specifically exempted " \* \* \* uses of DDT by public health officials in disease control programs \* \* \* "

After reviewing the application and other available information, EPA has determined that (a) a pest outbreak of fleas vectoring plague is likely to occur in California; (b) there are no alternative means of control available, taking into

account the efficacy and hazard; (c) significant health problems may result if the fleas vectoring plague are not controlled; and (d) 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 December 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 total amount of DDT used may not exceed fifty pounds actual insecticide;

2. The DDT will be applied directly to wild rodent burrows with hand-powered dusting equipment or applied through the use of bait dust stations;

3. Areas in the foothills and mountains of California to be treated are limited to those meeting the two criteria specified above in this notice;

4. Personnel of the Applicant's Vector Biology and Control Section will supervise all pesticide applications;

5. Dr. Allen M. Barnes, Chief, Plague Branch, CDC (Fort Collins), will be kept advised of all flea population suppression activities;

6. Areas treated with DDT should be surveyed to ensure that no endangered species that could be adversely affected are present;

7. No applications will be made in areas where the American Peregrine falcon is feeding or nesting;

8. Liaison will be established with the California Fish and Game Department prior to applying DDT in any area;

9. The EPA shall be immediately informed of any adverse effects to man or the environment resulting from this program; and

10. The Applicant's Vector Biology and Control Section will be responsible for assuring that all provisions of this specific exemption are followed and must submit a report detailing the use of DDT and the results of the program by February 15, 1980.

(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: July 23, 1979.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-23452 Filed 7-27-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1284-6; OPP-180325]

**Crisis Exemption To Use Captafol To Control Anthracnose on Strawberry Plants****AGENCY:** Environmental Protection Agency (EPA), Office of Pesticide Programs.**ACTION:** Notice of temporary crisis exemption.

**SUMMARY:** EPA gives notice that the North Carolina Department of Agriculture (hereafter referred to as "North Carolina") has availed itself of a crisis exemption to use Difolatan (captafol) to control anthracnose on approximately 500 acres of strawberries grown for plants in North Carolina. Since treatment was expected to exceed fifteen days, North Carolina submitted a request for a specific exemption for continuation of this use of captafol.

**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 North Carolina, that State produces more strawberry plants than any other state east of California. Plants grown in North Carolina are shipped to many other states and foreign countries for fruit production.

Anthracnose has been a destructive disease during the past three years for strawberry plant producers in the southeastern part of North Carolina when high temperatures and rainfall favor disease development.

Anthracnose (*Colletotrichum fragariae*) attacks the mature crown, runners, and runner plants. The fungus enters the crown at the soil line and causes reddish-brown discolored areas in the white tissues in the center of the crown. Infected mature plants wilt and die. The fungus is carried over from year to year in crowns that become infected in late-summer. The fungus produces masses of spores on diseased plant tissues and these spores are spread to nearby plants by splashing water or winds.

Despite the use of repeated applications of benomyl, which is registered for control of anthracnose, North Carolina claims that emergency conditions exist in strawberry plant producing areas and are expected to

exist through September. There are no alternative control methods. North Carolina estimates a possible loss of more than \$2.5 million to North Carolina farmers without an effective fungicide program to control anthracnose.

North Carolina has been using Difolatan 4F (EPA Reg. No. 239-2211) at a rate of two pounds active ingredient per acre every seven days during periods of weather conditions favorable for pathogen dissemination. Producers of certified strawberry plants have applied the fungicide in sufficient water to obtain thorough coverage of all plant parts, using ground equipment.

Difolatan is registered for use on many fruit and vegetable crops. North Carolina claims that this use of captafol on a limited number of acres for non-bearing plant production will eliminate the need for numerous applications of the fungicide on a much larger number of acres of strawberries being grown for fruit. North Carolina has submitted a request for a specific exemption for continuation of this use of captafol.

(Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).)

Dated: July 23, 1979.

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

[FR Doc. 79-23443 Filed 7-27-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1284-7; OPP-180326]

**Delaware, Maryland, and Virginia; Issuance of Specific Exemptions To Use Blazer on Soybeans To Control Morning-glory Species****AGENCY:** Environmental Protection Agency (EPA), Office of Pesticide Programs.**ACTION:** Issuance of specific exemptions.

**SUMMARY:** EPA has granted specific exemptions to the Delaware and Maryland Departments of Agriculture and the Virginia Department of Agriculture and Consumer Services (hereafter referred to as the "Applicants") to use Blazer on 50,000 acres of soybeans in each State for the control of morning-glory species. The specific exemptions expire on July 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:** Morning-glory species are annual plants which have the ability to germinate throughout the season. They not only compete with the soybeans for light, nutrients, and water, but also create a hindrance at harvest time. The long vines slow down and can stop harvesting by clogging the harvesting equipment. Additional losses can be incurred from docking due to morning-glory seeds in harvested soybeans.

The Applicants had earlier applied for specific exemptions which were denied because a determination that an emergency condition existed could not be made. In their subsequent requests for the proposed use, the Applicants referred to the extremely heavy rainfall which occurred during May and early June. In wet years the weeds become a very serious problem, according to the Applicants. The Applicants estimate possible losses in the three States at \$3.5 million without an effective morning-glory control program.

There are currently twenty-two or more registered compounds for use in soybeans to control morning-glory species. The Applicants stated that the available registered chemicals either do not control morning-glory under their States' conditions, or can no longer be used on planted soybeans due to agriculture practices and the present stage of soybean development. The Applicants claim that: (1) dinitramine is too phytotoxic to soybeans and they do not recommend it for sandy loam soils; (2) Dinoseb gives poor control after 4-5 days and can injure soybeans; (3) Linuron does not provide satisfactory control at low rates, and is too phytotoxic at high rates; (4) Metribuzin is too phytotoxic; (5) Bentazon only provides partial control of small morning-glories (cotyledonary stage); and (6) Glyphosate is non-selective and can only be used as a spot treatment. Forty percent of the soybean fields have been solid seeded (seven-inch rows) or no-till planted and neither registered post-directed pesticides nor cultivation can be used on these soybean fields.

The Applicants proposed to make a single application of Blazer (sodium 5-(2-chloro-4-(trifluoromethyl)phenoxy)-2-nitrobenzoate) at a rate of 0.25 to 0.5

pound active ingredient (a.i.) per acre. Application is to be by ground or air equipment. Data indicate that this rate would be efficacious.

A temporary tolerance for residues of sodium 5-(2-chloro-4-(trifluoromethyl)phenoxy)-2-nitrobenzoate in or on soybeans at 0.1 part per million (ppm) has been established. This temporary tolerance expires on January 1, 1980. EPA has determined that residues of the a.i. in Blazer in or on soybeans as a result of the proposed plan will not exceed 0.1 ppm; and residues of the a.i. in Blazer in milk; eggs; liver and kidney of cattle, goats, horses and sheep; and meat, fat, and meat by-products of poultry will not exceed 0.01 ppm. These residue levels have been judged adequate to protect the public health. EPA has also determined that the proposed use of Blazer should not pose an unreasonable hazard to the environment.

After reviewing the applications and other available information, EPA determined that (a) pest outbreaks of morning-glory species have occurred; (b) there is no effective pesticide presently registered and available for use to control the morning-glory in Delaware, Maryland, and Virginia; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the morning-glory 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 Applicants have been granted specific exemptions to use the pesticide noted above until July 31, 1979, to the extent and in the manner set forth in the applications. The specific exemptions are also subject to the following conditions:

1. The products Blazer 2S and Blazer 2L, manufactured by Rohm and Haas Company may be applied;

2. Blazer 2L and 2S may be applied at a rate of 0.25 to 0.5 pound a.i. per acre. Only one application per season may be made. A maximum of 50,000 acres of soybeans may be treated in each State;

3. Blazer may be applied by ground equipment in a minimum of 20 gallons of water, or by aircraft in a minimum of 10 gallons of water;

4. Blazer may be applied only to soybean fields which were planted before June 11, 1979, and only when a major infestation of morning-glory exists, as determined by State Agriculture personnel, which will cause significant economic losses;

5. A pre-harvest interval of fifty days is imposed;

6. The fields may not be rotated to any other food crop within six months of last application of Blazer;

7. The spray program will be under the direction of the:

a. Division of Production and Promotion in Delaware,

b. Division of Plant Industries in Maryland, and

c. Pesticide, Plant and Hazardous Substances Section in Virginia;

8. All applicable directions and precautions on the Blazer 2S and 2L labels must be followed;

9. Soybeans treated according to the above provisions should not have residues of sodium 5-(2-chloro-4-(trifluoromethyl)phenoxy)-2-nitrobenzoate in excess of 0.1 ppm. Milk; eggs; liver and kidney of cattle, goats, horses and sheep; and meat, fat, and meat by-products of poultry should not have residues in excess of 0.01 ppm. Soybeans with residues of sodium 5-(2-chloro-4-(trifluoromethyl)phenoxy)-2-nitrobenzoate not exceeding 0.1 ppm may enter into interstate commerce. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been informed of this action;

10. The EPA will be immediately informed of any adverse effects from use of Blazer in connection with this exemption;

11. The Applicants are each responsible for assuring that all provisions of the specific exemption for that State are met and each must submit a report summarizing the results of the program in that State by December 31, 1979; and

12. In order to help prevent future emergencies, farmers should be encouraged to use 30-inch row spacing when planting soybeans.

(Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).)

Dated: July 23, 1979.

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

[FR Doc. 79-23450 Filed 7-27-79; 8:45 am]  
BILLING CODE 4560-01-M

[FRL 1283.4; OPP-50436]

#### Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with

respect to the use of pesticides for experimental purposes.

No. 876-EUP-38. Velsicol Chemical Corporation, Chicago, IL 60611. This experimental use permit allows the use of 0.40 pound of the rodenticide diphacinone on sugarcane fields to evaluate control of cotton rats, Norway rats, rice rats, roof rats, Polynesian rats, and house mice. A total of 800 acres is involved; the program is authorized only in the States of Florida and Hawaii. The experimental use permit is effective from May 15, 1979 to August 1, 1981. (PM-16, William Miller, Room: E-343, Telephone: 202/426-9458)

No. 1471-EUP-58. Elanco Product Company, Indianapolis, IN 46206. This experimental use permit allows the use of 13,650 pounds of the herbicide oryzalin on wheat to evaluate control of weeds. A total of 13,650 acres is involved; the program is authorized only in the States of Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maryland, Mississippi, Missouri, New Jersey, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. The experimental use permit is effective from July 9, 1979 to July 9, 1980. A temporary tolerance for residues of the active ingredient in or on wheat has been established. (PM-25, Robert Taylor, Room: E-301, Telephone: 202/755-2196)

No. 2724-EUP-16. Zoexon Industries, Dallas, TX 75234. This experimental use permit allows the use of 8.15 pounds of the insecticide N-(Mercaptomethyl) phthalimide S-(0,0-dimethyl phosphorodithioate) on beef cattle to evaluate control of the Gulf Coast tick, Spinose ear tick, and hornfly. A total of 1,400 animals is involved; the program is authorized only in the State of Texas. The experimental use permit is effective from June 26, 1979 to June 26, 1980. Permanent tolerances for residues of the active ingredient in or on the fat, meat, and meat byproducts of beef cattle have been established (40 CFR 180.261). (PM-15, Jay Ellenberger, Room: E-329, Telephone: 202/426-9490)

Interested parties wishing to review the experimental use permits are referred to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Washington, D.C. 20460. The descriptive paragraph for each permit contains a telephone number and room number for information purposes. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate permit may be made conveniently available for review purposes. The files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

(Section 5 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: July 20, 1979.

Douglas D. Camp, Jr.

Director, Registration Division.

[FR Doc. 79-23449 Filed 7-27-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1284-5; OPP-180324]

**North Dakota and South Dakota  
Departments of Agriculture; Issuance  
of Specific Exemptions to Use 2,4-D to  
Control Broadleaf Weeds in Millet**

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

**ACTION:** Issuance of specific exemptions.

**SUMMARY:** EPA has granted specific exemptions to the North and South Dakota Departments of Agriculture (hereafter referred to as "North Dakota," and "South Dakota," or the "Applicants") to use 2,4-D amine to control broadleaf weeds in 75,000 acres of millet in North Dakota and 35,000 acres of millet in South Dakota. The specific exemptions expire on September 1, 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 the EPA Headquarters, so that the appropriate files may be made conveniently available for review purposes.

**SUPPLEMENTARY INFORMATION:** Millets are minor crops grown for grain and forage. Of at least five different groups of millets grown in the United States, foxtails and proso are the primary ones grown in North Dakota, proso in South Dakota. According to the Applicants, approximately 99 percent of the millet is harvested for grain and the major commercial use for the grains is in birdseed mixtures. Proso millet can also be foraged or cut and dried for hay. Foxtail millet hay and ground grain can be fed to livestock. Broadleaf weeds, such as redroot pigweeds, Kochia, and wild mustard, are of primary concern to millet growers. There are currently no EPA-registered pesticides for control of broadleaf weeds in millets. North Dakota has estimated a loss valued at \$700,000 and South Dakota \$1,000,000 if broadleaf weeds are not controlled.

The Applicants proposed to make a single application of 0.25 to 0.50 pound dimethylamine salt of 2,4-D per acre on a maximum of 75,000 acres of millet in North Dakota and 35,000 acres in South

Dakota. State-certified private and commercial applicators using air and ground equipment will make the applications.

2,4-D is a widely used broadleaf weed herbicide and tolerances have been established on foods that make up approximately 80 percent of the total average human diet. EPA has determined that millet grain and straw residue levels of 2,4-D not in excess of 0.1 part per million (ppm) and 10 ppm, respectively, are adequate to protect the public health and that this use should not exceed these levels. EPA has also considered the potential for residues from nitrosamine contamination of the chemical and has calculated that such residues would be less than 1 part per billion, which level should not pose undue hazard to the environment. This determination was based on the following reasons: (1) millet is not normally a human food item; (2) the residues are extremely small; (3) the residues are very likely not stable; and (4) the chance of any exposure is very small. The proposed use of 2,4-D is not expected to result in dietary exposure to residues of the chemical which would be in excess of those levels currently considered adequate to protect the public health for the following reasons: (1) millet is not normally a human food item; (2) established tolerances for meat, milk, and poultry will not be exceeded; and (3) 2,4-D tolerances are established for the major feed commodities at levels significantly higher than the 10 ppm level expected to occur in millet straw.

After reviewing the applications and other available information, EPA has determined that (a) pest outbreaks of broadleaf weeds in millet are likely to occur; (b) there is no pesticide presently registered and available for use to control these weeds in North and South Dakota; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if these weeds 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 Applicants have been granted specific exemptions to use the pesticide noted above until September 1, 1979, to the extent and in the manner set forth in the applications. The specific exemptions are also subject to the following conditions:

1. An EPA-registered dimethylamine salt of 2,4-D which is appropriately labeled for the intended means of application (ground or air) is authorized;
2. 2,4-D will be applied at a maximum rate of one-half pound active ingredient

per acre. A maximum of one application may be made;

3. A maximum of 75,000 acres may be treated in North Dakota, 35,000 acres in South Dakota;

4. A maximum of 37,500 pounds active ingredient may be applied in North Dakota, 17,500 pounds in South Dakota;

5. Applications may be made by air and ground equipment;

6. All applications will be made by State-certified commercial applicators or by growers;

7. No application will be made within four weeks of heading time;

8. All applications shall be made only in situations where the weed problem is serious and substantial crop losses are imminent;

9. EPA has determined that residues resulting from this use will not exceed 0.1 ppm in or on millet grain and 10 ppm in or on straw. Residues not in excess of these levels will not pose a threat to the public health. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action;

10. All applicable directions, restrictions, and precautions on the product label must be followed;

11. Precautions must be taken to minimize or avoid spray drift to non-target areas;

12. The EPA will be immediately informed of any adverse effects resulting from the use of this pesticide in connection with this exemption; and

13. North and South Dakota shall each be responsible for assuring that all of the provisions of its specific exemption are met, and each must submit a report summarizing the results of this program by December 31, 1979.

(Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 619; 7 U.S.C. 136).)

Dated: July 23, 1979.

Edwin L. Johnson,

Deputy Assistant Administrator for Pesticide Programs.

[FR Doc. 79-23442 Filed 7-27-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1283-6; PF-142]

**Pesticide Programs; Notice of Filing of  
Pesticide Petition**

Chevron Chemical Co., 940 Hensley St., Richmond, CA 94804, has submitted a petition (PP 9F2222) to the Environmental Protection Agency (EPA) which proposes that 40 CFR 180.205 be amended by establishing a tolerance for the residues of the herbicide paraquat (1,1'-dimethyl-4,4-bipyridinium-ion)

derived from application of either the dichloride or the bis-(methyl)sulfate salt calculated in both instances as the cation in or on the raw agricultural commodity wheat straw at 5.0 parts per million (ppm). The proposed analytical method for determining residues is by freeing of the paraquat cation with ammonium chloride, reduction by sodium dithionite, and determination by spectrophotometry. Notice of this submission is given pursuant to the provisions of section 408(d) (1) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on this petition. Comments may be submitted, and inquiries directed, to Product Manager (PM) 25, Room E-359, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M St., SW, Washington, DC 20460, telephone number 202/755-2196. Written comments should bear a notation indicating the petition number "PP 9F2222". Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice will be available for public inspection in the Product Manager's office from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

Dated: July 20, 1979.

Douglas D. Camp, Jr.,  
Director, Registration Division.

[FR Doc. 79-23445 Filed 7-27-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1283-7; PF-141]

#### Pesticide Programs; Notice of Filing of Pesticide/Feed Additive Petitions

Pursuant to sections 408(d)(1) and 409(b)(5) of the Federal Food, Drug, and Cosmetic Act, the Environmental Protection Agency (EPA) gives notice that the following petitions have been submitted to the Agency for consideration.

PP 9F2221. Dow Chemical USA, PO Box 1706, Midland, MI 48640. Proposes that 40 CFR 180.342 be amended by establishing tolerances for the combined residues of the insecticide chlorpyrifos [*O,O*-diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate] and its metabolite 3,5,6-trichloro-2-pyridinol in or on the raw agricultural commodities cucumbers and pumpkins at 0.05 part per million, seed and pod vegetables at 0.05 ppm, apples at 1.0 ppm, and bean and pea forage at 1.0 ppm. The proposed analytical method for determining residues is by gas chromatography using flame photometric detection.

FAP 9H5227. Dow Chemical USA. Proposes that 21 CFR 561.98 be amended by

permitting residues of the above insecticide in or on the animal feed commodity apple pomace at 2.0 ppm.

Interested persons are invited to submit written comments on these petitions. Comments may be submitted, and inquiries directed, to Product Manager (PM) 12, Room E-335, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M St., SW., Washington, DC 20460, telephone number 202/426-2635. Written comments should bear a notation indicating the petition number to which the comments pertain. Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice will be available for public inspection in the Product Manager's office from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

Dated: July 20, 1979.

Douglas D. Camp, Jr.,  
Director, Registration Division.

[FR Doc. 79-23446 Filed 7-27-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1283-8; PF-143]

#### Pesticide Programs; Notice of Filing of Food/Feed Additive Petitions

Monsanto Co., 800 Lindbergh Blvd., St. Louis, MO 63166, has submitted a petition (FAP 9H5196) to the Environmental Protection Agency (EPA) which proposes that 21 CFR 193.235 and 561.253 be amended by permitting the combined residues of the herbicide glyphosate [*N*-(phosphonomethyl)glycine] and its metabolite aminomethylphosphonic acid resulting from the application of the sodium salt of glyphosate in the growing of sugarcane with a tolerance limitation of 20 parts per million (ppm) in sugarcane molasses. Notice of this submission is given pursuant to the provisions of section 409(b)(5) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on this petition. Comments may be submitted, and inquiries directed, to Product Manager (PM) 25, Room E-359, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M St., SW, Washington, DC 20460, telephone number 202/755-2196. Written comments should bear a notation indicating the petition number "FAP 9H5196". Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice will be available for public inspection in

the Product Manager's office from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

Dated: July 20, 1979.

Douglas D. Camp, Jr.,  
Director, Registration Division.

[FR Doc. 79-23447 Filed 7-27-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1284-4; OTS-50004]

#### Transfer of TSCA Premanufacture Notification Information to Contractor; Notice of Data Transfer

AGENCY: Environmental Protection Agency (EPA), Office of Toxic Substances.

ACTION: Notice of Data Transfer.

SUMMARY: EPA will transfer chemical substance identities submitted by manufacturers and importers under Section 5 of the Toxic Substances Control Act (TSCA) to its contractor, Tracor-Jitco of Rockville, Maryland. The data transferred will contain only the identity of chemical substances which may or may not have been claimed confidential. Tracor-Jitco will perform literature searches on these chemical substances and furnish the results of these literature searches to EPA.

DATE: The transfer of the identity of chemical substances claimed confidential will occur no sooner than August 9, 1979 and will continue in controlled stages.

FOR FURTHER INFORMATION CONTACT: John B. Ritch, Jr., Director, Industry Assistance Office, Office of Toxic Substances (TS-799), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. The toll-free telephone number is 800-424-9065. In Washington, D.C., please call 554-1404.

SUPPLEMENTARY INFORMATION: Under Section 5 of TSCA, manufacturers and importers of chemical substances have reported and will continue to report information concerning new chemical substances which are not included in the Master Inventory File of Chemical Substances and which they intend to manufacture or import. To assist the Administrator in carrying out his statutory responsibilities of regulating chemical substances under Section 5, it is necessary to perform bibliographic searches on the open scientific literature for information on the chemical substances reported. Tracor-Jitco, Inc., Rockville, MD, has been selected to perform the literature searches (Contract #68-01-5114) because EPA does not have the in-house resources to do the work.

The data furnished to the contractor to perform the required literature searches will consist only of a list of chemical substances, as well as their Chemical Abstracts Service (CAS) Registry Numbers, where available.

Pursuant to 40 CFR 2.306(j), it has been determined that it is necessary for Tracor-Jitco to be furnished the information to satisfactorily perform its contract.

The data transmitted to the contractor will not identify the manufacturer or importer of the chemical substance and will not disclose whether the substance is intended to be manufactured or imported. In addition to the chemical substances reported under Section 5 of TSCA, EPA has requested and will continue to request Tracor-Jitco to perform literature searches on other chemical substances whose identities have not been claimed confidential and submitted under any other provisions of TSCA.

Although the transfer of chemical substances claimed confidential without the identity of the manufacturer or importer or the intended use of the substances may not constitute the transfer of confidential business information, EPA decided to treat this information as confidential business information and publish this notice to inform all submitters of information that a transfer will occur.

Tracor-Jitco is legally required under the terms of its contract not to reveal the fact that EPA has requested a particular literature search to anyone outside its organization and to take appropriate measures to safeguard the information collected during literature searches to prevent its unauthorized disclosure. The contractor is prohibited under the terms of its contract to disclose any information collected under this contract to any third party in any form without written authorization from EPA.

Pursuant to the EPA/TSCA Confidential Business Information Security Manual, Tracor-Jitco has been authorized to have access to this information. A security plan for Tracor-Jitco has been approved and EPA's Security and Inspection Division has conducted the required inspection of the Tracor-Jitco facilities and has found them to be in compliance with the requirements of the TSCA Confidential Business Information Security Manual. Tracor-Jitco is required to treat all EPA task orders which identify chemical substances claimed confidential in accordance with EPA's TSCA Confidential Business Information Security Manual.

(Section 5 of TSCA (Pub. L. 94-469, 90 Stat. 2003, 15 U.S.C. 2601 *et seq.*)

Dated: July 23, 1979.

Steven D. Jellinek,  
Assistant Administrator for Toxic Substances.

[FR Doc. 79-23441 Filed 7-27-79; 8:45 am]  
BILLING CODE 6560-01-M

[FRL 1284-3]

**Water Quality Standards; Main Stem of the Ohio River; Corrections**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Correction Notice and Extension of Public Comment Period.

**SUMMARY:** In FR Doc. 79-19410, Thursday, June 21, 1979, at 44 FR 36252, EPA published a notice on Water Quality Standards; Main Stem of the Ohio River. In that document, several errors or incomplete statements appeared which need correction. The corrections are listed below.

**Corrections**

The table and accompanying footnotes on page 36253, Traditional Water Quality Constituents, contain incomplete or inaccurate statements regarding ORSANCO recommendations on dissolved oxygen, temperature, and fecal coliform bacteria. The complete ORSANCO recommendations for these parameters are as follows.

**Dissolved Oxygen:** Concentration shall average at least 5.0 mg/l per calendar day and shall not be less than 4.0 mg/l at any time or any place outside the mixing zone.

**Temperature:** Maximum rise above natural temperature shall not exceed 5 deg. F; in addition the allowable maximum temperature during a month shall not exceed:

**Month and Temperature Deg. F**

January.....	50
February.....	50
March.....	60
April.....	70
May.....	80
June.....	87
July.....	89
August.....	89
September.....	87
October.....	78
November.....	70
December.....	57

Water temperature shall not exceed the maximum limits in the above table during more than one percent of the hours in the 12-month period ending with any month; at no time shall the water temperature at such locations exceed the maximum limits in the table by more than 3 deg. F.

**Fecal coliform for primary recreation:** Content (either MPN or MF count) shall not exceed 200/100 ml as a monthly geometric mean based on not less than five samples per month; nor exceed 400 per 100 ml in more than ten percent of all samples taken during month; these limits are applicable to waters designated for recreational use during the recreation season.

ORSANCO's recommendations also include the following statements on toxic substances, including pesticides, and polychlorinated biphenyls (PCB's). **"Toxic Substances:** Not to exceed one-tenth the 96-hour median tolerance limit; other limiting concentrations may be used when justified on the basis of available evidence and approved by the appropriate regulatory agency."

**"Polychlorinated biphenyls (PCB)**

Total PCB shall not exceed 0.001 microgram per liter; however, when the level is less than the practical laboratory quantification level (currently 0.1 microgram per liter) a fish flesh body burden level in excess of 2 micrograms per gram shall be cause for concern and further investigation."

Both EPA and ORSANCO have other recommendations relating to water quality standards which were not cited in the earlier Federal Register notice because they are either not at issue or are not essential to accomplish the purposes of the notice. However, EPA recognizes that ORSANCO's recommendations include, as do all State standards, narrative criteria defining minimum conditions applicable to all waters, known in the program as the "four free froms", plus a mixing zone provision, allowed by general EPA standards policy, and specific criteria for radionuclides.

**Public Comment Period Extension**

The deadline for submitting comments on the notice published on June 21, 1979, (44 FR 36252) is hereby extended to September 5, 1979.

Swept T. Davis,  
Acting Assistant Administrator for Water and Waste Management.

July 23, 1979.  
[FR Doc. 79-23455 Filed 7-27-79; 8:45 am]  
BILLING CODE 6560-01-M

[FRL 1284-2]

**Ambient Air Monitoring Reference and Equivalent Method Designation: Monitor Labs, Inc., Model 8850 Fluorescent SO<sub>2</sub> Analyzer**

Notice is hereby given that EPA, in accordance with 40 CFR Part 53 (40 FR

7044, February 18, 1975), has designated another equivalent method for the measurement of ambient concentrations of sulfur dioxide. The new equivalent method is an automated method (analyzer) which utilizes a measurement principle based on UV stimulated fluorescence. The method is:

EQSA-0779-039, "Monitor Labs Model 8850 Fluorescent SO<sub>2</sub> Analyzer", operated on a range of either 0-0.5 ppm or 0-1.0 ppm, with an internal time constant setting of 55 seconds, a TFE sample filter installed on the sample inlet line, and with or without any of the following options:

- 03A—Rack.
- 03B—Slides.
- 05A—Valves Zero/Span.
- 06A—IZS, Internal Zero/Span Source.
- 06B, C, D—NBS Traceable Permeation Tubes.
- 08A—Pump.
- 09A—Rack Mount for Option 08A.
- 010—Status Output W/Connector.
- 013—Recorder Output Options.
- 014—DAS Output Options.

This method is available from Monitor Labs, Incorporated, 10180 Scripps Ranch Blvd., San Diego, California 92131.

A notice of receipt of application for this method appeared in the Federal Register, Volume 44, May 23, 1979, page 29971.

A test analyzer representative of this method has been tested by the applicant, in accordance with the test procedures specified in 40 CFR Part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with Part 53, that this method should be designated as an equivalent method.

The information submitted by the applicant will be kept on file at the address shown below and will be available for inspection to the extent consistent with 40 CFR Part 2 (EPA's regulations implementing the Freedom of Information Act).

As an equivalent method, this method is acceptable for use by States and other control agencies for purposes of 40 CFR Part 58, Ambient Air Quality Surveillance (44 FR 27571, May 10, 1979). For such use, the method must be used in strict accordance with the operation or instruction manual provided with the method and subject to any limitations (e.g., operating range) specified in the applicable designation (see description of the method above). Vendor modifications of a designated method used for purposes of Part 58 are permitted only with prior approval of EPA, as provided in Part 53. Provisions concerning modification of such

methods by users are specified under Section 2.8 of Appendix C to Part 58 (44 FR 27585).

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(1) A copy of the approved operation or instruction manual must accompany the analyzer when it is delivered to the ultimate purchaser.

(2) The analyzer must not generate any unreasonable hazard to operators or to the environment.

(3) The analyzer must function within the limits of the performance specifications given in Table B-1 of Part 53 for at least 1 year after delivery when maintained and operated in accordance with the operation manual.

(4) Any analyzer offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with Part 53.

(5) If such an analyzer has one or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been designated as reference or equivalent methods.

(6) An applicant who offers analyzers for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the analyzer has been cancelled or if adjustment of the analyzers is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(7) An applicant who modifies an analyzer previously designated as a reference or equivalent method is not permitted to sell the analyzer (as modified) as a reference or equivalent method (although he may choose to sell it without such representation), nor to attach a label or sticker to the analyzer (as modified) under the provisions described above, until he has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice of a new reference or equivalent method designation for the analyzer as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated non-compliance with any of these conditions should be reported to: Director, Environmental Monitoring and Support Laboratory, Department E (MD-77), U.S. Environmental Protection

Agency, Research Triangle Park, North Carolina 27711.

Designation of this equivalent method will provide assistance to the States in establishing and operating their air quality surveillance systems under Part 58. Additional information concerning this action may be obtained by writing to the address given above.

Stephen J. Gage,  
Assistant Administrator for Research and Development.

[FR Doc. 79-23444 Filed 7-27-79; 8:45 am]  
BILLING CODE 6560-01-M

[FRL 1285-3; OPP-180340]

#### Department of Defense; Issuance of Specific Exemption To Use Parantrophol To Control Fungi Which Deteriorate Leather

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

ACTION: Issuance of a specific exemption.

SUMMARY: EPA has granted a specific exemption to the U.S. Department of Defense (hereafter referred to as the "Applicant") to use parantrophol (PNP) to treat leather military articles in order to prevent the rapid deterioration of these articles by fungi under high humidity. The specific exemption expires on June 16, 1980.

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, the military departments have been treating various leather military articles, of which the most important were boots and shoes, for thirty years. However, this particular use of PNP—treating leather during manufacture for the end use protection of the product against fungal decay—has never been registered. The Applicant has formally applied for registration of PNP for the exclusive purpose of treating military leather articles; however, required toxicity studies will not be completed until 1981. The Applicant is also working on getting registrations for alternative compounds. The Applicant was confronted with the problem of not having a registered

product for use on leather while being required for logistical and contractual reasons to plan in advance for large scale procurements.

Without an efficient fungicide, the cost of replacing shoes would increase significantly because of fungal decay, the Applicant claimed. In addition, the issuance of new shoes and other leather equipment would be delayed. Further delays in issuing contracts would thus progressively result in unsatisfied demands which could result in the Applicant's inability to store sufficient stock to serve as protection against a national emergency.

The Applicant will use a maximum of 175,000 pounds of PNP at a dosage rate of 0.18 to 0.7 percent based on the dry weight of the leather to treat four million pairs of footwear valued at \$65,450,000 and miscellaneous leather items valued at \$200,000. PNP will be applied during the tanning, fat liquoring or other operations of the tanners in preparing finished leather. PNP will be applied by personnel of the tanning companies preparing leather for use in end items to be manufactured for the Applicant.

At least thirteen genera of fungi are known to cause leather deterioration; damage from these fungi occurs not only in humid tropical regions but also in temperate or cold regions where the humidity is in excess of 65%. It is known that during the Korean War, leather shoes not treated with PNP lasted only 10 days in the field. While there are registered fungicide products for treating the surfaces of finished leather for mold/mildew prevention, the Applicant has stated that these products are not practical under field use. There appears to be no registered fungicide that (1) is applied during the manufacturing process; and (2) has a claim for preventing mold/mildew on the finished product. Many fungicides are applied to leather during the tanning process, but the intent is to protect the leather during this process and not for end use.

Paranitrophenol has been used by the Applicant for over thirty years. During this period, no adverse effects have so far been reported other than some irritation when treated leather was applied directly to the skin. There appear to be no significant health hazards associated with the use of PNP for this purpose. However, there is a potential human health hazard associated with mold/mildew on leather. One of the fungal genera, *Aspergillus*, is also capable of causing Aspergillosis, which is a disease of the lungs in humans.

After reviewing the application and other available information EPA has

determined that (a) an emergency situation has occurred; (b) there is no pesticide presently registered and available for use to control these fungi during manufacture for end use protection; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic or potential health problems may result if the fungi 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 16, 1980, to the extent and in the manner set forth in the application. The specific exemption is also subject to the following conditions:

1. The fungicide paranitrophenol (PNP) is authorized;
2. The dosage rate for PNP may be from 0.18 to 0.7 percent based on the dry weight of the leather, to be applied during the tanning, fat liquoring, or other operations performed by tanners in the preparation of finished leather;
3. PNP shall be used by the personnel of tanning companies preparing leather for use in end items to be manufactured for the Applicant;
4. In addition to boots and shoes, the following items may be made from leather treated with PNP: footwear counters, money bags, pocket ammunition magazines, policeman's club carriers, side arm shoulder straps, police security belts, handcuff cases, first aid dressing cases, flagstaff slings, cartridge belt holders, and dispatch cases;
5. None of the items made from PNP-treated leather shall be intended for direct human skin contact;
6. A maximum of 175,000 pounds of PNP may be used;
7. The Applicant is responsible for insuring that all of the provisions of this specific exemption are met and must submit a report summarizing the results of this program by December 16, 1980; and
8. The EPA shall be immediately informed of any adverse effects occurring to man or the environment resulting from this specific exemption.

(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: July 23, 1979.

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

[FR Doc. 79-23454 Filed 7-27-79; 9:45 am]

BILLING CODE 6560-01-M

[FRL 1285-2; OPP-180337]

**New Hampshire, New Jersey, New York, Oregon, Vermont, and Washington, Issuance of Specific Exemptions To Use Mesurol on Blueberries as a Bird Repellent**

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

**ACTION:** Issuance of specific exemptions.

**SUMMARY:** EPA has granted specific exemptions to the New Jersey Department of Environmental Protection; the New York Department of Environmental Conservation; and the New Hampshire, Oregon, Vermont, and Washington Departments of Agriculture (hereafter referred to as "New Jersey," "New York," "New Hampshire," "Oregon," "Vermont," "Washington," or the "Applicants") to use Mesurol as a bird repellent on 700 acres of blueberries in New Jersey, 500 acres in New York, 2,700 acres in New Hampshire, 500 acres in Oregon, 50 acres in Vermont, and 800 acres in Washington. The specific exemptions expire 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:** Starlings, grackles, robins, and blackbirds are the predominant species responsible for significant losses in blueberry production in New Jersey, New York, New Hampshire, Oregon, Vermont, and Washington.

The birds begin feeding on the earliest maturing varieties as the fruit ripens and continue through maturity and harvest. The Applicants state that bird damage in the form of predation is ever-present, and current methods of control (distress baits, chemosterilants, noise devices, alarms, and netting) are not effective, or are not economically feasible.

If Mesurol is not available, New Jersey estimates a loss of approximately

\$945,000; New York, a loss of \$420,000 to \$1,050,000; New Hampshire, a loss of \$160,000; Oregon, a loss of \$500,000; Vermont, a loss of \$75,000; and Washington, a loss of \$168,000 due to bird damage to this year's blueberry crop.

The Applicants requested that EPA allow application of Mesurol 75% Wettable Powder, EPA Reg. No. 3125-288, which contains the active ingredient (a.i.) 3,5-dimethyl-4-(methylthio)phenyl methylcarbamate.

EPA has established permanent tolerances for residues of the active ingredient on fruits with similar physiological characteristics, such as cherries at 25 parts per million (ppm) and peaches at 15 ppm. A temporary tolerance of 30 ppm has been established for residues of the active ingredient on blueberries and the proposed use should not exceed that level. This use is not expected to pose an unreasonable hazard to the environment.

After reviewing the applications and other available information, EPA has determined that (a) pest outbreaks of depreddating birds have occurred or are about to occur in blueberry fields; (b) there is no pesticide presently registered and available for use to control depreddating birds in New Jersey, New York, New Hampshire, Oregon, Vermont, and Washington; (c) there are no alternative means of control, taking into account the efficacy and hazard; (d) significant economic problems may result if the depreddating 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 Applicants have been granted specific exemptions to use the pesticide noted above until September 30, 1979, to the extent and in the manner set forth in the applications. The specific exemptions are also subject to the following conditions:

1. The product Mesurol 75% Wettable Powder, EPA Reg. No. 3125-288, is authorized;

2. A maximum application rate of 2.67 pounds of formulation (2.0 pounds a.i.) per acre per application in not less than five gallons of water is authorized;

3. A maximum of three applications may be made, not to exceed 6.0 pounds of formulation (4.5 pounds a.i.) per acre per season;

4. A maximum of 3,150 pounds a.i. may be applied to 700 acres of blueberries in New Jersey. A maximum of 2,250 pounds a.i. may be applied to 500 acres in New York. A maximum of 11,700 pounds a.i. may be applied to

2,700 acres in New Hampshire. A maximum of 2,250 pounds a.i. may be applied to 500 acres in Oregon. A maximum of 225 pounds a.i. may be applied to 50 acres in Vermont. A maximum of 3,600 pounds a.i. may be applied to 800 acres in Washington;

5. A seven-day interval between applications must be observed;

6. Applications may be made with ground or aerial equipment;

7. Applications shall be made by State-certified private applicators or State-licensed commercial applicators;

8. Blueberries with residue levels not exceeding 30 ppm for the a.i. 3,5-dimethyl-4-(methylthio)phenyl methylcarbamate may enter interstate commerce. The Food and Drug Administration, U.S. Department of Health, Education, and Welfare, has been advised of this action;

9. Mesurol is toxic to fish. It must be used with care when applied in areas adjacent to any body of water. It may not be applied when weather conditions favor run-off or drift from treated areas;

10. All applicable precautions, directions, and restrictions on the EPA-accepted label must be adhered to;

11. The EPA must be immediately informed of any adverse effects resulting from this use of Mesurol; and

12. The Applicants are each responsible for ensuring that all of the provisions of that State's specific exemption are followed and must submit a final report summarizing the results of the program by December 31, 1979.

(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: July 23, 1979.

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

[FR Doc. 79-23453 Filed 7-27-79; 8:45 a.m.]  
BILLING CODE 6560-01-M

[FRL 1283-5; OPP-50435]

#### Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of

No. 478-EUP-73. Stauffer Chemical Company, Richmond, CA 94804. This experimental use permit allows the use of approximately 1,480 pounds (2,080 pounds originally authorized) of the insecticide N-(Mercaptomethyl) phthalimide S-(O,O-

dimethyl phosphorodithioate) and 10,499 pounds (14,755 pounds originally authorized) of petroleum oil on forest acres to evaluate control of spruce budworm. A total of 750 acres is involved; the program is authorized only in the State of Montana. The experimental use permit is effective from June 8, 1979 to June 8, 1980. (PM-15, Jay Ellenberger, Room: E-329, Telephone: 202/426-9490)

No. 1471-EUP-69. Elanco Product Company, Indianapolis, IN 46206. This experimental use permit allows the use of 19,080 pounds of the herbicide oryzalin on wheat to evaluate control of weeds. A total of 19,080 acres is involved; the program is authorized only in the States of Alabama, Arkansas, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maryland, Mississippi, Missouri, New Jersey, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Texas, and Virginia. The experimental use permit is effective from July 9, 1979 to July 9, 1980. A temporary tolerance for residues of the active ingredient in or on wheat has been established. (PM-25, Robert Taylor, Room: E-301, Telephone: 202/755-7013)

No. 36638-EUP-2. Conrel, Needham Heights, MA 02194. This experimental use permit allows the use of approximately 3.04 pounds of the insecticide cis-7,8, epoxy-methyloctadecane on forest acres to evaluate control of gypsy moth. A total of 40 acres is involved; the program is authorized only in the State of Massachusetts. The experimental use permit is effective from June 7, 1979 to June 5, 1980. (PM-17, Franklin Gee, Room: E-341, Telephone: 202/426-9417)

Interested parties wishing to review the experimental use permits are referred to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Washington, D.C. 20460. The descriptive paragraph for each permit contains a telephone number and room number for information purposes. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate permit may be made conveniently available for review purposes. The files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Statutory authority: Section 5 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 July 20, 1979.

Douglas D. Camp, Jr.  
 Director, Registration Division.  
 [FR Doc. 79-23440 Filed 7-28-79; 8:45 am]  
 BILLING CODE 6560-01-M

[FRL 1285-7]

### Unleaded Gasoline Regulations; Clarification of Emergency Exception

AGENCY: Environmental Protection Agency.

ACTION: Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) clarifies what constitutes a *bona fide* emergency for purposes of avoiding liability for introducing leaded gasoline into a vehicle requiring unleaded gasoline.

**FOR FURTHER INFORMATION CONTACT:** Robert A. Weissman, Attorney, Mobile Source Enforcement Division, at 202-755-2816.

**SUPPLEMENTARY INFORMATION:** On January 10, 1973, EPA published a rule (40 CFR 80.22(a)) prohibiting a retailer from introducing or causing or allowing the introduction of leaded gasoline into any motor vehicle which is labeled "unleaded gasoline only," or which is equipped with a gasoline tank filler inlet which is designed for the introduction of unleaded gasoline. 39 Fed. Reg. 1254. On December 12, 1974 EPA published a limited exception to the general prohibition of section 80.22(a). 38 Fed. Reg. 43281. The exception provides that in order to avoid liability, the party

deemed in violation will be required demonstrate that the introduction of the leaded gasoline into the vehicle was in response to a *bona fide* emergency and that only as much leaded fuel as was reasonably necessary to alleviate the circumstances of the particular emergency was introduced into the vehicle.

When the emergency provision was promulgated on December 12, 1974, EPA was concerned that not all stations had been able to secure supplies of unleaded gasoline. Circumstances arose where motorists, particularly in remote areas of the country, were unable to find unleaded gasoline. Therefore, the emergency provision was enacted to prevent motorists from being literally stranded away from home when they ran out of gasoline and could not find unleaded gasoline anywhere within the driving range remaining for the vehicle; it was not intended to address an overall gasoline shortage or unleaded gasoline shortage, particularly in urban areas where numerous gasoline retail outlets exist.

In the preamble to the rule establishing the exception, EPA described what type of situation would be considered an emergency. However, in response to numerous questions that have been received, the Agency is reiterating the policy that was established at that time.

The retailer who introduces the leaded fuel must have no unleaded fuel at his station. The gasoline tank of the vehicle must be almost empty and there must be no other station within a

several mile radius that is available to dispense unleaded gasoline. The retailer can introduce only enough leaded fuel to enable the motorist to reach the closest open station with unleaded gasoline, or the motorist's destination, whichever is closer.

As EPA stated in 1974, the exception is to be interpreted extremely narrowly. A general gasoline shortage, or even a shortage of unleaded gasoline, does not constitute a *bona fide* emergency for purposes of this exception. In a situation where one retail outlet is out of unleaded gasoline but there are other stations with unleaded gasoline nearby, no *bona fide* emergency exists. We believe it is reasonable to expect that retailers will assess the unleaded gasoline availability in their immediate area just as they assess the pricing by competitive stations.

Before a retailer may introduce leaded gasoline he must have a reasonable basis for believing an emergency exists. If he does not have a reasonable basis, he will be considered liable for introducing leaded gasoline into the vehicle requiring unleaded fuel. As indicated in 40 CFR 80.23(e)(2), the retailer has the burden of establishing that the conduct was in response to a *bona fide* emergency. As set out at 40 CFR 80.5, the penalty for violation of 40 CFR 80.22(a) is up to \$10,000 per violation.

Marvin B. Durning,  
 Assistant Administrator for Enforcement.

[FR Doc. 79-23439 Filed 7-27-79; 8:45 am]  
 BILLING CODE 6560-01-M

## FEDERAL COMMUNICATIONS COMMISSION

### Notification List: Mexican Standard Broadcast Stations

List of new stations, proposed changes in existing stations, deletions and corrections in assignments of Mexican standard broadcast stations modifying the assignments of Mexican broadcast stations contained in the Appendix to the Recommendations of the North American Regional Broadcasting Agreement Engineering Meeting, January 30, 1941.

#### Mexican List No. 289—March 1, 1979

Call letters	Location	Power (watts)	Antenna radiation mv/m/kw	Schedule	Class	Antenna height (ft)	Ground system		Proposed date of change or commencement of operation
							No. radials	Length (ft)	
(New)	Santiago Pa. Dgo. N. 25°03'36" W. 105°23'48" D 640 kHz	.500	ND-D-175	560kHz	III	352	120	369	Sept. 1, 1979.
XEEMM	Salamanca, Gto. N. 20°33'47" W. 101°21'58"	1,000	BA-D	D 660kHz	II				Do.
(New)	Monterrey, N.L. N. 25°36'57" W. 100°21'03"	10,000	DA-D	D 690kHz	II				Do.
XEMA	Fresnillo, Zac. N. 23°10'58" W. 102°53'46" (PO 1340 kHz)	5,000D/ .250N	ND-U-188	U	II	357	110	357	Do.

Call letters	Location	Power (watts)	Antenna radiation mV/m/kw	Schedule	Class	Antenna height (ft)	Ground system		Proposed date of change or commencement of operation
							No. radiats	Length (ft)	
XEDKR	Guadalajara, Jal. N. 20°38'8" W. 103°20'24" (Shares antenna with XEDK, 1250 kHz)	1.000	ND-D-172	700kHz D	H	316	120	245	Immediately.
XELTZ	Loreto, Zac. N. 22°16'16" W. 101°58'56" (PO 1260 kHz)	1.000D/ .250N	ND-U-175	740kHz U	II	306	120	253	Sept. 1, 1979.
XEZV	Tiapa, Gro. N. 17°32'00" W. 98°32'00"	1.000	ND-D-175	800 kHz D	II	308	120	216	Do.
XEIN	Cintalapa, Chis. N. 16°41'42" W. 93°42'23" (See 1450 kHz)	1.000	ND-D-175	810 kHz D	II	304	90	243	Do.
XENL	Monterrey, N.L. N. 25°40'11" W. 100°18'27" (Shares antenna with XEIZ, 1240 kHz)	5.000D/ 2.000N	ND-D-190 DA-N	860 kHz U	II	285	120	285	Immediately.
XETZ	Zapopan, Jal N. 20°37'21" W. 103°39'46" (PO 1/kw/D ND-D-181)	10.000	ND-D-189	880 kHz D	II	297	120	268	Do.
XECAA	Calvillo, Ags. N. 21°51'00" W. 102°43'22"	1.000D/ .100N	ND-U-181	950 kHz U	III	230	120	230	Do.
XEMH	Merida, Yuc. N. 20°56'45" W. 89°36'10" (Shares antenna with XEHQ, 1240 kHz)	1.000D/ .100N	ND-U-182	970 kHz U	III	246	90	246	Do.
(New)	Rio Bravo, Tam. N. 25°58'00" W. 98°06'45" (Assignment deleted)	.250	ND-D-175	1000 kHz D	II	194	90	236	
XEPU	Monclova, Coah. N. 26°54'14" W. 101°24'45"	.250	ND-D-187	1110 kHz D	II	213	120	213	Sept. 1, 1979.
XEUK	Caborca, Son. N. 30°41'50" W. 112°09'29" (Change to 1470 kHz)	.250	DA-D	1120 kHz D	II				
XERRF	Merida, Yuc. N. 21°00'13" W. 89°35'48" (Shares antenna with XEFC, 1330 kHz)	1.000D/ .350N	ND-U-177	1150 kHz U	III	197	90	194	Immediately.
XEPA	Cd. Juarez, Chih. N. 31°42'48" W. 106°26'45" (Shares antenna with XEP, 1300 kHz)	1.000	ND-D-173	1190 kHz D	II	207	120	135	Do.
(New)	Montemorelos, N.L. N. 25°10'52" W. 99°51'34"	1.000	ND-D-174	1200 kHz D	IV	228	120	120	Sept. 1, 1979.
XEIZ	Monterrey, N.L. N. 25°40'11" W. 100°18'27" (Shares antenna with XENL, 860 kHz)	.500D/ .250N	ND-U-223	1240 kHz U	IV	265	120	265	Immediately.
XEMQ	Merida, Yuc. N. 20°56'45" W. 89°36'10" (Shares antenna with XEMH, 970 kHz)	1.000D/ .250N	ND-U-202	1240 kHz U	IV	246	90	246	Do.
XEDK	Guadalajara, Jal. N. 20°38'28" W. 103°20'24" (Shares antenna with XEDKR, 700 kHz)	5.000D/ 1.000N	ND-U-223	1250 kHz U	III	316	120	245	Do.
XELTZ	Loreto, Zac. N. 22°16'16" W. 101°58'56" (Change to 740 kHz)	.500	ND-D-179	1260 kHz D	III	177	120	164	
XEHD	Durango, Dg. N. 24°01'31" W. 104°40'11"	.500	ND-D-175	1270 kHz D	III	155	120	155	Immediately
XEP	Cd. Juarez, Chih. N. 31°42'48" W. 106°26'45" (Shares antenna with XEYC, 1480 kHz)	1.000D/ .500N	ND-U-177	1300 kHz U	III	207	120	135	Do.
XEC	Tijuana, BCN N. 32°31'15" W. 117°01'16"	.250D/ .250N	ND-U-190	1310 kHz U	III	187		187	Do.

Call letters	Location	Power (watts)	Antenna radiation mv/m/kw	Schedule	Class	Antenna height (ft)	Ground system		Proposed date of change or commencement of operation
							No. radials	Length (ft)	
XEVB	Villa de Juarez, N.L. N. 25°39'00"W. 100°05'30" (Assignment deleted)	1.000D/ .250N	ND-U-185.....	1310 kHz U	III	184	120	172	
XEVB	Monterrey, N.L. N. 25°41'04"W. 100°18'59" Tizimin, Yuc. N. 21°06'56"W. 88°09'25"	.500D/ .250N	ND-U-175.....	1310 kHz U	III	188	120	129	Sept. 1, 1979.
XEUP		1.000D/ .250N	ND-U-190.....	1310 kHz U	III	187	120	187	Immediately.
XEBO	Irapuato, Gto. N. 20°37'52"W. 101°21'32"	5.000D/ 1.000N	ND-D-184..... DA-N.....	1330 kHz U	III	185	120	185	Do.
XEFC	Merida, Yuc. N. 21°00'13"W. 89°35'48" (Shares antenna with XERRF, 1150 kHz) (PO 1/kw/U ND-U-188)	3.000D/ 1.000N	ND-U-188.....	1330 kHz U	III	197	90	194	
XERUY	Merida, Yuc. N. 20°52'17"W. 89°37'39"	1.000D/ .250N	ND-U-190.....	1400 kHz U	IV	177	120	177	Do.
XEIN	Cintalapa, Chis. N. 16°41'58"W. 93°43'24" (Assignment deleted)	1.000D/ .200N	ND-D-175 DA-N..	1450 kHz U	IV	246	120	246	
XEYC	Cd Juarez, Chih. N. 31°42'48"W. 106°26'45" (Shares antenna with XEPZ, 1190 kHz)	1.000D/ 1.000N	ND-U-187.....	1460 kHz U	III	207	120	135	Immediately.
XEUK	Caborca, Son. N. 30°43'00"W. 112°20'50" (PO 1120 kHz)	.500	ND-D-190.....	1470 kHz D	III	167	120	167	Sept. 1, 1979.
XEQI	Monterrey, N. L. N. 25°45'24"W. 100°17'54"	10.000	ND-D-190.....	1510 kHz D	II	163	120	163	Immediately.
(New)	Panuco, Ver. N. 22°00'00"W. 98°12'18"	1.000	ND-D-190.....	1510 kHz D	II	163	120	163	Sept. 1, 1979.
XEYK	Motul, Yuc. N. 21°43'10"W. 89°17'30"	.250	ND-D-175.....	1540 kHz D	II	148	120	148	Do.
XEMA	Fresnillo, Zac. N. 23°10'26"W. 102°52'58" (Change to 690 kHz) (Shares antenna with XEQS, 1470 kHz)	1.000D/ .250N	ND-U-193.....	1540 kHz U	IV	197	120	197	
XERUV	Jalapa, Ver. N. 19°31'35" W. 96°54'51" 10.000N1114ND-U-175	10.000D/ 10.000N1114ND-U-175		1550 kHz U	I-B	131	90	131	Sept. 1, 1979.
XERIO	Ixtlan Del Rio, Nay N. 21° 03' 33" W. 104° 21' 20"	5.000	ND-D-190.....	1560 kHz D	II	155	120	155	Do.

Richard J. Shiben,  
Chief, Broadcast Bureau, Federal Communications Commission.  
[FR Doc. 79-23388 Filed 7-27-79; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL MARITIME COMMISSION

### Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as

amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10423 or may inspect the

agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary.

Federal Maritime Commission, Washington, D.C., 20573, on or before August 20, 1979. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No.: T-2966-A-2.

Filing Party: J. L. Haskell, Deputy Port Director, City of Milwaukee Board of Harbor Commissioners, 500 North Harbor Drive, Milwaukee, Wisconsin 53202.

Summary: Agreement No. T-2966-A-2, between the City of Milwaukee (City) and Domtar Industries, Inc. (Domtar), modifies the parties' basic agreement which provides for the five-year lease of 4.004 acres of land on the South Harbor Tract to be used as a storage and distribution terminal. The purpose of the modification is to extend the lease for five years, and increase the monthly rental to \$1,700. The amendment further provides that Domtar will pay the cost of blacktopping an area within the leasehold, subject to City's approval.

Agreement No.: T-2969-2.

Filing Party: Richard L. Landes, Deputy, Harbor Branch Office, City Attorney of Long Beach, Harbor Administration Building, P.O. Box 570, Long Beach, California 90801.

Summary: Agreement No. T-2969-2, between the City of Long Beach (City) and Exxon Corporation (Exxon), modifies the parties' basic agreement, which provides for the 36-year exclusive lease to Exxon of certain land and water areas; and exclusive license for construction and operation of certain pipeline; and a tertiary berth assignment for the use of wharf and wharf premises located at Long Beach, California (premises). The premises will continue to be used for the receipt, handling, loading, unloading, transporting and storage of Exxon's petroleum products in connection with its fuel bunkering services. The purpose of this amendment is to increase the amount of reimbursement to Exxon for the relocation of certain pipes, valve boxes and pertinent facilities as a result of additional necessary work not known to be required at the time the first amendment to the lease (Agreement No. T-2969-1) was executed.

Agreement No. T-3828.

Filing Party: Mr. Richard H. Van Derzee, Chairman, Law and Legislation Committee, c/o Niagara Frontier Transportation Authority, 901 Fuhrmann Boulevard, Buffalo, New York 14203.

Summary: Agreement No. T-3828, among the Albany Port District Commission; Niagara Frontier Transportation Authority; Ogdensburg Bridge & Port Authority; Port of Oswego Authority; and the City of Rochester, provides for the creation of a council to be known as the Council of Upstate Ports of New York (CUPNY) to govern the parties' operations at the upstate ports of the State of New York. The agreement provides for the parties to: (1) assess and collect all terminal rates and/or charges for or in connection with traffic handled by them within this agreement's scope, and as prescribed in tariffs filed by CUPNY or its individual members with the Commission; (2) establish, maintain, publish and file tariffs, tariff additions, and supplements; (3) give Council members prior notice of all changes in said rates, charges, classifications, rules, regulations and practices in order to afford them the opportunity for consultation relative to such changes and before publication thereof. Tariff changes will not become effective until after 30 days' notice to the public, unless good cause exists for a change on shorter notice. Admission to the CUPNY is open to any Upstate Port of New York engaged in the business of furnishing wharfage, dockage, or other marine terminal facilities or services upon a majority vote of the members of CUPNY.

Agreement No: T-3835.

Filing Party: Richard L. Landes, Deputy, City Attorney of Long Beach Harbor Branch Office, Harbor Administration Building, Post Office Box 570, Long Beach, California 90801.

Summary: Agreement No. T-3835, between the City of Long Beach (City) and West Coast Warehouse Corporation (West Coast), provides for the lease of three parcels of land and office space to be used for the storage of commodities, offices in connection with West Coast's warehouse and trucking business, and for the repair, maintenance and storage of West Coast's vehicles and warehouse equipment. As monthly rental for the three parcels of land, West Coast shall pay City the sum of \$6,335. The term of the lease is one year.

Agreement No. 9238-9.

Filing Party: Marc J. Fink, Esq., Billig, Sher & Jones, P.C., Suite 300, 2033 K Street, N.W., Washington, D.C. 20006.

Summary: Agreement No. 9238-9 amends the Greece/United States Atlantic Rate Agreement for the purposes of (1) increasing, from two to five days, the written notice period required before a party can take independent action as to rates; (2) increasing the financial guarantee required of each party from \$10,000 to \$50,000; and (3) providing that the parties may agree upon and publish uniform credit rules.

Agreement No. 10348-1.

Filing Party: Jorge Luis Wachter, Executive Administrator, Conferencia Interamericana de Fletes—Sección "B", Lavalle 381—8° Piso (1047), Buenos Aires, Argentina.

Summary: Agreement No. 10348-1 amends the Argentina/U.S. Gulf Pooling Agreement which provides for a cargo revenue pooling and sailing agreement in the trade from Argentina to the U.S. gulf. The purpose of the amendment is to: (1) change the name of one

of the parties from The Northern Pan-American Line, A/S to Oivind Lorentzen, Ltd. (NOPAL) in Article 2(a) and on the signature page of the basic agreement, and (2) modify Article 7 c) IX so as to clarify the distribution made under pool payments. Pool payments shall be made in accordance with credit from overcarriage penalty, less undercarriage forfeiture. With reference to the credit derived from the overcarriage penalty, which is forfeited by the undercarrier as per Article 7 c) VIII of the basic agreement, it will be distributed among the overcarriers and the undercarriers whose contribution to the pool fund is not under 85 percent of their share and in proportion to their respective shares.

Agreement No. 10375.

Filing Party: Peter P. Wilson, Senior Counsel, Matson Navigation Company, P.O. Box 3933, San Francisco, California 94119.

Summary: Agreement No. 10375, between Korea Marine Transport Company, Limited (KMTC) and Matson Agencies Division of Matson Navigation Company (Matson) provides that KMTC will appoint Matson as its husbanding agent for all vessels in non-container service owned, chartered, or managed by it in the States of Alaska, California, Hawaii, Oregon, and Washington.

By Order of the Federal Maritime Commission.

Dated: July 25, 1979.

Francis C. Hurney,  
Secretary.

[FR Doc. 79-23404 Filed 7-27-79; 8:45 am]  
BILLING CODE 6730-01-M

[Docket No. 79-50]

**Inquiry Regarding the United Nations Convention on Code of Conduct for Liner Conferences**

**AGENCY:** Federal Maritime Commission.

**ACTION:** Enlargement of Time to Comment.

**SUMMARY:** Notice of Inquiry in subject proceeding was published in the Federal Register of May 16, 1979 (44 FR 28724). Responses are presently due on July 16, 1979. The Washington Representative of CENSA has requested an extension of time until August 31, 1979 within which to respond. The fact that a study group has been assigned to this matter and is nearing completion of a draft report which must be distributed to member associations scattered throughout the world is cited as the reason for the request. We are anxious to obtain the views of CENSA on this matter and therefore are in favor of granting the extension. This delay will not be critical because it is not contemplated that a rule will issue from this proceeding.

**DATES:** Comments on or before August 31, 1979.

**ADDRESS:** Comments (original and fifteen copies) to: Secretary, Federal

Maritime Commission, Washington, D.C. 20573.

**FOR FURTHER INFORMATION CONTACT:** Secretary, Federal Maritime Commission, 1100 L Street, N.W., Room 11101, Washington, D.C. 20573.

By the Commission.

Francis C. Hurney,  
Secretary.

[FR Doc. 79-23403 Filed 7-27-79; 8:45 am]

BILLING CODE 6730-01-M

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Health Resources Administration

#### Health Professions Loan Repayment Program

**AGENCY:** Health Resources Administration.

**ACTION:** Notice of Phase-out of Loan Repayment Program.

**SUMMARY:** This is to give notice that the Health Resources Administration will no longer accept applications for Agreements for Loan Repayment under section 741(f) of the PHS Act in return for an individual's practicing in a health manpower shortage area. A phase-out period is provided for National Health Service Corps and Indian Health Service members.

**EFFECTIVE DATE:** Immediately.

**FOR FURTHER INFORMATION CONTACT:** Mr. John F. Belin, Chief, Student and Institutional Assistance Branch, Division of Manpower Training Support, Bureau of Health Manpower, Room 5-50, Health Resources Administration, 3700 East West Highway, Center Building, Hyattsville, Maryland 20782, (telephone: (301) 438-8310).

**SUPPLEMENTARY INFORMATION:** This is to give notice that, except as specified below, the Health Resources Administration will no longer accept applications under section 741(f) of the Public Health Service Act to enter an agreement to practice in a shortage area under which a portion of an individual's educational loans are repaid in return for the individual's agreeing to practice as a physician (M.D. or D.O.), dentist, optometrist, podiatrist, veterinarian or pharmacist in a designated health manpower shortage area. This decision is based on the fact that insufficient Federal funds are available for the repayment of educational loans beyond those described below.

Under section 741(f), the Secretary is authorized to enter into agreements with individuals who have received a degree

of doctor of medicine, doctor of osteopathy, doctor of dentistry or an equivalent degree, doctor of veterinary medicine or an equivalent degree, doctor of optometry or an equivalent degree, doctor of podiatry or an equivalent degree, or bachelor of science in pharmacy or an equivalent degree to repay a portion of certain educational loans in return for their practicing in a health manpower shortage area as a member of the National Health Service Corps or otherwise.

There are individuals who have applied for assignment in the National Health Service Corps (NHSC) and Indian Health Service (IHS) of the Public Health Service based on commitments made during their recruitment that agreements for loan repayment were available to them as members of the NHSC and IHS. The Health Resources Administration believes that these commitments must be honored. Therefore, these individuals who, by the date of the publication of this Notice in the Federal Register, have applied for assignment and have been matched with an eligible practice site by the National Health Service Corps or Indian Health Service may apply to enter into an agreement for loan repayment. All applications for loan repayment agreements must be received by April 1, 1980.

Dated: July 18, 1979.

Henry A. Foley,  
Administrator, Health Resources  
Administration.

[FR Doc. 79-23343 Filed 7-27-79; 8:45 am]

BILLING CODE 4110-83-M

### Health Services Administration

#### Primary Health Care Advisory Committee; Establishment

Pursuant to the Federal Advisory Committee Act, Public Law 92-463 (5 U.S.C. Appendix I), the Health Services Administration announces the establishment by the Secretary, HEW, of the Primary Health Care Advisory Committee on July 13, 1979, pursuant to section 340A(c) of the Public Health Service Act, as amended.

**Designation:** Primary Health Care Advisory Committee.

**Purpose:** The Committee will review applications for grants and contracts in order to make recommendations to the Secretary with respect to (1) the capabilities of applicants for grants and contracts under subsection (a) of section 340A of the Public Health Service Act, to effectively carry out the projects for which the grants and contracts would be

made; (2) the renewal of grants and contracts under such subsection; and (3) the evaluation to be made under section 106(b) of the Migrant and Community Health Centers Amendments of 1978.

Authority for this Committee is continuous and a charter will be filed every two years in accordance with section 14(b)(2) of Public Law 92-462.

Dated: July 23, 1979.

William H. Aspden, Jr.,  
Associate Administrator for Management.

[FR Doc. 79-23305 Filed 7-27-79; 8:45 am]

BILLING CODE 4110-84-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Secretary

[Docket No. N-79-939]

#### Proposed New System of Records

**AGENCY:** Department of Housing and Urban Development.

**ACTION:** Notice of proposed new system of records.

**SUMMARY:** The Department is giving notice of a new system of records it intends to maintain that is subject to the provisions of the Privacy Act of 1974.

**EFFECTIVE DATE:** This system of records shall become effective without further notice on August 29, 1979, unless comments are received on or before August 29, 1979, which would result in a contrary determination.

**ADDRESS:** Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

**FOR FURTHER INFORMATION CONTACT:** Mr. Harold Rosenthal, Departmental Privacy Act Officer, Telephone (202) 755-5192.

**SUPPLEMENTARY INFORMATION:** The new system identified as Section 518 Files consists of manual records of HUD insured owners of one-to-four family dwellings who filed complaints because of major defects found in their homes. The personal data included in this system are: name, address, telephone number, property inspection report, relevant claim information and disposition of claim.

A new system report was filed with the Speaker of the House, the President of the Senate and the Office of Management and Budget on May 29, 1979. The prefatory statement containing General Routine Uses applicable to all of the Department's systems of records was published at 43 FR 55105 (November 24, 1978). Appendix A, which

lists the addresses of HUD's field offices, was published at 43 FR 55121 (November 24, 1978).

The Department's Atlanta Regional Officer moved to Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Ga. 30303.

#### HUD/H-6

##### SYSTEM NAME:

Section 518 Files.

##### SYSTEM LOCATION:

HUD field offices.

##### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

HUD insured owners of one-to-four family dwellings who filed claims because of structural or other major defects found in their homes.

##### CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, home phone number, property inspection report, disposition of claim information and other information pertinent to the claim.

##### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine Uses paragraphs in prefatory statement. Other routine uses: none.

##### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

##### STORAGE:

In file folders.

##### RETRIEVABILITY:

Name, case number, and claim number.

##### SAFEGUARDS:

Records are kept in lockable file cabinets with access limited to authorized personnel.

##### RETENTION AND DISPOSAL:

Records are retained for six years and then disposed.

##### SYSTEM MANAGER AND ADDRESS:

Director, Office of Organization and Management Information, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

##### NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

##### RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

##### CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) in relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

##### RECORD SOURCE CATEGORIES:

Subject individuals and Departmental records.

(5 U.S.C. 552a, 88 Stat. 1896; sec. 7(d) Department of HUD Act (42 U.S.C. 3535(d)).) Issued at Washington, D.C., July 16, 1979.

Vincent J. Hearing,  
Deputy Assistant Secretary for  
Administration.

[FR Doc. 79-23289 Filed 7-27-79; 8:45 am]  
BILLING CODE 4210-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

#### California; Order Providing for Opening of Public Lands; Correction

July 20, 1979.

In FR Doc. 79-21482 appearing on pages 40725 and 40726, in the issue of Thursday, July 12, 1979, make the following corrections:

(1) On page 40725 the first line CA-334 should be corrected to read CA-344.

(2) On page 40726 paragraph three, the first sentence reads At 10 a.m. on August 13, 1979, the land shall be open to operation of the public land laws, generally, subject to valid existing rights, the provisions of existing rights, and the requirements of applicable law. This sentence is corrected to read At 10 a.m. on August 13, 1979, the land shall be open to operation of the public land laws generally, including the mining laws (30 U.S.C. Ch. 2), and the mineral leasing laws, subject to valid existing rights, the provisions of existing

withdrawals and the requirements of applicable law.

Joan B. Russell,  
Chief, Lands Section, Branch of Lands and Minerals Operations,

[FR Doc. 79-23296 Filed 7-27-79; 8:45 am]  
BILLING CODE 4310-84-M

[Colorado 27763]

#### Invitation to Join in Coal Exploration Program

July 20, 1979.

Pursuant to Section 2(b) of the Mineral Leasing Act of February 25, 1920, as amended by Section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 1085, 30 U.S.C. 201(b) and to the regulations adopted as Subpart 3507 of Title 43 of the Code of Federal Regulations (published in the Federal Register, Volume 42 at pages 4457-4460 on January 25, 1977) members of the public are hereby invited to participate with The Pittsburg & Midway Coal Mining Co., Missouri Corporation, in a program for the exploration of coal deposits owned by the United States of America in the following described lands located in Rio Blanco County, Colorado:

T2N, R93W, 6th P.M.

Sec. 4, Lots 4, 10, 12, 28, 29, 30, S½SW¼;  
Sec. 5, Lots 4, 13, SW¼NW¼, W½SW¼,  
S½SE¼;

Sec. 6, Lots 1 through 7, S½NE¼,  
SE¼NW¼, E½SW¼, SE¼ (All);

Sec. 7, E½, E½NW¼;

Sec. 8, All;

Sec. 9, W½;

Sec. 16, NW¼NW¼;

Sec. 17, NE¼NE¼.

T3N, R93W, 6th P.M.

Sec. 28, SW¼;

Sec. 29, S½S½;

Sec. 30, Lots 3, 4, E½NW¼, E½SW¼;

Sec. 31, Lots 1 through 4, E½, E½W½ (All);

Sec. 32, All;

Sec. 33, NW¼NW¼.

T3N, R94W, 6th P.M.

Sec. 25, All.

The above contained 5093.43 acres more or less.

Any party electing to participate in this exploration program must send written notice of that election to the Bureau of Land Management and to The Pittsburg & Midway Coal Mining Co. directed to the following persons at the addresses shown:

Leader, Craig Team, Branch of Adjudication, Bureau of Land Management, Room 700, Colorado State Bank Bldg., 1600 Broadway, Denver, Colorado 80202, and Mr. R. Doyle Whitmer, The Pittsburg & Midway Coal Mining Co., 1720 So. Bellaire, Denver, Colorado 80222.

Such written notice must be received by these persons at the addresses shown

above not later than 10 calendar days after the last date of publication of this Notice in this newspaper.

This Notice is required to be published for four consecutive weeks in this newspaper as a newspaper of general circulation in the area including the lands described above.

This exploration program is fully described in and will be conducted pursuant to an exploration plan approved by the Geological Survey, United States Department of the Interior. This exploration plan is available for your review during normal business hours in the following offices:

Bureau of Land Management, P.O. Box 248, 455 Emerson Street, Craig, Colorado 81625, or Bureau of Land Management, Room 700, Colorado State Bank Bldg., 1600 Broadway, Denver, Colorado 80202.

In general, the exploration plan provides for rotary and core drilling of approximately 22 holes in the above-described lands to varying depths with analysis and study of the coal samples obtained from such drilling.

Any party electing to participate in this exploration program must share all of the costs of this program equally with The Pittsburg and Midway Coal Mining Co., and with any other members of the public who also elect to participate in this exploration program. The Pittsburg & Midway Coal Mining Co. will control this exploration program subject to the terms and provisions of the exploration plan described above and the exploration license issued pursuant to that plan. The appropriate shares of costs incurred in the exploration program will be billed to each participant by The Pittsburg & Midway Coal Mining Co. on completion of prospecting each year.

Pursuant to 43 CFR 3507.4, the licensee shall furnish to the Mining Supervisor copies of all data (including but not limited to, geological, geophysical, and core drilling analyses) obtained during exploration. The licensee shall submit such data and, where appropriate, the methods by which the data were gathered, at such time and in such form as required by the Mining Supervisor, the authorized officer, or surface management agency, or as specified in this Subpart, the license, or the plan. The confidentiality of all data so obtained shall be maintained until after the areas involved have been leased or such time as the Mining Supervisor determines that making the data available to the public would not damage the competitive position of the licensee, whichever comes first.

Any party wishing to participate in this exploration program must also meet the qualifications to hold an exploration license as provided in Section 3507 of Title 43 of the Code of Federal Regulations.

This Notice has been reviewed by the appropriate officials of the Bureau of Land Management and has been approved in form and substance for publication in this newspaper to comply fully with the terms and provisions of the federal statutes and regulations requiring such notice.

The foregoing notice is being published in the Federal Register as a consequence of promulgation, effective July 19, 1979, of Part 3400 of 43 Code of Federal Regulations. 43 CFR 3410.2-1(d)(1) requires publication of the notice published in a local newspaper by a coal exploration license applicant in the Federal Register.

The foregoing notice was approved by the undersigned on July 9, 1979 pursuant to regulations then in effect, 43 CFR 3507.3-1(d). It is being published in the Federal Register to meet the new requirements.

Notice of any election to participate in the exploration program must be received by the following persons on or before August 29, 1979 or within the time specified in the publication of the Notice in a newspaper of general circulation in the area where the lands covered by the license application, whichever is later:

Leader, Craig Team, Branch of Adjudication, Bureau of Land Management, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202, and Mr. R. Doyle Whitmer, The Pittsburg & Midway Coal Mining Co., 1720 So. Bellaire, Denver, Colorado 80222.

See generally 44 Federal Register 42584 at 42614 (No. 140, July 19, 1979).

Andrew W. Heard, Jr.,  
Leader, Craig Team, Branch of Adjudication.  
[FR Doc. 79-23298 Filed 7-27-79; 8:45 am]  
BILLING CODE 4310-84-M

#### [Colorado 28170]

#### Mountain Fuel Resources, Inc.; R/W Application for Pipeline

July 20, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 USC 185), Mountain Fuel Resources, Inc., 180 East First South, Salt Lake City, Utah 84139, has applied for a right-of-way for 4½" O. D. buried natural gas pipeline laterals approximately 3.41 miles long, to hook up the Federal Wells

#8-1, 10-1 and 12-2 on the following Public Lands:

#### Sixth Principal Meridian, Rio Blanco County Colorado

T. 2 S., R. 103 W.

Section 1, S½SW¼;  
Section 8, N½NE¼;  
Section 9, S½NE¼, N½NW¼;  
Section 10, SW¼NW¼, S½;  
Section 11, E½SE¼;  
Section 12, NW¼.

The above-named gathering system will enable the applicant to collect natural gas in an area through which the pipeline will pass and to convey it to the applicant's customers in Mountain Fuel's transmission main line for use in its market areas. The purposes for this notice are: (1) to inform the public that the Bureau of Land Management is proceeding with the preparation of environmental and other analytic reports, necessary for determining whether or not the application should be approved and if approved, under what terms and conditions; (2) to give all interested parties the opportunity to comment on the application; (3) to allow any party asserting a claim to the lands involved or having bona fide objections to the proposed natural gas gathering system to file its claim or objections in the Colorado State Office. Any party so filing must include evidence that a copy thereof has been served on Mountain Fuel Resources, Inc.

Any comments, claim or objections must be filed with the Chief, Branch of Adjudication, Bureau of Land Management, Colorado State Office, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202, as promptly as possible after publication of this notice.

Andrew W. Heard, Jr.,

Leader, Craig Team Branch of Adjudication.

[FR Doc. 79-23298 Filed 7-27-79; 8:45 am]

BILLING CODE 4310-84-M

#### [Colorado 25122 q, x]

#### Northwest Pipeline Corporation; R/W Applications for Pipeline

July 20, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (41 Stat. 449), as amended (30 USC 185), Northwest Pipeline Corporation, P.O. Box 1526, Salt Lake City, Utah 84110, has applied for rights-of-way for the Foundation Creek Gathering Systems approximately .807 miles across the following Public Lands:

**Sixth Principal Meridian, Rio Blanco County, Colorado**

T. 3 S., R. 101 W.  
Section 18 W½NE¼, E½NW¼.  
T. 3 S., 102 W.  
Section 24 E½SE¼.

The above-named gathering system will enable the applicant to collect natural gas in the area through which the pipeline will pass and to convey it to the applicants' customers.

The purposes for this notice are: (1) to inform the public that the Bureau of Land Management is proceeding with the preparation of environmental and other analytic reports, necessary for determining whether or not the application should be approved and if approved, under what terms and conditions. (2) to give all interested parties the opportunity to comment on the application. (3) to allow any party asserting a claim to the lands involved or having bona fide objections to the proposed natural gas gathering system to file its claim or objections in the Colorado State Office. Any party so filing must include evidence that a copy thereof has been served on *Northwest Pipeline Corporation*. Any comment, claim or objections must be filed with the Chief, Branch of Adjudication, Bureau of Land Management, Colorado State Office, Room 700, Colorado State Bank Building, 1600 Broadway, Denver, Colorado 80202, as promptly as possible after publication of this notice.

Andrew W. Heard, Jr.,  
Leader, *Craig Team, Branch of Adjudication*.  
[FR Doc. 79-23300 Filed 7-27-79; 8:45 am]  
BILLING CODE 4310-84-M

[W-68622]

**Wyoming; Application**

July 19, 1979.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Company of Colorado Springs, Colorado filed an application for a right-of-way to construct a 4½ inch pipeline, a 4' by 6' meter house and related metering and dehydration facilities for the purpose of transporting natural gas across the following described public lands:

**Sixth Principal Meridian, Wyoming**

T. 18 N., R. 99 W.,  
Sec 26, NW¼NE¼, E½NW¼, SW¼NW¼.

The proposed pipeline will transport natural gas from the Golden Federal #1 Well located in the NE¼ of section 26 to a point of connection with an existing pipeline located in the NE¼ of section

27. The 4' by 6' meter house and related metering and dehydration facilities are to be located entirely within the proposed 50 foot right-of-way in the NE¼ of section 26, all within T. 18 N., R. 99 W., Sweetwater County, Wyoming.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, Highway 187 N., P.O. Box 1869, Rock Springs, Wyoming 82901.

Harold G. Stinchcomb,  
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 79-23301 Filed 7-27-79; 8:45 am]  
BILLING CODE 4310-84-M

[INT DES 79-21]

**Proposed Grazing Management Program for the Shoshone Resource Planning Area Idaho; Extension of Public Comment Period and Public Meeting on Draft Environmental Impact Statement (EIS)**

On April 26, 1979, the Bureau of Land Management advised interested parties that a draft of the proposed EIS for the management of certain grazing lands in the Shoshone District, Idaho, was available for review. (44 FR 24649) Early in May, these parties were advised that the Bureau of Land Management would conduct public hearings on the draft EIS in Shoshone, Idaho, on May 30, 1979, and in Boise, Idaho, on May 31, 1979.

On May 29, 1979, the Bennett Hills Grazing Association initiated a lawsuit against the United States, seeking a postponement of the public hearings on the draft EIS for 90 days from and after May 30, 1979, and an extension of 90 days from and after June 11, 1979, for submitting written comment. *Bennett Hills Grazing Association v. U.S.*, Civ. No. 79-1110 (D. Idaho). The district court for the district of Idaho promptly granted an *ex parte* temporary restraining order. After hearing, an order granting a preliminary injunction was entered on June 18, 1979. The injunction prohibited BLM from conducting hearings or establishing a final date for the receipt of written comments on the draft EIS for a period of 90 days from and after May 31, 1979, and further directed the Bureau of Land Management to conduct public hearings

on the EIS upon expiration of the 90-day period.

The United States filed an emergency motion to vacate the preliminary injunction with the U.S. Court of Appeals for the Ninth Circuit on July 5, 1979. After argument, the Court of Appeals vacated the preliminary injunction and remanded the matter to the District Court with instructions to dismiss.

The Shoshone EIS is one of 145 grazing EIS's which the Bureau of Land Management is preparing pursuant to the judgment of the U.S. District Court for the District of Columbia in *Natural Resources Defense Council v. Morton*, 388 F. Supp. 829. The court ordered schedule for EIS preparation requires that the final EIS for the Shoshone area be filed with the Environmental Protection Agency by September 30, 1979.

Because of the delay in the preparation of the EIS resulting from the *Bennett Hills Grazing Association* litigation, the Bureau of Land Management will not conduct a public hearing on the Shoshone EIS. Interested parties have had more than 45 days beyond the comment period set by the Bureau of Land Management to prepare written comments on the draft EIS. The proposed grazing management program for the Shoshone area is not unique and covers a small area relative to other areas for which grazing EIS's are being prepared. Further, extensive public involvement has already been achieved through meetings between employees of the Bureau of Land Management and interested parties, to discuss the proposal both before and after circulation of the draft EIS.

The period for submission of written comments on the draft EIS is hereby extended to and including August 8, 1979.

Notice is also given that a public meeting will be held at: Lincoln Elementary School, Shoshone, Idaho, August 7, 1979, at 7 p.m. MDT.

The public meeting will be conducted by an official of the Bureau of Land Management, U.S. Department of the Interior. Individuals wishing to make oral comments will be limited to 10 minutes, with written submission invited. Prior to giving oral comments, individuals or spokesmen are requested to register at the beginning of the meeting.

Dated: July 27, 1979.  
Edward Hastey,  
Acting Director, Bureau of Land Management,  
U.S. Department of the Interior.  
[FR Doc. 79-23548 filed 7-27-79; 8:45 am]  
BILLING CODE: 4310-84-M

### Office of Surface Mining

[Navajo Tribal Coal Lease No. NOO-C-14-20-2190]

### Consolidation Coal Co. ("Compasso Project")—Burnham Mine, San Juan County, N. Mex.; Notice of Availability of Proposed Mining and Reclamation Plan for Public Review

**AGENCY:** Office of Surface Mining Reclamation and Enforcement.

**ACTION:** Availability, for Public Review, of Proposed Coal Mining and Reclamation Plan.

**SUMMARY:** Pursuant to Part 177 of Title 25, Code of Federal Regulations, notice is hereby given that the Office of Surface Mining has received information considered under the referenced regulations to constitute a mining and reclamation plan. The proposed coal mining operation is described below:

Bureau of Indian Affairs, and the U.S. Geological Survey.

At the time of recommending a final decision regarding the proposed mining and reclamation plan, the Office of Surface Mining will issue a Notice of Availability of Pending Decision.

**FOR FURTHER INFORMATION CONTACT:** Bob Starr or Mark Humphrey, Office of Surface Mining, Region V, Room 207, 1823 Stout Street, Denver, Colorado, 80202.

Mary Wright,  
Deputy Regional Director, Office of Surface Mining, Region V.

[FR Doc. 79-23339 Filed 7-27-79; 8:45 am]  
BILLING CODE 4310-05-M

Applicant	Mine name	Location of lands to be affected		
		State	County	Township, range, and section
Consolidation Coal Co.	Burnham	New Mexico	San Juan	T.25N, R.16W: 25, 36. T.24N, R.16W: 1, 2, 3, 10, 11, 12. T.25N, R.15W: 28, 29, 30, 31, 32, 33. T.24N, R.15W: 4, 5, 6, 7, 8.

\*Office of Surface Mining Reference No.: NM 0005.

The proposed mine is located about 35 miles southwest of Farmington, New Mexico and about 50 miles northeast of Gallup, New Mexico within the Navajo Reservation. The plan undergoing review was submitted to OSM in October of 1978 and concerns mining in only the northern portion of the Navajo lease. The Burnham Mine described in that plan is proposed to involve approximately 6,831 acres from which coal will be extracted over a 38-year period. The mine plan area is approximately 9,000 acres. The plan does not address the remaining area of the 40,287-acre lease. A Final Environmental Impact Statement (FES 77-13) addressing mining of 29,095 acres as proposed in a plan submitted in 1975 was prepared by the Bureau of Indian Affairs and issued on May 11, 1977.

Coal is proposed to be extracted at a rate of about 300,000 tons the first year, increasing to 750,000 tons, 1,000,000 tons, and 4,350,000 tons the second, third, and fourth years, respectively. Production for the fifth through thirty-eighth year is anticipated at 6,400,000 tons per year. Total coal extraction will be 244,000,000 tons during the projected life of the mine. The multiple seam dragline operation would include the extraction of coal from four primary coal zones and designated as yellow, blue, green, and red (listed in stratigraphically

descending order). Coal from the various seams greater than three feet in thickness would be mined. Coal will be exported off-site. The only transportation route discussed in the plan and under evaluation by OSM is truck haul via existing roads.

The mining and reclamation plan and associated materials are available for review in the Region V Office of Surface Mining (Room 207, Post Office Building, 1823 Stout Street, Denver, Colorado, 80202) and in the Bureau of Indian Affairs, Navajo Area Office, Window Rock, Arizona, 86515.

This notice is issued at this time for the convenience of the public. The Office of Surface Mining has not yet determined whether the proposed plan will be in compliance with the applicable regulations. Any additional information obtained or prepared during the course of the review, such as the technical analysis and environmental assessment, will be made available for public review.

**DATES:** No action with respect to recommending approval of the proposed plan shall be taken by the Regional Director for a period of 30 days after publication in the Federal Register. Recommendations will be based on reviews by the Office of Surface Mining, the Navajo Tribal Council, New Mexico Coal Surface Mining Commission, the

### Bureau of Reclamation

[INT DES 79-45]

### Animas-La Plata Project, Colorado and New Mexico; Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement on the proposed Animas-La Plata Project, which would develop water for irrigation and municipal and industrial use in southwestern Colorado and northwestern New Mexico and also benefit reservoir fisheries and recreation. Written comments may be submitted to N. W. Plummer, Regional Director, in Salt Lake City (address below) within 45 days of this notice.

Copies are available for inspection at the following locations:

- Office of Communications, Room 7220, Department of the Interior, Washington, DC 20240, Telephone (202) 343-9247
- Office of Environmental Affairs, Room 7022, Bureau of Reclamation, Department of the Interior, Washington, DC 20240, Telephone (202) 343-4991
- Division of Engineering Support, Technical Services and Publications Branch, E&R Center, Denver Federal Center, Denver, CO 80225, Telephone (303) 234-3000
- Office of the Regional Director, Bureau of Reclamation, Federal Building, 125 South State Street, Salt Lake City, UT 84147, Telephone (801) 524-5404
- Durango Projects Office, Bureau of Reclamation, 835 Second Avenue, P.O. Box 640, Durango, CO 81301, Telephone (303) 247-0247
- Libraries in Durango, Denver, Boulder, Fort Collins, Greeley, and Cortez, Colorado; and Santa Fe, Farmington, and Aztec, New Mexico.

Single copies of the draft statement may be obtained, free on request, to the Commissioner of Reclamation, or the Regional Director, at the above

addresses. Please refer to the statement number above.

Dated: July 25, 1979.

Larry E. Meierotto,

*Assistant Secretary of the Interior.*

[FR Doc. 79-23380 Filed 7-27-79; 8:45 am]

BILLING CODE 4310-09-M

[INT DES 79-46]

**Upalco Unit, Central Utah Project, Utah; Availability of Draft Environmental Statement**

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement on a proposed water resource project that would develop water for irrigation and municipal and industrial uses in northeastern Utah. It would also benefit fisheries, recreation, and flood control. Written comments may be submitted to the Regional Director (address below) within 45 days of this notice.

Copies are available for inspection at the following locations:

Office of Communications, Room 7220, Department of the Interior, Washington, DC 20240 Telephone (202) 343-9247;

Office of Assistant to the Commissioner—Ecology, Room 7620, Bureau of Reclamation, Department of the Interior, Washington, DC 20240 Telephone: (202) 343-4991;

Division of Engineering Support, Technical Services and Publications Branch, E&R Center, Denver Federal Center, Denver, Colorado 80225 Telephone (303) 234-3006;

Office of the Regional Director, Bureau of Reclamation, Federal Building, 125 South State Street, Salt Lake City, Utah 84147 Telephone (801) 524-5404;

Central Utah Projects Office, Bureau of Reclamation, 160 North 200 West, P.O. Box 1338, Provo, Utah 84601 Telephone(801) 584-0310.

Single copies of the draft statement may be obtained on request to the Commissioner of Reclamation or the Regional Director. Please refer to the statement number above.

Dated July 25, 1979.

Larry E. Meierotto,

*Assistant Secretary of the Interior.*

[FR Doc. 79-23381 Filed 7-27-79; 8:45 am]

BILLING CODE 4310-09-M

**DEPARTMENT OF JUSTICE**

**Office of the Attorney General**

[Order No. 842-79]

**Addition to List of Bureau of Prisons Institutions**

AGENCY: Department of Justice.

ACTION: Notice.

**SUMMARY:** Attorney General Order No. 646-76 (41 FR 14805) classifies and lists the various Bureau of Prisons institutions. Order No. 649-76 (41 FR 19233) further amended the list published by Order No. 646-76. This order adds to the list one Federal Correctional Institution and two new Federal Prison Camps.

**EFFECTIVE DATE:** This order is effective as of April 15, 1979.

**FOR FURTHER INFORMATION CONTACT:** Ira B. Kirschbaum, Assistant General Counsel, Bureau of Prisons, U.S. Department of Justice, HOLC Building, 320 First Street NW., Washington, D.C. 20534 (202-724-3062).

By virtue of the authority vested in me by Sections 4003, 4042, 4081, and 4082 of Title 18, United States Code, Order No. 646-76, as amended, is further amended as follows:

Subparagraphs B and C of Section 1 of Order No. 646-76, are amended to designate one additional Federal Correctional Institution and two additional Federal Prison Camps:

"B. The Bureau of Prisons facilities at the following locations are designated as Federal Correctional Institutions:

\* \* \* \* \*

(23) Bastrop, Texas

C. The Bureau of Prisons facilities at the following locations are designated as Federal Prison Camps:

\* \* \* \* \*

(5) Big Spring, Texas  
(6) Boron, California"

Dated: July 18, 1979.

Griffin B. Bell,

*Attorney General.*

[FR Doc. 79-23312 Filed 7-27-79; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 27-79]

**Privacy Act of 1974; Notice of New System of Records**

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice proposes to establish a new system of records to be maintained by the Criminal Division.

The Index of Prisoners Transferred Under Prisoner Transfer Treaties (Justice/CRM-026) is a new system of records for which no public notice consistent with the provisions of 5 U.S.C. § 552a(e)(4) has been published in the Federal Register.

5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment; the Office of Management and Budget, which has oversight responsibility under the Act, requires a 60-day period in which to review the system before it is implemented. Therefore, the public, the Office of Management and Budget (OMB), and the Congress are invited to submit written comments on this system. Comments should be addressed to the Administrative Counsel, Office of Management and Finance, Room 1118, Department of Justice, 10th Street and Constitution Avenue, N.W., Washington, D.C. 20530. If no comments are received from either the public, OMB, or the Congress by September 28, 1979, the system will be implemented without further notice in the Federal Register. No oral hearings are contemplated.

A report of the proposed system has been provided to the Director, OMB, to the President of the Senate, and to the Speaker of the House of Representatives.

Dated: July 17, 1979.

Kevin D. Rooney,

*Assistant Attorney General for Administration.*

JUSTICE/CRM-026

**SYSTEM NAME:**

Index of Prisoners Transferred Under Prisoner Transfer Treaties.

**SYSTEM LOCATION:**

U.S. Department of Justice; Criminal Division; 10th and Constitution Ave., N.W., Washington, D.C. 20530.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Prisoners transferred to or from prisons in the United States under prisoner transfer treaties with other countries.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The system consists of alphabetical indices bearing individual names of prisoners involved in transfers and the tape recordings and occasional verbatim transcripts of consent verification hearings held pursuant to 18 U.S.C. 4107 and 4108, as well as copies of consent verification forms.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

The system is maintained to implement the provisions of 18 U.S.C. 4107(e) and 4108(e). The records maintained in the system are used in conjunction with litigation relating to the transfer of prisoners under prisoner transfer treaties.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:**

The file is used by personnel of the Office of International Affairs of the Criminal Division to confirm the status of verification consent proceedings and to provide a readily retrievable record in the event of litigation on the issue of consent to the transfer. In addition, a record may be disseminated to the court, to court personnel, and to parties and their counsel in any litigation brought on the issue of proper consent to a prisoner transfer; to a state, local or foreign government, at its request, when the record relates to one of its past or present prisoners who have been the subject of a consent verification hearing; and, to any foreign government that is a party to an applicable treaty in a scheduled report that is required by the treaty.

**RELEASE OF INFORMATION TO THE NEWS MEDIA AND THE PUBLIC:**

Information permitted to be released to the news media and the public pursuant to 28 CFR § 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

**RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:**

Information contained in the system, not otherwise required to be released pursuant to 5 U.S.C. § 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

**RELEASE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS SERVICE:**

A record from the system of records may be disclosed to the National Archives and Records Service (NARS) for records management inspections conducted under the authority of 44 U.S.C. §§ 2904 and 2906.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

Verification consent forms and tape recordings are stored in file drawer safes.

**RETRIEVABILITY:**

A record is retrieved from index cards by the name of the individual and from the file jackets by location and date of the verification consent hearings which appear on the index cards.

**SAFEGUARDS:**

The records are stored in file drawer safes. Access to them is limited to personnel of the Office of International Affairs, Criminal Division, United States Department of Justice. The office in which the records are contained is securely locked at night and on weekends.

**RETENTION AND DISPOSAL:**

Currently it is planned to maintain records for 10 years in file safes referred to above and then transfer them to the Federal Records Center for retention.

**SYSTEM MANAGER(S) AND ADDRESS:**

Assistant Attorney General, Criminal Division; U.S. Department of Justice; 10th and Constitution Avenue, N.W., Washington, D.C. 20530.

**NOTIFICATION PROCEDURE:**

Inquiry concerning this system should be in writing and made to the system manager listed above.

**RECORD ACCESS PROCEDURES:**

A request for access to a record contained in this system shall be made in writing to the system manager, with the envelope and the letter clearly marked 'Privacy Access Request.' The request shall include the name of the individual involved, his birth date and place, or any other identifying number or information which may be of assistance in locating the record, the name of the case or matter involved, if known, and the name of the judicial district involved, if known. The requester shall also provide a return address for transmitting the information.

**CONTESTING RECORD PROCEDURES:**

Individuals desiring to contest or amend information maintained in the system should direct their request to the system manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

**RECORD SOURCE CATEGORIES:**

Court records and prisoner statements.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 79-23297 Filed 7-27-79; 8:45 am]

BILLING CODE 4410-01-M

**METRIC BOARD****Public Forum**

Notice is hereby given that the United States Metric Board will hold a Public Forum on Thursday, August 16, 1979, from 9:00 a.m. to 1:00 p.m. The forum will be held in conjunction with the Metric Board's regular August meeting. Notice of the regular meeting appears in the Sunshine Meeting section of this issue. The Forum will be held at the Jack Tar Hotel, Van Ness and Geary Streets, California Room, San Francisco, California 94101.

The purpose of the Forum will be to allow Board Members to receive comments about voluntary metric conversion from representatives of groups or organizations and from individuals. Those who wish to participate are invited to submit statements or questions in advance to Mr. Bill DeReuter, Office of Public Information, United States Metric Board, The Magazine Building, 1815 North Lynn Street, Suite 600, Arlington, Virginia 22209.

Louis F. Polk,

*Chairman, United States Metric Board.*

[FR Doc. 79-23354 Filed 7-27-79; 8:45 am]

BILLING CODE 3510-10-M

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

[Notice 79-67]

**Space and Terrestrial Applications Steering Committee (STASC) Proposal Evaluation Advisory Subcommittee Meeting**

The Geodynamics Panel of the STASC, Proposal Evaluation Advisory Subcommittee, will meet on August 14, 15 and 16, 1979, from 8:30 am to 5:30 pm each day at the Goddard Space Flight Center, Building 28, Room 200, Greenbelt, Maryland 20770. The morning session of the meeting on August 14, 1979, is open to the public. Members of the public will be admitted to the meeting on a first-come, first-served basis up to the room's seating capacity

of 30 persons. Visitors will be requested to sign a visitor's register.

From 8:30 am to 12:00 noon the Panel will discuss and review Research and Technology Operating Plans (RTOP's) submitted to NASA Headquarters by NASA centers to conduct research in the Geodynamics program.

The agenda for this part of the meeting is as follows: 8:30 am, Introductory Remarks; 9:00 am, Presentations on the Solid Earth Dynamics, Gravity and Geoid RTOP's; 10:00 am, Review of the Crustal Deformation and Advanced Study RTOP's; 12:00 noon, Adjourn.

The meeting will be closed to the public from 1:00 pm to 5:30 pm on August 14 and from 8:30 am to 5:30 pm on August 15 and 16, 1979, for evaluation and categorization of the proposals submitted to NASA in response to an Applications Notice for research in the Supporting Research and Technology phase of the Geodynamics program.

Public discussion of the professional qualifications of the proposers and their potential scientific contributions to the Geodynamics programs would invade the privacy of the proposers and the other individuals involved. Since the Subcommittee sessions will be concerned throughout with matters listed in 5 U.S.C. 552b(c), (6), as described above, it has been determined that the sessions should be closed to the public.

For further information, please contact Mr. James P. Murphy, NASA Headquarters, Washington, D.C. (202) 755-3848.

Dated: July 24, 1979.

Frank J. Simokaitis,  
*Acting Deputy Associate Administrator for External Relations.*

[FR Doc. 79-23292 Filed 7-27-79; 8:45 am]

BILLING CODE 7510-01-M

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## NATIONAL SCIENCE FOUNDATION

### Committee Management; Establishment

Pursuant to the Federal Advisory Committee Act (P.L. 92-463), it is hereby determined that the establishment of the Advisory Committee on Special Research Equipment (2-year and 4-year colleges) is necessary, appropriate, and in the public interest in connection with the performance of duties imposed upon

the Director, National Science Foundation (NSF) and other applicable law. This determination follows consultation with the Committee Management Secretariat Staff, General Services Administration, pursuant to Section 9(a) of the Federal Advisory Committee Act and other applicable issuances.

Name of committee: Advisory Committee on Special Research Equipment (2-year and 4-year colleges).

Purpose: To provide advice and recommendations concerning support for research equipment and instruments for colleges and universities without doctorate programs in science and education (or having only very small doctorate programs).

Effective date of establishment and duration: This establishment is effective upon filing the charter with the Director, NSF, and with the standing committees of Congress having legislative jurisdiction of the Foundation. The Committee will continue for two calendar years from the effective date.

Membership: The membership of this Committee shall be fairly balanced in the terms of the points of view represented and the Committee's function. Members shall be representative of a broad spectrum of science and engineering disciplines, of regions of the country, and of types of academic institutions (2-year, 4-year, etc.; public and private, etc.). There will be no discrimination on the basis of sex, religion, or national origin.

Operation: The Committee will operate in accordance with provisions of the Federal Advisory Committee Act (P.L. 92-463), Foundation policy and procedures, OMB Circular No. A-63, Revised, and other directives and instructions issued in implementation of the Act.

Dated: July 25, 1979.

Richard C. Atkinson,

*Director.*

[FR Doc. 79-23401 Filed 7-27-79; 8:45 am]

BILLING CODE 7555-01-M

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## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards Subcommittee on Advanced Reactors; Meeting

#### *Correction*

In FR Doc. 79-22470 appearing on page 43126 in the issue for July 23, 1979,

the heading is not accurate. The heading, as given, incorrectly indicates that the Nuclear Regulatory Commission is part of the Department of Energy, which it is not. The Nuclear Regulatory Commission is an independent regulatory agency and not part of any cabinet-level Executive Department. The heading for this document as it should read appears above.

BILLING CODE 1505-01-M

[Docket No. 50-255 SP]

### Consumers Power Co. (Palisades Nuclear Plant); Hearing

July 23, 1979.

On January 29, 1979, the Nuclear Regulatory Commission published in the Federal Register 44 FR 5732, a notice that the Commission had received a request from the Consumers Power Company (Licensee) for an amendment to Provisional Operating License No. DPR-20 to permit the removal and replacement of the steam generators at the Palisades Plant (the facility), located in Covert Township, Van Buren County, Michigan, and the return of the facility to operation using the new steam generators. The notice provided that by February 28, 1979, any person whose interest may be affected by the proceeding could file a petition for leave to intervene in accordance with the Commission's Rules of Practice, 10 CFR Part 2, particularly 10 CFR § 2.714.

A timely petition for leave to intervene and request for a hearing in the proceeding was filed by the Great Lakes Energy Alliance (GLEA). An Atomic Safety and Licensing Board was established to rule upon such petition and to preside over the proceeding in the event that a hearing were ordered. After holding a special prehearing conference pursuant to 10 CFR § 2.751a, the Atomic Safety and Licensing Board issued an order on July 23, 1979, granting the petition and admitting GLEA as a party to the proceeding.

Please take notice that a hearing will be conducted in this proceeding. The Atomic Safety and Licensing Board which has been designated to preside over this proceeding consists of Dr. George C. Anderson, Dr. M. Stanley

Livingston, and Charles Bechhoefer, who will serve as Chairman of the Board.

During the course of the proceeding, the Board will hold one or more prehearing conferences pursuant to 10 CFR § 2.752. The public is invited to attend any prehearing conferences, as well as the evidentiary hearing. During some or all of these sessions, and in accordance with 10 CFR § 715(a), any person, not a party to the proceeding, will be permitted to make a limited appearance statement, either orally or in writing, stating his position on the issues. The number of persons making oral statements and the time allowed for each oral statement may be limited depending upon the total time available at various sessions. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section. Written statements supplementing or in lieu of oral statements may be of any length and will be accepted at any session of the proceeding or may be mailed to the Secretary of the Commission.

For further details, see the Licensee's letter dated January 3, 1979 and the enclosed Steam Generator Repair Report, other material submitted by the Licensee in support of this action, and papers filed concerning the petition for leave to intervene, including the Special Prehearing Conference Order ruling upon the intervention petition, dated July 23, 1979, all of which are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Michigan 49006. As they become available, the following documents may be inspected at the above locations: (1) the Safety Evaluation Report prepared by the Commission's Office of Nuclear Reactor Regulation; and (2) any environmental review documents which may be required by the Commission's regulations in 10 CFR Part 51.

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

The Atomic Safety and Licensing Board.  
Charles Bechhoefer,  
Chairman.

[FR Doc. 79-23344 Filed 7-27-79; 8:45 am]

BILLING CODE 7590-01-M.

### Duke Power Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 75, 75, and 72 to Facility Operating Licenses Nos. DPR-38, DPR-47, and DPR-55, respectively, issued to Duke Power Company, which revised the Technical Specifications for operation of the Oconee Nuclear Station, Units Nos. 1, 2, and 3, located in Oconee County, South Carolina. The amendments are effective as of the date of issuance.

These amendments revise the Technical Specifications by deleting Technical Specification 4.13, Fuel Surveillance, as its requirements have been met.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission had made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated May 1, 1979, (2) Amendments Nos. 75, 75, and 72 to Licenses Nos. DPR-38, DPR-47 and DPR-55, respectively, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W. Washington, D.C. and at the Oconee County Library, 201 South Spring Street, Walhalla, South Carolina. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 12th day of July 1979.

For the Nuclear Regulatory Commission.  
Robert W. Reid,  
Chief, Operating Reactors Branch No. 4,  
Division of Operating Reactors.

[FR Doc. 79-23345 Filed 7-27-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-269, 50-270 and 50-287]

### Duke Power Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendments Nos. 76, 76, and 73 to Facility Operating Licenses Nos. DPR-38, DPR-47 and DPR-55, respectively, issued to Duke Power Company, which revised the Technical Specifications for operation of the Oconee Nuclear Station, Units Nos. 1, 2 and 3, located in Oconee County, South Carolina. The amendments are effective as of the date of issuance.

These amendments revise the Technical Specifications by deleting obsolete requirements from the surveillance program concerned with the structural integrity of the reactor building, and by substituting an alternate surveillance tendon for one damaged in the Oconee Unit No. 2 reactor building dome.

The applications for the amendments comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR Section 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of these amendments.

For further details with respect to this action, see (1) the applications for amendments dated October 1, 1976 and June 12, 1978, (2) Amendments Nos. 76, 76, and 73 to Licenses Nos. DPR-38, DPR-47 and DPR-55, respectively, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

and at the Oconee County Library, 201 South Spring Street, Walhalla, South Carolina. A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 16th day of July 1979.

For the Nuclear Regulatory Commission.  
Robert W. Reid,  
*Chief, Operating Reactors Branch No. 4,  
Division of Operating Reactors.*

[FR Doc. 79-23347 Filed 7-27-79; 8:45 am]  
BILLING CODE 7590-01-M

[Docket No. 50-334]

**Duquesne Light Co. et al.; Issuance of Amendment to Facility Operating License**

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 19 to facility Operating License No. DPR-66 issued to Duquesne Light Company, Ohio Edison Company, and Pennsylvania Power Company (the licensees), which revised Technical Specifications for operation of the Beaver Valley Power Station, Unit No. 1 (the facility) located in Beaver County, Pennsylvania. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications to require actuation of safety injection based on two out of three channels of low pressurizer pressure.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since this amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated June 26, 1979, (2) Amendment No. 19 to License No. DPR-66 and (3) the Commission's related

Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 17th day of July.

For the Nuclear Regulatory Commission.  
Charles M. Trammell,  
*Acting Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.*

[FR Doc. 79-23348 Filed 7-27-79; 8:45 am]  
BILLING CODE 7590-01-M

[Docket No. 50-298]

**Nebraska Public Power District; Issuance of Amendment to Facility Operating License**

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 58 to Facility Operating License No. DPR-46, issued to Nebraska Public Power District, which revised the Technical Specifications for operation of the Cooper Nuclear Station, located in Nemaha County, Nebraska. The amendment is effective June 22, 1979.

The amendment modified the Technical Specifications to permit operation of the facility at less than 40% power for a period not to exceed 48 hours between June 22 and June 25, 1979, with the containment deinterred.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR Section 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the formal application for amendment dated June 21, 1979, (2) Amendment No. 58 to License No. DPR-46, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Auburn Public Library, 118-15th Street, Auburn, Nebraska 68305. A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

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

For the Nuclear Regulatory Commission.  
Vernon L. Rooney,  
*Acting Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.*

[FR Doc. 79-23348 Filed 7-27-79; 8:45 am]  
BILLING CODE 7590-01-M

[Docket Nos. Stn 50-556 and Stn 50-557]

**Public Service Co. of Oklahoma (Black Fox Station, Unit Nos. 1 and 2); Issuance of Amendment to Limited Work Authorization**

Pursuant to the provisions of 10 CFR 50.10(e) of the Nuclear Regulatory Commission's (Commission) regulations, the Commission has authorized the Public Service Company of Oklahoma to conduct certain site activities in connection with the Black Fox Station, Unit Nos. 1 and 2, prior to a decision regarding the issuance of construction permits. Notice of the Limited Work Authorization was published in the Federal Register on August 11, 1978 (43 FR 35762).

Since that time, the Director of Nuclear Reactor Regulation has determined that additional activities may be authorized under the Limited Work Authorization. The additional activities are within the scope of those authorized by 10 CFR 50.10(e)(1) and include excavation and backfill for permanent structures, which had not been previously authorized.

Any activities undertaken pursuant to this authorization are entirely at the risk of the Public Service Company of Oklahoma, and the grant of the authorization has no bearing on the issuance of construction permits with respect to the requirements of the Atomic Energy Act of 1954, as amended, and rules, regulations, or orders of the Commission promulgated pursuant thereto.

A copy of (1) the Atomic Safety and Licensing Board's Partial Initial Decision Authorizing Limited Work Authorization and the Order Granting Applicants' Motion for Reconsideration and Clarification; (2) the applicant's Preliminary Safety Analysis Report and amendments thereto; (3) the applicant's Environmental Report and amendments thereto; (4) the staff's Final Environmental Statement dated February 1977; (5) the Commission's letters of authorization dated July 26, 1978, September 6, 1978, and November 30, 1978, and (6) the Commission's letter amending the authorization dated July 24, 1979, are available for public inspection at the Commission's Public Document Room at 1717 H Street, NW, Washington, DC, and at the Tulsa City County Library, 400 Civic Center, Tulsa, Oklahoma.

Dated at Bethesda, Maryland, this 24th day of July 1979.

For the Nuclear Regulatory Commission.

Donald E. Sells,

*Acting Branch Chief, Environmental Projects Branch 2, Division of Site Safety and Environmental Analysis.*

[FR Doc. 79-23349 Filed 7-27-79; 8:45 am]

BILLING CODE 7590-01-M

### International Atomic Energy Agency Draft Safety Guide; Availability of Draft for Public Comment

The International Atomic Energy Agency (IAEA) is developing a limited number of internationally acceptable codes of practice and safety guides for nuclear power plants. These codes and guides will be developed in the following five areas: Government Organization, Siting, Design, Operation, and Quality Assurance. The purpose of these codes and guides is to provide IAEA guidance to countries beginning nuclear power programs.

The IAEA Codes of Practice and Safety Guides are developed in the following way. The IAEA receives and collates relevant existing information used by member countries. Using this collation as a starting point, an IAEA Working Group of a few experts then develops a preliminary draft. This preliminary draft is reviewed and modified by the IAEA Technical Review Committee to the extent necessary to develop a draft acceptable to them. This draft Code of Practice or Safety Guide is then sent to the IAEA Senior Advisory Group which reviews and modifies the draft as necessary to reach agreement on the draft and then forwards it to the IAEA Secretariat to obtain comments from Member States. The Senior

Advisory Group then considers the Member State comments, again modifies the draft as necessary to reach agreement and forwards it to the IAEA Director General with a recommendation that it be accepted.

As part of this program, Safety Guide SG-S6, "Hydrological Dispersion of Radioactive Material in Relation to Nuclear Power Plant Siting," has been developed. The working Group, consisting of Mr. Z. Dlouhy of Czechoslovakia; Mr. Y. Belot of France; and Mr. A. J. Policastro (Argonne National Laboratory) of the United States of America developed the initial draft of this Safety Guide from an IAEA collation during a meeting on January 29-February 9, 1979. The initial Working Group draft was modified by the IAEA Technical Review Committee in meetings on March 19-23, 1979 and May 21-25, 1979. We are soliciting comments on Revision 1 on this Safety Guide dated March 23, 1979. Comments on this draft received by September 5, 1979 will be useful to the U.S. representatives to the Technical Review Committee and Senior Advisory Group in evaluating its adequacy prior to the next IAEA discussion.

Single copies of this draft may be obtained by a written request to the Director, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(5 U.S.C. 522(a))

Dated at Rockville, Md., this 20th day of July 1979.

For the Nuclear Regulatory Commission.

Robert B. Minogue,

*Director, Office of Standards Development.*

[FR Doc. 79-23355 Filed 7-27-79; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF MANAGEMENT AND BUDGET

### Agency Forms Under Review

#### Background

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 USC Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the act also considers comments on the forms and

recordkeeping requirements that will affect the public.

#### List of Forms Under Review

Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last list was published. The list has all the entries for one agency together and grouped into new forms, revisions, extensions, or reinstatements. Each entry contains the following information:

The name and telephone number of the agency clearance officer;

The office of the agency issuing this form;

The title of the form;

The agency form number, if applicable;

How often the form must be filled out; Who will be required or asked to report;

An estimate of the number of forms that will be filled out;

An estimate of the total number of hours needed to fill out the form; and

The name and telephone number of the person or office responsible for OMB review.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. In addition, most repetitive reporting requirements or forms that require one-half hour or less to complete and a total of 20,000 hours or less annually will be approved ten business days after this notice is published unless specific issues are raised; such forms are identified in the list by an asterisk (\*).

#### Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. Comments and questions about the items on this list should be directed to the OMB reviewer of office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer or your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Stanley E. Morris, Deputy Associate Director for Regulatory Policy and Reports Management, Office of Management and Budget, 726 Jackson

Place, Northwest, Washington, D.C.  
20503.

**DEPARTMENT OF AGRICULTURE**

Agency Clearance Officer—Donald W.  
Barrowman—447-6202

*New Forms*

Forest Service

\*Study Plan and Questionnaire for  
Estimating Recreation Use—Mount  
Rogers National Recreation Area  
Other (see SF-83)

Recreation visitors to the Mount Rogers  
National Recreation Area; 7,575  
responses, 505 hours

Charles A. Ellett, 395-5080

Forest Service

National Director of Forest Tree Seed  
Orchards

FS-3300-2

Single time

Owners of Forest Tree Seed Orchards;  
200 responses, 50 hours

Charles A. Ellett, 395-5080

*Revisions*

Food and Nutrition Service

Quality Control Review Schedule

FNS-245, 247-1, 2, 3, 4, and 248

On occasion

Food stamp participants applicants and  
State agencies; 14,188 responses,  
1,101,026 hours

Charles A. Ellett, 395-5080

*Reinstatements*

Food and Nutrition Service

Food Stamp Program—Performance

Reporting System

Other (see SF-83)

State agencies; 54 responses, 270 hours

Charles A. Ellett, 395-5080

**DEPARTMENT OF ENERGY**

Agency Clearance Officer—John

Gross—252-5214

*New Forms*

\*Survey of Fuel Oil Dealers Retail/  
Wholesale

B-1156, 1157, 1158, and 1159

Monthly

Retail/wholesale fuel oil dealers; 60,000  
responses, 15,000 hours

Jefferson B. Hill, 395-5867

**DEPARTMENT OF HEALTH, EDUCATION, AND  
WELFARE**

Agency Clearance Officer—Peter

Gness—245-7488

*New Forms*

Social Security Administration

\*Application for Benefits Under the  
Federal Republic of Germany-United  
States International Social Security  
Agreement

SSA-3957

On occasion

Per. fil. for SS een. under the agree. bet.  
United States and Germany; 50,000  
responses, 16,666 hours

Barbara F. Young, 395-6132

*Revisions*

Social Security Administration

\*Record of SSI Inquiry

SSA-3462

Other (see SF-83)

Per. who inquire about paymt under tit.  
XVI of the SSA; 152,000 responses,  
15,200 hours

Barbara F. Young, 395-6132

**DEPARTMENT OF JUSTICE**

Agency Clearance Officer—Donald E.

Larue—633-3526

*Extensions*

Immigration and Naturalization Service

\*Application To Preserve Residence . . .  
Naturalization Purposes N-470

On occasion

Permanent residence; 3,000 responses,  
750 hours

Richard Sheppard, 395-3211

**DEPARTMENT OF THE TREASURY**

Agency Clearance Officer—Floyd I.

Sandlin—376-0436

*Revisions*

Bureau of Customs

\*Temporary Application for Extension  
of Bond for Importation

Customs 3173

On occasion

Importers/brokers; 50,000 responses,  
4,165 hours

Susan B. Geiger, 395-5867

Bureau of Customs

\*Lien Notice

Customs 3485

On occasion

Carriers transporting imported goods;  
109,800 responses, 10,980 hours

Susan B. Geiger, 395-5867

**ENVIRONMENTAL PROTECTION AGENCY**

Agency Clearance Officer—John J.

Stanton—245-3064

*New Forms*

Analysis of Alternative EPA Technical  
Assistance Strategies

Single time

State and local environmental  
managers; 500 responses, 300 hours

Edward H. Clarke, 395-5867

**COMMUNITY SERVICES ADMINISTRATION**

Agency Clearance Officer—Jack  
Stoehr—254-5300

*New Forms*

CSA/Grantee Program Management  
System Manual,

Vol. 1—Forms

395, 509, 510, 511, 512, 513, 514, and 515  
Annually

40 grantees; 40 responses; 200 hours

Barbara F. Young, 395-6132

**UNITED STATES INTERNATIONAL TRADE  
COMMISSION**

Agency Clearance Officer—Charles  
Ervin—523-0267

*New Forms*

Questionnaire for importers Casein and  
Mixtures in Chief Value of Casein  
Single time

U.S. importers of casein and casein  
mixtures; 46 responses, 368 hours

Susan B. Geiger, 395-5867

**VETERANS ADMINISTRATION**

Agency Clearance Officer—R. C.  
Whitt—389-2282

*New Forms*

Blind Rehabilitation Evaluation  
Single

Blind veterans in receipt of VA pension  
or compensation; 2,400 responses, 800  
hours

David P. Caywood, 395-6140

David R. Leuthold,

Acting Deputy Associate Director for  
Regulatory Policy and Reports Management.

[FR Doc. 79-23419 Filed 7-27-79; 8:45 am]

BILLING CODE 3110-01-M

**SECURITIES AND EXCHANGE  
COMMISSION**

[Release No. 34-16042; File No. SR-BSPS-  
79-1]

Self-Regulatory Organizations;  
Proposed Rule Change by Bradford  
Securities Processing Services, Inc.

Pursuant to Section 19(b)(1) of the  
Securities Exchange Act of 1934, 15  
U.S.C. 78s(b)(1), as amended by Pub. L.  
No. 94-29, 16 (June 4, 1975), notice is  
hereby given that on July 11, 1979, the  
above-mentioned self-regulatory  
organization filed with the Securities  
and Exchange Commission a proposed  
rule change as follows:

The proposed rule change is to open a  
branch office in Detroit, Michigan. This  
branch office will operate similar to the  
branch offices approved by the  
Commission in Rel. No. 34-12915 dated  
October 12, 1976, Rel. No. 34-13511

dated May 6, 1977, and Rel. No. 13876 dated August 19, 1977.

The basis and purpose of the foregoing proposed rule change are as follows:

The purpose of this rule change is to establish an office in Detroit, Michigan, through which the corporation can better service participants located in Detroit and other participants which have effected transactions with brokers, dealers and others in the Detroit metropolitan area.

Because of the importance of transactions effected by and with brokers, dealers and others with offices in Detroit, it is important that the corporation has a facility in Detroit to render its services. Therefore, the purpose of this rule change is to insure present and potential customers timely clearance of securities transactions.

This facility will help to provide for the prompt and accurate clearance of securities transactions by or with brokers, dealers and others in the Detroit area. It will allow for any participant in the corporation to utilize this facility for the prompt and accurate clearance of its securities transactions.

Verbal comments received from our existing customers and potential customers indicate a need for out services in Detroit.

BSPS is of the opinion that opening this branch office will not impose any burden on competition.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six (6) copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file

number referenced in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,  
*Secretary.*

July 20, 1979.

[FR Doc. 79-23303 Filed 7-27-79; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 30, Rev. 15, Amdt 29]

### Program Activities in Field Offices; Delegation of Authority

Delegation of Authority No. 30, Rev. 15, republished in the Federal Register on November 24, 1978 (43 FR 55220), as amended (44 FR 963, 44 FR 5039, 44 FR 19572, and 44 FR 21108), is further amended to delegate authority to request and receive IRS disclosure information on last known address.

Accordingly, Part VIII of Delegation of Authority No. 30, Revision 15, is amended as follows:

#### Part VIII—Legal Services

\* \* \* \* \*

#### Section C—Authority to contact IRS

To request and receive address information from IRS records for purpose of collection and compromise of SBA Federal claims. This information will be used only by Agency employees directly engaged in and solely for their use in preparation for any administrative or judicial proceeding pertaining to the collection or compromise of a Federal claim in accordance with the provisions of Section 3 of the Federal Claims Collection Act of 1966.

- a. Regional Administrators
- b. Regional Counsel
- c. District Directors
- d. District Counsel

\* \* \* \* \*

Effective Date: July 30, 1979.

Dated: June 23, 1979.

A. Vernon Weaver,  
*Administrator.*

[FR Doc. 79-23317 Filed 7-27-79; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

[CGD 79-103]

#### Headquarters; Change of Address

Notice is given that the Coast Guard is moving its Headquarters from 400 Seventh Street, S.W., Washington, D.C. 20590 to the Coast Guard Headquarters Building at Buzzard's Point. The street address for the new Headquarters Building is 2100 Second Street, S.W., Washington, D.C. 20590. Working hours continue to be from 7:30 a.m. to 4 p.m.

This move is taking place over a period of several months and we are attempting to conduct business as usual during the move. However, there are some inadvertent disruptions (e.g., some phone service has been disrupted for more than two weeks) and some delays have been and will be experienced in handling mail inquiries. We apologize for any inconvenience that the public may experience as a result of this move.

Coast Guard rulemaking documents previously published in the Federal Register have stated that comments would be available for inspection at the Marine Safety Council Office. This office has relocated to room 2418 at the above address. The telephone number remains unchanged. (202-426-1477).

Dated: July 19, 1979.

C. F. DeWolf,

*Rear Admiral, U.S. Coast Guard, Chairman,  
Marine Safety Council.*

[FR Doc. 79-23437 Filed 7-27-79; 8:45 am]

BILLING CODE 4910-14-M

#### New York Harbor; Temporary Control of Vessel Traffic; Cancellation

Notice is hereby given that the Captain of the Port, New York Order No. 1-79 issued effective 1 April 1979, published on pages 22546 thru 22549 of the Federal Register, Volume 44, No. 74 dated 16 April 1979, was cancelled effective 1200 28 June 1979. The Captain of the Port, New York Order No. 1-79 provided emergency directions for vessel traffic within the Port of New York during the recent tow boat operators strike. This Order was cancelled with the settlement of the tow boat operators strike and the resumption of normal tug boat services within New York Harbor.

(Pub. L. 95-474 (33 U.S.C. 1223); 49 CFR 1.46(n) (49 CFR 10083, 2/18/79); 33 CFR 160.35(b)).

Dated: June 29, 1979.

James L. Fleishell,  
Captain, U.S. Coast Guard, Captain of the  
Port, New York, N.Y.

[FR Doc. 79-23438 Filed 7-27-79; 8:45 am]

BILLING CODE 4910-14-M

## Research and Special Programs Administration

### Workshop on Radio-Navigation Systems

Notice is hereby given that the United States Department of Transportation and The Institute of Navigation will, in co-sponsorship, conduct a workshop to provide a forum for the nation's civil user community to express its views to the Department of Transportation regarding radio-navigation systems. Consideration will be given to matters such as users' needs and formulation of needs statements, deficiencies, recommendations for courses of action, and general public policy responding to user needs.

The Workshop will be held October 9-11, 1979, at the Ramada Inn, 1900 Ft. Myer Drive, Arlington, Virginia. The Workshop is open to the public, and it is not anticipated that any limitation on attendance will be necessary due to available space. Any member of the public may file a written statement with the Department of Transportation before, during or after the workshop. To the extent that time permits, the workshop chairman may allow public presentation of oral statements at the workshop. Each participant will be responsible for personal expenses such as transportation and lodging. Additionally, there may be a nominal registration fee to cover administrative costs associated with the workshop.

The workshop will be conducted as follows:

**October 9, Morning**—Plenary Session, opened by General Chairman, Sven Doddington, Consultant of ITT Corporation, New York.

I. Activities since the September 1978 navigation conference, by DOT representative.

II. Introductory statements by the three panel chairmen: Land—Paul Rosenberg, Paul Rosenberg Associates, Pelham, NY. Marine—Max Carpenter, Maritime Institute of Technology and Graduate Studies, Linthicum Heights, MD. Air—Frank White, Air Transport Association, Washington, D.C.

**Afternoon**—Three panels will meet separately, each under the above panel chairmen. Audience participation is encouraged. The Land Panel will consist of:

A sub-panel on Automatic Vehicle Monitoring, chaired by R. Tutt, University of Tennessee; and,

A sub-panel on Site Registration, chaired by Clarence W. Mosher, New York State Department of Motor Vehicles.

**October 10, Breakfast**—Addressed by Pat Reynolds, Pan American World Airways, New York.

**All Day**—Panel activities continued.

**October 11, Morning**—Plenary Session, in which the three panels will present their findings.

There will be no formal paper presentations.

The Final Agenda will be completed no later than 29 August and will be mailed to those who have indicated an interest or upon request. The public is invited to submit issue topics by 31 July 1979 to:

The Institute of Navigation, 815 15th Street, N.W., Suite 832, Washington, D.C. 20005, telephone (202) 783-4121.

For details on registration please contact:

Conference Coordinator/930, Transportation Systems Center, Kendall Square, Cambridge, Ma. 02142, telephone (617) 494-2342.

Dated: July 25, 1979.

Howard Dugoff,  
Administrator.

[FR Doc. 79-23394 Filed 7-27-79; 8:45 am]

BILLING CODE 4910-60-M

## Federal Aviation Administration

### Civil Aircraft N36565; Show Cause Order Relating To Recordation of a Security Agreement

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration has issued an Order to Show Cause relating to the cancellation of an erroneous recordation of a security agreement against Civil Aircraft N36565.

**DATES:** Objections must be received by the close of business, August 10, 1979.

**ADDRESS:** Send objections to: FAA Aircraft Registry, U.S. Department of Transportation, Post Office Box 25504, Oklahoma City, Oklahoma 73125.

**FOR ADDITIONAL INFORMATION CONTACT:** Florine G. Crockett, Chief, Technical Section, Aircraft Registration Branch, FAA Aircraft Registry, P.O. Box 25504, Oklahoma City, Oklahoma 73125, telephone (405) 688-2284.

**SUPPLEMENTAL INFORMATION:** On February 1, 1979, a security agreement, dated January 23, 1979, between American Aviation Ground Services,

Inc., as mortgagor, and American National Bank & Trust of New Jersey, was recorded in the FAA Aircraft Registry against Civil Aircraft N36565. On the same date, a bill of sale dated January 20, 1979, from American Aviation Ground Services, Inc., to Robert L. VanBuskirk relating to N36565 was recorded in the FAA Aircraft Registry. The security agreement did not meet the eligibility requirements of § 49.17(e), referenced in § 49.33 of the Federal Aviation Regulations (14 CFR Part 49), since American Aviation Ground Services, Inc., was not the owner of the aircraft on January 23, 1979, having executed a bill of sale for the aircraft to Robert L. VanBuskirk on January 20, 1979. It appearing the recordation of the security agreement of January 23, 1979, was in error and is of no legal effect, the Federal Aviation Administration, on July 19, 1979, issued a Show Cause Order to the concerned parties, giving them until August 10, 1979, to submit objections to the cancellation of the recordation of the security agreement dated January 23, 1979, retroactively as of the date of recordation.

Issued in Oklahoma City, Oklahoma, on July 19, 1979.

Calvin H. Davenport,

Acting Director, Aeronautical Center.

[FR Doc. 79-23128 Filed 7-27-79; 8:45 am]

BILLING CODE 4910-13-M

## Materials Transportation Bureau Records; Notice of Change of Location

The records of the Materials Transportation Bureau of the Department of Transportation have been moved from room 6500 of the Trans Point Building at 2100 Second Street, S.W., to room 8428 of the Nassif Building located at 400 Seventh Street, S.W. This is a temporary location. After September 22, 1979, the records will be located in room 8104 of the Nassif Building.

The mailing address remains the same: Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590.

Issued in Washington, D.C. on July 20, 1979.

Alan I. Roberts,

Associate Director for Hazardous Material Regulations, Materials Transportation Bureau.

[FR Doc. 79-23168 Filed 7-27-79; 8:45 am]

BILLING CODE 4910-60-M

## Urban Mass Transportation Administration

### Intent To Prepare an Environmental Impact Statement

In accordance with the provisions of the National Environmental Policy Act (83 Stat. 852), the Council on Environmental Quality's implementing regulations, (40 CFR Parts 1500-1508) and the Urban Mass Transportation Administration's *Policy on Major Urban Mass Transportation Investments* (published in the Federal Register on September 22, 1976), the Urban Mass Transportation Administration hereby gives notice that an analysis of transportation alternatives in the Guadalupe transportation corridor and preparation of related Draft and Final environmental impact statements are to begin following a public meeting on August 29, 1979 at which the scope and conduct of the analysis will be discussed. Members of the public and interested Federal, State and local agencies are invited to comment on the proposed scope of work, the alternatives to be studied and the evaluation criteria which should be used to arrive at a decision. This Scoping Meeting will be held at 7 P.M. in the Santa Clara County Board of Supervisors Chambers, 70 West Hedding Street, San Jose, California 95110.

The Urban Mass Transportation Administration's *Policy on Major Urban Mass Transportation Investments* requires a metropolitan area planning organization to undertake such an analysis of alternatives if the area is contemplating seeking Federal funding for a major investment. The Policy defines a major investment as any new or extended fixed guideway transit facility. To be eligible for Federal funding, the analysis must be conducted, but completion of the analysis does not ensure that Federal funding will be forthcoming. Federal funds are limited, and thus any project proposal resulting from the analysis must vie for these funds against other candidate projects nationally. The subject analysis will be conducted by the Santa Clara County Transportation Agency and the metropolitan Transportation Commission, under the supervision of the Urban Mass Transportation Administration. Consultant support will also be sought.

The Guadalupe Transportation Corridor is defined as a 16-mile north-south corridor running through the center of the City of San Jose. The corridor is bounded roughly by State highway 237 on the north, Old Oakland

Road and US 101 on the east, Bernal Road and the Almaden Valley on the south, and Meridian/Bascom/Winchester/Bowers/Great America Parkway on the west. The study area encompasses over 75 square miles and contains more than 350,000 people and 180,000 jobs today. Substantial residential and industrial growth is occurring in both the northern third and southern third of this corridor. Major activity centers in the Guadalupe Corridor, running from north to south, are Marriott's Great America Theme Park, Orchard Business and Technology Industrial Parks, San Jose Municipal Airport, the Joint City of San Jose/Santa Clara County Civic Center, downtown San Jose, the SP commuter railroad terminal, Oakridge Mall Regional Shopping Center and the IBM/Edenvale Industrial Parks.

Proposed transportation alternatives include expanded express bus, light rail, commuter rail and highway-only solutions, as well as two transit guideway/highway combinations. Nine transportation alternatives in addition to the Null have been tentatively identified. They are as follows:

- 0—Null (*Do Nothing*).—516 Buses County wide plus Existing SP Commuter RR Service.
- 1—*Baseline Bus (TSM)*.—750 Buses County wide plus Upgraded SP Commuter RR Service.
- 2—*Commuter-Railroad*.—750 Buses County wide plus Upgraded and Extended SP Commuter RR Service in Guadalupe Corridor.
- 3—*Busway*.—800 Buses County wide plus Upgraded SP plus new Busway in Guadalupe Corridor.
- 4—*Light Rail (Rte 85/87)*.—750 Buses County wide plus Upgraded SP plus new Light Rail Line in Rte 85/87 R/W in Guadalupe Corridor.
- 5—*Light Rail (Rte 82/1st St)*.—750 Buses county wide plus Upgraded SP plus new Light Rail Line in Monterey Highway (Rte 82)/First St. R/W in Guadalupe Corridor.
- 6—*Freeway*.—800 Buses County wide plus Upgraded SP plus new 6-lane Freeway in Guadalupe Corridor.
- 7—*Expressway*.—800 Buses County wide plus Upgraded SP plus new 4-lane Expressway in Guadalupe Corridor.
- 8—*Busway + Freeway*.—800 Buses County wide plus Upgraded SP plus new 2-lane Busway and 4-lane Freeway in Guadalupe Corridor.
- 9—*Light Rail + Expressway*.—750 Buses County wide plus Upgraded SP plus new Light Rail Line and 4-lane Expressway in Guadalupe Corridor.

The proposed evaluation criteria will include transportation, environmental, social, economic and financial impact areas as required by current Federal

(NEPA) and State (CEQA) environmental laws and current Federal CEQ, UMTA and FHWA guidelines. Additional impact areas and measures important to local decision-making will also be included.

At the August 29th Scoping Meeting, staff will present the above information in more detail using maps and visual aids, as well as a plan for an active citizen participation program, a work schedule and budget. The public and affected public agencies will be invited to comment, either orally at the meeting or in writing for a period of 30-days following the meeting. Appropriate adjustments to the work scope and alternatives will be made accordingly.

If there are any questions, please contact the UMTA Project Manager, Mr. Alfred Harf, Office of Planning, Urban Mass Transportation Administration, 400 7th Street, S.W., Washington, D.C. 20590, Telephone (202) 426-2360, or the UMTA Regional Office Planning Representative, Mr. Michael Kennedy 2 Embarcadero Center, San Francisco, California 94111, Telephone (415) 556-2884, or the Local Agency Project Director, Mr. David Minister, Santa Clara County Transportation Agency, 1555 Berger Drive (Room 203), San Jose, California 95112, Telephone (408) 209-2362.

Dated: July 23, 1979.

Robert H. McManus,  
Associate Administrator for Planning,  
Management & Demonstration.

[FR Doc. 79-23199 Filed 7-27-79; 8:45 am]  
BILLING CODE 4910-57-M

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

[Public Debt Series—No. 15-79]

### Series V-1981 Notes; Interest Rate

July 25, 1979.

The Secretary announced on July 24, 1979, that the interest rate on the notes designated Series V-1981, described in Department Circular—Public Debt Series—No. 15-79, dated July 18, 1979, will be 9% percent. Interest on the notes will be payable at the rate of 9% percent per annum.

### Supplementary Statement

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental

procedures applicable to such regulations.

Paul H. Taylor,  
*Fiscal Assistant Secretary.*

[FR Doc. 79-23342 Filed 7-27-79; 8:45 am]

BILLING CODE 4810-01-M

#### Customs Service

##### October 1979 Customhouse Broker's Examination

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

**SUMMARY:** Pursuant to 111.13(b) of the Customs Regulations, (19 CFR 111.13(b)), the October 1979 examination for a Customhouse broker's license would normally be scheduled to be given at each district office on October 1, 1979, the first Monday in October. Because of the observance of the Jewish Holiday of Yom Kippur, the October 1979 Customhouse Broker Examination has been scheduled for Thursday, October 4, 1979. All Customs districts will be so notified.

**EFFECTIVE DATE:** July 30, 1979.

**FOR FURTHER INFORMATION CONTACT:** Bylle Patterson, Operations Officer, Planning, Resource Utilization and Evaluation Branch, Duty Assessment Division, Office of Operations, United States Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229 (202-566-8651).

Dated: July 23, 1979.

William T. Archey,  
*Acting Commissioner of Customs.*

[FR Doc. 79-23359 Filed 7-27-79; 8:45 am]

BILLING CODE 4810-22-M

[T.D. 79-212]

##### Bicycle Tires and Tubes From the Republic of Korea; Petition Filed by American Manufacturer, Producer or Wholesaler

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Notice of petition filed by an American manufacturer, producer or wholesaler, pursuant to section 516(a), Tariff Act of 1930.

**SUMMARY:** This notice is to advise the public that an American manufacturer has filed a petition alleging that the determination of the Secretary of the Treasury that the bounties or grants received by Korea Inoue Kasei were equal to "0.5 percent of the f.o.b. price for export to the United States," was erroneous, and requesting that countervailing duties should be assessed

at the rate of 12.07 percent on bicycle tires and tubes manufactured and exported from the Republic of Korea by Korea Inoue Kasei.

**DATE:** Comments should be received no later than August 29, 1979.

**FOR FURTHER INFORMATION CONTACT:** Theodore Hume, Office of the Chief Counsel, U.S. Customs Service, 1301 Constitution Avenue, NW, Washington, D.C. 20229 (202-566-5476).

**SUPPLEMENTARY INFORMATION:** Pursuant to section 516(a), Tariff Act of 1930, as amended by the Trade Act of 1974 (19 U.S.C. 1516(a)), and § 175.21(a), Customs Regulations (19 CFR 175.21(a)), notice is hereby given that a petition dated January 30, 1979, was filed on behalf of Carlisle Tire and Rubber Company, an American manufacturer of bicycle tires and tubes. The petitioner alleges that the countervailing duties assessable on bicycle tires and tubes produced by Korea Inoue Kasei are too low and that the proper amount of countervailing duties should be 12.07 percent, not 0.5 percent as was stated in the final countervailing duty determination published January 12, 1979 (44 FR 20841).

Before a decision is made with regard to this petition, consideration will be given to any relevant data, views or arguments submitted in writing. Submissions should be addressed to the Commissioner of Customs, 1301 Constitution Avenue, NW, Washington, D.C. 20229, in time to be received no later than August 29, 1979.

Written submissions will be made available for public inspection in accordance with § 103.8(b), Customs Regulations (19 CFR 103.8(b)), at the Classification and Value Division, Headquarters, U.S. Customs Service, Washington, D.C., during regular business hours.

This notice is being published pursuant to section 516(a), Tariff Act of 1930, as amended (19 U.S.C. 1516(a)) and § 175.21(a), Customs Regulations (19 CFR 175.21(a)).

William T. Archey,  
*Acting Commissioner of Customs.*

Approved: July 23, 1979.

Robert Munheim,  
*General Counsel of the Treasury.*

[FR Doc. 79-23358 Filed 7-27-79; 8:45 am]

BILLING CODE 4810-22-M

#### INTERSTATE COMMERCE COMMISSION

[Volume No. 65]

##### Permanent Authority Decisions; Decision-Notice

###### Correction

In FR Doc. 79-16906, published, at page 31375, on Thursday, May 31, 1979, on page 31377, the following corrections should be made:

1. In the first column, the fifteenth line "NY, and extending along NY Hwy to" should be corrected to read "NY, and extending along NY Hwy 57 to";

2. In the first column, in the first full paragraph "Note", the fourteenth line reading "(2)(e) seeks to eliminate of Sharon, PA. Part" should be corrected to read "(2)(e) seeks to eliminate the gateway of Sharon, PA. Part".

BILLING CODE 1505-01-M

[Docket No. AB-6 (Sub-No. 48F)]

##### Burlington Northern, Inc., Abandonment Near Jamestown and Klose in Stutsman County, N. Dak.; Findings

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided May 24, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in AB-36 (Sub-No. 2), *Oregon Short Line R. Co.—Abandonment Goshen* 360 I.C.C. 91 (1979), and for public use as set forth in said decision, the present and future public convenience and necessity permit the abandonment of a line of railroad between milepost 39.67 near Jamestown, ND, and milepost 33.75 near Klose, ND, a distance of 5.92 miles, in Stutsman, ND. The line consists of two parts, one segment of approximately 1.2 miles between Jamestown and the North Dakota State Hospital located at Jamestown, and a second segment of about 4.7 miles between the State Hospital and Klose. A certificate of abandonment will be issued to the Burlington Northern, Inc. based on the above-described finding of abandonment, by August 29, 1979, unless within 30 days from the date of publication, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment)

to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the Federal Register on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,  
Secretary.

[FR Doc. 79-23399 Filed 7-27-79; 8:45 am]  
BILLING CODE 7035-01-M

[Twenty-Ninth Revised Exemption No. 129]

**Exemption Under Provision of Rule 19 of the Mandatory Car Service Rules Ordered in Ex Parte No. 241**

*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  
Port Huron and Detroit Railroad Company  
Reporting Marks: PHD  
Southern Railway Company  
Reporting Marks: CG-NS-SA-SOU

*Effective 12:01 a.m., July 15, 1979, and continuing in effect until further order of this Commission.*

Issued at Washington, D.C., July 12, 1979.  
Interstate Commerce Commission.  
Joel E. Burns,  
Agent.  
[FR Doc. 79-23396 Filed 7-27-79; 8:45 am]  
BILLING CODE 7035-01-M

[Docket No. AB-43 (Sub-No. 39)]

**Illinois Central Gulf Railroad Co. Abandonment Near Hermanville and Harrison in Clairborne and Jefferson Counties, Miss.; Findings**

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided September 21, 1978, the decision decided January 11, 1979, and the decision of the Commission, Division 1, acting as an Appellate Division, adopted the Review Board's decision of September 21, 1978, as modified by the decision of January 11, 1979, which is administratively final, stating that, the present and future public convenience and necessity permits the abandonment by the Illinois Central Railroad Company of a portion of its Natchez District extending from milepost 50.5 near Hermanville, MS, to milepost 70.0 at Harrison, MS, in Clairborne and Jefferson Counties, MS, a distance of 19.5 miles, subject to the conditions for the protection of employees discussed in AB-36 (Sub-No.

2), *Oregon Short Line R. Co.-Abandonment Goshen*, 360 I.C.C. 91 (1979), and subject to the condition that, subsequent to abandonment, the Illinois Central Gulf Railroad Company will continue to base its rates on pulpwood and wood chips on mileages existing prior to the abandonment, and subject further to the condition that the Illinois Central Gulf Railroad Company or its contractors shall conduct rail line salvage operations so as to (1) avoid the alligator nesting season, and (2) avoid excess sedimentation and possible damage to downstream water habitat. Salvage operations shall not be conducted without giving reasonable notice to the Mississippi Game and Fish Commission. A certificate of abandonment will be issued to the Illinois Central Gulf Railroad Company based on the above-described finding of abandonment, by August 29, 1979, unless within 30 days from the date of publication, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the Federal Register on March 31, 1976, at 41

FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-23397 Filed 7-27-79; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-206F and AB-207F]

**The Louisiana & Pine Bluff Railway Co. Entire Abandonment Near Dollar Junction and Huttig, in Union County, Ark., and Arkansas & Louisiana Missouri Railway Co.—Abandonment of Trackage Rights Over the Louisiana & Pine Bluff Railway Co. and Missouri Pacific Railroad Co. Near Dollar Junction and Huttig, in Union County, Ark.; Findings**

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a Certificate and Decision decided July 6, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to (a) the conditions for the protection of railway employees prescribed by the Commission in AB-36 (Sub-No. 2), *Oregon Short Line R. Co.—Abandonment Goshen*, 360 I.C.C. 91 (1979) and (b) that the prior approval and consummation of the transaction in Finance Docket No. 29043, the present and future public convenience and necessity permits (1) the abandonment by the Louisiana & Pine Bluff Railway Company (L&PB) in AB-206 of its line of railroad between Dollar Junction, AR (at or near Missouri Pacific Railroad Company milepost 523.01) and Huttig, AR (at or near Missouri Pacific Railroad Company milepost 526.51), a distance of approximately 1.83 miles, together with switching and side tracks connected thereto, all in Union County, AR, and (2) discontinuance of service by the Arkansas & Louisiana Missouri Railway Company (A&LM) in AB-207 over this line as well as its operations over the Missouri Pacific line between these two points, via Felsentel, AR. A certificate of public convenience and necessity permitting abandonment and discontinuance of service was issued to the Louisiana & Pine Bluff Railway Company and the Arkansas & Louisiana Missouri Railway Company. Since no investigation was instituted, the requirement of Section 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the Federal Register be made only after such a

decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (Section 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served no later than August 14, 1979. The offer, as filed, shall contain information required pursuant to Section 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective 45 days from the date of this publication.

Agatha L. Mergenovich,  
Secretary.

[FR Doc. 79-23402 Filed 7-27-79; 8:45 am]

BILLING CODE 7035-01-M

[ICC Order No. P-26]

**Passenger Train Operation**

July 25, 1979.

To: The Atchison, Topeka and Santa Fe Railway Company.

*It appearing*, That the National Railroad Passenger Corporation (Amtrak) has established through passenger train service between Chicago, Illinois, and Laredo, Texas. The operation of these trains requires the use of the tracks and other facilities of the Missouri-Kansas-Texas Railroad Company (MKT) between Temple, Texas, and Taylor, Texas. These tracks of the MKT are temporarily out of service because of a derailment. An alternate route between these points is available via The Atchison, Topeka and Santa Fe Railway Company between Temple, Texas, and Milano, Texas, thence via the Missouri Pacific Railroad Company between Milano, Texas, and Taylor, Texas.

It is the opinion of the Commission that the use of such alternate route is necessary in the interest of the public and the commerce of the people; that notice and public procedures 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* (a) Pursuant to the authority vested in me by order of the Commission served March 6, 1978, and of the authority vested in the Commission by section 402(c) of the Rail

Passenger Service Act of 1970 (45 U.S.C. § 502(c)), The Atchison, Topeka and Santa Fe Railway Company is directed to permit use of its tracks between Temple and Milano, Texas, by trains of the National Railroad Passenger Corporation.

(b) In executing the provisions of this order, the common carriers involved shall proceed even though no agreements or arrangements now exist between them with reference to the compensation terms and conditions applicable to said transportation. The compensation terms and conditions shall be, during the time this order remains in force, those which are voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, the compensation terms and conditions shall be as hereafter fixed by the Commission upon petition of any or all of the said carriers in accordance with pertinent authority conferred upon it by the Interstate Commerce Act and by the Rail Passenger Service Act of 1970, as amended.

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

(d) *Effective date*. This order shall become effective at 8:00 a.m., CDT, July 13, 1979.

(e) *Expiration date*. The provisions of this order shall expire at 11:59 p.m., CDT, July 14, 1979, unless otherwise modified, changed, or suspended by order of this Commission.

This order shall be served upon the Atchison, Topeka and Santa Fe Railway Company and upon the National Railroad Passenger Corporation (Amtrak), and that it be filed with the Director, Office of the Federal Register.

Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc. 79-23395 Filed 7-27-79; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-57 (Sub-No. 7)]

**Soo Line Railroad Co. Abandonment Between Baraga (Baraga County) and Calumet and Lake Linden (Houghton County), Mich.; Findings**

Notice is hereby given pursuant to 49 U.S.C. 10903 that by a decision decided October 13, 1978, and the decision of the Commission, Division 1, served June 11, 1979, as modified, adopted the initial decision of the Administrative Law Judge, which is administratively final, stating that, (1) the public convenience and necessity require the abandonment

of (a) that portion of the Soo Line Railroad's branch line commencing at a point 500 feet north of the Portage Lake bridge in the city of Hancock, MI, and running to the end of that line at Calumet, MI; and (b) that portion of the line commencing at First Street, Dollar Bay, MI, and running to Lake Linden, MI; (2) insofar as the application seeks the Commission's approval of the abandonment of that portion of the branch line commencing at milepost 23 near Baraga and running to the portion of the line described in (1) above, the public convenience and necessity require the continued operation of that segment and this portion of the application is denied; (3) the partial abandonment ordered (1) above is conditional upon the rendering of service by the railroad over the remaining portion of the line, (2) above, on at least a twice weekly basis. Otherwise, the abandonment application is denied in its entirety; (4) this partial abandonment is also conditional upon the continuation of the bridge fee assessed by the State of MI to the railroad at the reduced level described in this decision; and (5) the employee protective conditions set out in AB-36 (Sub-No. 2), *Oregon Short Line R. Co.-Abandonment Goshen*, 360 I.C.C. 91 (1979) shall be imposed here. A certificate of abandonment will be issued to the Soo Line Railroad Company based on the above-described finding of abandonment, by August 29, 1979, unless within 30 days from the date of publication, the Commission further finds that:

(1) a financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) it is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If the Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail services over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the Federal Register on March 31, 1976, at 41 FR 13691, as amended by publication of May 10, 1978, at 43 FR 20072. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced decision.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-23398 Filed 7-27-79; 8:45 am]

BILLING CODE 7035-01-M

# Sunshine Act Meetings

Federal Register

Vol. 44, No. 147

Monday, July 30, 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.

### FEDERAL ELECTION COMMISSION.

FEDERAL REGISTER NO. FR-S-1485.

#### PREVIOUSLY ANNOUNCED DATE AND TIME:

Tuesday, July 31, 1979, at 10 a.m.

#### CHANGE IN MEETING:

This meeting will be open to the public.

#### MATTERS TO BE CONSIDERED:

##### Portions Open to the Public

Setting of dates for future meetings.  
Correction and approval of minutes.  
Advisory Opinion 1979-38 V. Bruce Whitehead, Corporate Counsel for Hardee's Food Systems, Inc.  
1980 Election and related matters.  
Appropriations and budget.  
Pending legislation.  
Classification actions.  
Routine administrative matters.

##### Portions Closed to the Public

Compliance; Personnel.

#### PERSON TO CONTACT FOR INFORMATION:

Mr. Fred S. Eiland, Public Information Officer, Telephone: 202-523-4065.

[S-1514-79 Filed 7-26-79; 3:29 p.m.]

BILLING CODE 6715-01-M

2.

### FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 9:30 a.m., August 2, 1979.

PLACE: 1700 G Street NW., Sixth Floor, Washington, D.C.

STATUS: Open meeting.

#### CONTACT PERSON FOR MORE

INFORMATION: Franklin O. Bolling (202-377-6677).

#### MATTERS TO BE CONSIDERED:

Application for Bank Membership—Burrill Mutual Savings Bank, New Britain, Connecticut.

Application for Amendment of Resolution No. 79-332.

Application for Amendment of Resolution No. 79-332, dated June 14, 1979 Conditionally Approving the Bank Membership and Insurance of Accounts—Farmers Savings and Loan Association, Dixon, California.

Application for Permission to Organize a Federal Association—Albert M. Lavezzo, *et al.*, Vallejo, California.

Preliminary Application for Conversion to Federal Mutual Charter—Security Savings and Loan Association, Durham, North Carolina.

Certificate of Authority to do Business in District of Columbia—Equitable Savings and Loan Association, Wheaton, Maryland.

Privacy Act of 1974.

Assessments.

Application for Issuance of Preferred Stock—Biscayne Federal Savings and Loan Association, Miami, Florida.

Regulation Regarding Merger of Federal Stock Associations.

Request for Permission to Incur Debt—Financial Corporation of America, Budget Capital Corporation, Los Angeles, California.

No. 256, July 26, 1979.

[S-1512-79 Filed 7-26-79; 3:29 p.m.]

BILLING CODE 6720-01-M

3.

### FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: At the conclusion of the open meeting to be held at 9:30 a.m., August 2, 1979.

PLACE: 1700 G Street, NW., Sixth Floor, Washington, D.C.

STATUS: Closed Meeting.

#### CONTACT PERSON FOR MORE

INFORMATION: Franklin O. Bolling (202-377-6677).

#### MATTERS TO BE CONSIDERED:

Consideration of FHL Bank Officer Salary Guidelines.

Consideration of Internal Review Office's Quarterly Report to the Board.

No. 257, July 26, 1979.

[S-1513-79 Filed 7-26-79; 3:29 p.m.]

BILLING CODE 6720-01-M

4.

### METRIC BOARD.

TIME AND DATE: August 16, 1979 at 2:00 p.m.; August 17, 1979 at 8:30 a.m.

PLACE: The meeting on August 16 and 17 will be held in the California Room of the Jack Tar Hotel, Van Ness and Geary Streets, San Francisco, California 94101.

STATUS: Open to the public except from 8:30 a.m. to 10:30 a.m. on August 17

during which time the Board will formulate its 1981 budget. This portion of the meeting is closed under exemption section (c)(9)(B) of U.S.C. 522b.

#### MATTERS TO BE CONSIDERED:

Thursday, August 16

Approval of agenda.

Review/approval of minutes of June 21-22, 1979 Board meeting.

Reports.

Discussion on report to the Congress on legislative and regulatory changes required to accommodate metric measurement.

Friday, August 17

Approval of 1981 budget.

Discussion and debate on policy interpretation of the Metric Conversion Act (PL 94-168).

Proposed planning guidelines—discussion and consideration for approval.

Introduction of agenda items for October meeting.

SUPPLEMENTARY INFORMATION: Notice of a public forum to be held by the U.S. Metric Board on August 16, 1979, which will provide individuals and groups the opportunity to comment on metric conversion appears elsewhere in this issue.

#### CONTACT PERSON FOR MORE

INFORMATION: Joan Phillips, 703-235-1933.

Louis F. Polk,

Chairman, United States Metric Board

[S-1507 Filed 7-26-79; 10:29 am]

BILLING CODE 3510-10-M

5.

### NATIONAL TRANSPORTATION SAFETY BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 42405, July 19, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Thursday, July 26, 1979, 9 a.m. [NM-79-24]

CHANGE IN MEETING: A majority of the Board has determined by recorded vote that the business of the Board requires that the time of this meeting be changed to 9 a.m., Wednesday, August 1, 1979, that the agenda of this meeting be revised to read as set forth below, and that no earlier announcement was possible.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Railroad Accident Report*—Rear-end collision of two Consolidated Rail Corporation freight trains at Muncy, Pennsylvania, on January 31, 1979, and *Recommendations* to the Consolidated Rail Corporation.

2. *Aircraft Accident Report*—Delta Air Lines, Inc., Boeing 727-200, N467DA, and Flying Tiger, Inc., Boeing 747-F, N804FT, O'Hare International Airport, Chicago, Illinois, February 15, 1979.

3. *Railroad Accident Report*—Derailment of Amtrak Train No. 8, the Empire Builder, on Burlington Northern track at Lohman, Montana, on March 28, 1979, and *Recommendations* to the Burlington Northern Company and to Amtrak.

4. *Marine Accident Report*—Collision of M/V STAR LIGHT (Greek) and the USS FRANCIS MARION, Norfolk, Virginia; March 4, 1979, and *Recommendations* to the Commandant, U.S. Coast Guard.

5. *Railroad Accident Report*—Derailment of New York City Transit Authority subway train, New York, New York, December 12, 1978, and *Recommendations* to the Metropolitan Transportation Authority.

6. *Case History*—Motor Vehicle Safety Standard 121: Air Brake Systems.

7. *Special Study*—Noncompliance with Hazardous Materials Regulations.

**CONTACT PERSON FOR MORE INFORMATION:** Sharon Flemming, 202-472-6022.

July 25, 1979.

[S-1510-79 Filed 7-26-79; 11:47 am]

BILLING CODE 4910-58-M

6

#### NATIONAL TRANSPORTATION SAFETY BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 42405, July 19, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Friday, July 27, 1979, 9 a.m. [NM-79-25]

CHANGE IN MEETING: A majority of the Board has determined by recorded vote that the business of the Board requires that the time of this meeting be changed to 9 a.m., Thursday, August 2, 1979, that the agenda of this meeting be revised to read as set forth below, and that no earlier announcement was possible.

STATUS: The first four items will be open to the public; the remaining three items will be closed to the public under Exemption 10 of the Government in the Sunshine Act.

#### MATTERS TO BE CONSIDERED:

1. *Letter to Materials Transportation Bureau re closeout of seven Hazardous*

*Materials Recommendations.*

2. *Letter to Materials Transportation Bureau re Notice of Proposed Rulemaking, Notice No. 79-9, Dkt. No. HM-128A.*

3. *Letter to Federal Railroad Administration re Notice of Proposed Rulemaking, Dkt. LI-6, locomotive inspections.*

4. *Discussion*—Board policy on allowing absent Members to vote on agenda items after Board meetings.

5. *Opinion and Order*—Petition of Welch, Dkt. SM-2280; disposition of Administrator's appeal.

6. *Opinion and Order*—Commandant v. Woods, Dkt. ME-69; disposition of pilot's appeal.

7. *Opinion and Order*—Commandant v. Taylor, Dkt. ME-68; disposition of master's appeal.

**CONTACT PERSON FOR MORE INFORMATION:** Sharon Flemming, 202-472-6022.

July 25, 1979.

[S-1511-79 Filed 7-26-79; 11:47 am]

BILLING CODE 4910-58-M

7

#### POSTAL SERVICE: BOARD OF GOVERNORS.

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 9:00 A.M. on Tuesday, August 7, 1979, in the Management Sectional Center, Conference Room 235-235A, 141 Weston Street, Hartford, Connecticut. The meeting is open to the public. The Board expects to discuss the matters stated in the Agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, Louis A. Cox, at (202) 245-4632.

#### Agenda

1. Minutes of the Previous Meeting.

2. Remarks of the Postmaster General. (In keeping with its consistent practice, the Board's agenda provides this opportunity for the Postmaster General to inform the members of miscellaneous current developments concerning the Postal Service. He might report, for example, the appointment or assignment of a key official, or the effect on postal operations of unusual weather or a major strike in the transportation industry. Nothing that requires a decision by the Board is brought up under this item.)

3. Quarterly report on Financial Performance.

(Mr. Finch, Senior Assistant Postmaster General, Finance Group, will present the Quarterly Summary of Financial Performance.)

4. Quarterly Report on Service Performance.

(Mr. Conway, Deputy Postmaster General, will present the Quarterly Summary of Service Performance.)

5. Review of Legislative Matters.

(Mr. Hogan, Assistant Postmaster General, Government Relations, will report on current legislative activities, involving the Postal Service.)

6. Report of the Regional Postmaster General.

(Mr. Jellison, Regional Postmaster General, will report on postal conditions in the Northeast Region. Mr. Paul Donovan, Manager, Management Sectional Center at Hartford, will also present a report on postal conditions in the Hartford area.)

7. Briefing on Morgan Station.

(Mr. Jellison will bring the Board up to date on the Morgan Station facility in New York City.)

8. Postal Service Budget Program.

(Mr. Finch will discuss the Postal Service's Budget for FY 1980 with the Board.)

9. Proposed filing with the Postal Rate Commission for Merchandise Return Service.

(Mr. Finch will present for Board review a proposed filing with the Postal Rate Commission to change the Mail Classification Schedule under 39 U.S.C. § 3623 to include a merchandise return service.)

10. Recommended Decision of the Postal Rate Commission re Minimum Height for Carrier Route Presort Mail.

(The Governors will consider the Recommended Decision of July 19, 1979, to provide a temporary exemption from the minimum height standard of the Classification Schedule for certain cards that are presorted to carrier route or box section (Rate Commission Docket No. 79-1).

Louis A. Cox,

Secretary.

[S-1509-79 Filed 7-26-79; 10:29 am]

BILLING CODE 7710-12-M

8

#### SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (To be published)

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Wednesday, July 18, 1979; Tuesday, July 24, 1979.

CHANGES IN MEETING: Additional items; Deletion of item.

The following additional items will be considered at a closed meeting scheduled for Thursday, July 26, 1979, at 9 a.m.:

Other litigation matter.  
Settlement of injunction action.

The following item will not be considered at a closed meeting scheduled for Tuesday, July 31, 1979 at 10 a.m.

Settlement of injunctive action.

Chairman Williams and Commissioners Evans, Pollack and Karmel determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling or meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: George Yearsich at (202) 755-1100.

July 25, 1979.

[S-1508-79 Filed 7-26-79; 10:29 am]  
BILLING CODE 8010-01-M



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Monday  
July 30, 1979.

**REGISTRATION**

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**Part II**

**Department of  
Interior**

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**Bureau of Land Management**

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**Range Management and Technical  
Services**

## DEPARTMENT OF THE INTERIOR

## Bureau of Land Management

## [43 CFR Part 4100]

## Range Management and Technical Services; Grazing Administration and Trespass

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed Rulemaking.

**SUMMARY:** This proposed rulemaking would amend the regulations on grazing administration and trespass to conform to the provisions of the Public Rangelands Improvement Act of 1978 that amend and supplement the requirements of the Federal Land Policy and Management Act of 1976.

**DATE:** Comments by September 28, 1979.

**ADDRESS:** Director (650), Bureau of Land Management, 18th and C Streets, NW, Washington, D.C. 20240.

Comments will be available for public inspection in Room 5555 of the above address during regular business hours (7:45 a.m.-4:15 p.m.) Monday through Friday.

**FOR FURTHER INFORMATION, CONTACT:** Maxwell T. Lieurance, (202) 343-6011.

**SUPPLEMENTARY INFORMATION:** The principal author of this proposed rulemaking is David Little of the Division of Range Management, Bureau of Land Management, assisted by Robert Bruce of the Division of Legislation and Regulatory Management, Bureau of Land Management, and Carolyn Osolinik of the Office of the Solicitor, Department of the Interior.

The proposed rulemaking would add the Public Rangelands Improvement Act of 1978 (PL 95-514) as one of the authorities for administering grazing use of the public lands and would add and modify provisions to be consistent with that Act. The Public Rangelands Improvement Act includes conditions under which grazing permits and leases may be issued for a term of less than 10 years and emphasizes the cooperation, consultation, and coordination required during preparation of allotment management plans.

When there is a decrease in available forage, the present regulations require a cancellation of grazing preference. The proposed rulemaking would amend the regulations to permit suspension of preference rather than cancellation where there is a decrease in available forage.

The provisions for closure to livestock would be expanded by this proposed rulemaking to permit emergency adjustments in authorized grazing use as alternatives to complete closure. Such action would require that the authorized officer determine that the soil, vegetation, or other resources on the public land require protection because of drought, fire, or for similar reasons. Because protection of the resource requires immediate adjustments, such decisions would be issued as final decisions without prior issuance of proposed decisions and would be placed in full force and effect on a specified date. A decision which implements an action required by a previous final decision could also be issued as a final decision and be placed in full force and effect on a specified date.

The proposed rulemaking would require that decisions issued following completion of resource inventory, land use planning, and environmental impact statements be put in full force and effect on a specified date. Written approval by the Director would be required to do otherwise. Authority to implement these decisions in full force and effect exists in § 4160.3(c) of the current grazing regulations. This amendment, however, will clarify § 4160.3(c), as it relates to decisions issued after completion of livestock grazing EIS's. The proposed rulemaking would continue to permit discretion by the authorized officer to place other decisions in full force and effect if required for the orderly administration of the range or protection of resource values. This change is made to be consistent with the provisions of Section 402 of the Federal Land Policy and Management Act (43 U.S.C. 1752).

The proposed rulemaking also modifies the wording in the current regulations to make it clear that when an allotment management plan is completed, the terms and conditions of the allotment management plan are incorporated into a permit or lease. The proposal emphasizes the requirement of the Public Rangelands Improvement Act that allotment management plans are to be prepared in careful and considered consultation, cooperation, and coordination with affected permittees or lessees; landowners involved; the district grazing advisory boards; and any State having lands within the area involved.

The current regulations require that the land offered in an exchange-of-use grazing agreement be within the exterior boundaries of the allotment to be used. The proposed amendment would permit an exception where it would otherwise meet a specific objective identified in a land use plan or an allotment

management plan. The proposed rulemaking would also require that lands offered in an exchange-of-use agreement be unfenced and intermingled with public lands and that use under such an agreement be in harmony with management objectives for the allotment.

It is hereby determined that the publication of this document is not a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a significant regulatory rulemaking and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Under the authority of the Taylor Grazing Act of 1934, as amended (43 U.S.C. 315, 315(a)-315(r)), Section 4 of the Act of August 28, 1937 (43 U.S.C. 1811(d)), and the Federal Land Policy and Management Act of 1976, as amended by the Public Rangelands Improvement Act of 1978, (43 U.S.C. 1701 et. seq.), it is proposed to amend Part 4100, Group 4100, Subchapter D, Chapter II of Title 43 of the Code of Federal Regulations as set forth below:

1. Subpart 4100 is amended by changing Section 4100.0-3 by revising paragraph (b) as follows:

§ 4100.0-3 Authority.

(b) The Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), as amended by the Public Rangelands Improvement Act of 1978 (PL 95-514), provides for the management, protection, development, and enhancement of the public lands and directs the Secretary to manage these lands under principles of multiple use and sustained yield in accordance with land use plans.

2. Subpart 4110 is amended by changing Section 4110.3-2 by revising paragraphs (b) and (c) as follows:

§ 4110.3-2 Decrease in forage.

(b) When authorized grazing use exceeds the amount of forage available and allocated for livestock grazing within an allotment or where reduced grazing use is necessary to facilitate achieving the objectives in the land use plans, the grazing authorized under grazing permits or leases shall be

reduced to the livestock grazing capacity.

(c) Suspensions or reductions under paragraphs (a) or (b) of this section shall be equitably apportioned by the authorized officer or as agreed to among permittees or lessees and the authorized officer. If consistent with resource management needs, the authorized officer may provide that the reductions under paragraph (b) of this section be scheduled over a period not to exceed 3 years with the full reduction coming in the last year.

3. Subpart 4120 is amended in Sections 4120.2-1, by revising paragraphs (b), (c), and (d) and by adding a new paragraph (e) as follows:

**§ 4120.2-1 Mandatory terms and conditions.**

(b) If it has been determined that allotment management plans are not necessary, or if allotment management plans have not been implemented where they are needed, the authorized officer shall incorporate terms and conditions under this section in grazing permits or leases.

(c) The authorized officer shall adjust these terms and conditions if the condition of the range requires adjustment of grazing use, and may cancel grazing permits or grazing leases and grazing preferences as conditions warrant. Those adjustments affecting terms and conditions may be put into full force and effect pursuant to § 4160.3 of this title.

(d) All permits and leases shall be subject to cancellation, suspension, or adjustment as required by land use plans, and subject to applicable law.

(e) All permits and leases shall include the provisions that such permits and leases shall be subject to annual review and to adjustment in accordance with applicable law.

3a. Subpart 4120 is amended in § 4120.2-3 by revising the introductory paragraph and paragraphs (a) (c), and (f) to read as follows:

**§ 4120.2-3 Allotment management plans.**

Grazing Management may be applied on allotments through the preparation and implementation of allotment management plans.

(a) An allotment management plan shall be prepared in careful and considered consultation, cooperation, and coordination with the affected permittee(s) or lessee(s), landowners involved, the district grazing advisory boards where established, any State having lands within the area to be

covered by such allotment management plan, and shall be approved by the authorized officer and implemented (see § 4100.0-5(c) of this title). The allotment management plan shall include terms and conditions under 4120.2-1 of this title, may include terms and conditions under § 4120.2-2 of this title, and shall prescribe a system of grazing designed to meet specific management objectives. The plan shall include the limits of flexibility within which the permittee or lessee may adjust this operation without prior approval of the authorized officer. The plan shall provide for the collection of data that shall be used to evaluate the effectiveness of the system of grazing in achieving the specific objectives.

(c) Allotment management plans may be revised or terminated after review and careful and considered consultation, cooperation, and coordination with the parties involved.

(f) Decisions which specify that the terms and conditions of allotment management plans are incorporated into grazing permits or leases may be protested and appealed under Subpart 4160 of this title.

3b. Section 4120.3 is revised in its entirety including the caption.

**§ 4120.3 Emergency adjustments in livestock use and closure to livestock use.**

When the authorized officer determines that the soil, vegetation, or other resources on the public lands require protection because of drought, fire, or for other similar reasons, he shall take one of the following actions as he deems appropriate.

(a) The authorized officer may issue decisions temporarily adjusting the authorized livestock grazing use in allotments or portions of allotments affected by the emergency condition. Such decisions shall be issued as final decisions, without prior issuance of a proposed decisions, and shall be placed in full force and effect on the date specified by the authorized officer under § 4160.3(d) of this title. Each such decision shall required the owner of livestock affected thereby to adjust grazing use in accordance with the provisions of the decision. The authorized officer may proceed to impound, remove, and dispose of any livestock found in violation of the decision in accordance with § 4150.5 of this title. Each such decision shall state why the use adjustment is being made, shall specify the period of time during which the adjustment will be in effect, and shall describe the resource conditions that must be present before

the regularly authorized grazing use may be resumed.

(b) The authorized officer may temporarily close allotments to grazing by any kind of livestock and for any period of time. The action to be taken by the authorized officer shall be specified in a notice of closure. The notice of closure shall state why the allotments, or portions of allotments, are being closed, shall specify the period of time for which these areas will be closed, and shall describe the resource conditions that must be present before these areas are reopened to grazing. The notice shall be published in a local newspaper and shall be posted at the county courthouse and at a post office near the public land area involved. Written notification shall be delivered personally or by certified mail to those who are authorized to graze livestock on the allotments affected. The notice of closure shall be issued as a final decision in full force and effect under § 4160.3(d) and shall require all owners of livestock affected thereby to remove such livestock in accordance with provisions of the notice. The authorized officer may proceed to impound, remove, and dispose of any livestock found in violation of the closing notice after the closure date specified in the notice in accordance with § 4150.5.

4. Subpart 4130 is amended by changing sections § 4130.2 by revising paragraph (d)(2)(iv) to read as follows:

**§ 4130.2 Grazing permits or leases.**

(d) \*\*\*  
(2) \*\*\*

(iv) Availability of completed land use plans, except that the absence of a completed land use plan shall not be the sole basis for issuing a grazing permit or lease for a term of less than 10 years unless the authorized officer determines on a case-by-case basis that the information to be contained in such land use plan is necessary to determine whether a shorter term should be established;

4a. Section 4130.4-1 is revised to read:

**§ 4130.4-1 Exchange-of-use grazing agreements.**

An exchange-of-use grazing agreement may be issued to any applicant who owns or controls lands which are unfenced and intermingled with public lands when use under such an agreement would be in harmony with the management objectives of the allotment. The lands offered for exchange-of-use shall be within the exterior boundaries of the allotment to

be used, except that lands outside such boundaries may be included where it would otherwise meet specific objectives identified in a land use plan or allotment management plan. An exchange-of-use agreement may be issued to authorize use of public lands to the extent of the livestock grazing capacity of the lands offered in exchange-of-use. No fee shall be charged for this grazing use. The exchange-of-use agreement may be issued for a term of not more than 10 years. The expiration date of the exchange-of-use agreement may coincide with the expiration date of any grazing permit or lease issued on the allotment in which the lands offered in exchange-of-use is located. If the land offered in the exchange-of-use agreement is lease, the expiration date of the exchange-of-use agreement shall coincide with the expiration date of this lease not to exceed 10 years. During the term of the exchange-of-use agreement, the Bureau of Land Management shall have management for grazing purposes of such private lands under the provisions of this part and may authorize grazing use as deemed appropriate.

5. Section 4160.3 is amended by revising paragraph (c) and by adding a new paragraph (d) to read as follows:

**§ 4160.3 Final decisions**

\* \* \* \* \*

(c) The final decision shall provide for a period of 30 days after receipt for filing of an appeal. An appeal shall suspend the effects of a final decision from which it is taken, and an applicant having a grazing preference who was granted grazing use in the preceding year, may continue to make that use pending final action on an appeal, unless the decision appealed from was made effective by the authorized officer in accordance with the following:

Decisions affecting livestock grazing use which are issued to all affected permittees/lessees upon the completion of the resource inventory, land use planning, and environment impact statements, shall be put in full force and effect on the date specified in the decision and pending decision on appeal except the decision may, on written approval of the Director, provide otherwise. All other decisions may be put in full force and effect on a specified date and pending decision on appeal if found by the authorized officer to be required for the orderly administration of the public rangelands or for the protection of resource values.

(d) The authorized officer may issue a final decision without first issuing a proposed decision if the action is of an emergency nature as provided in Section 4120.3, or if the decision implements a

previous final decision. All such decisions shall be placed in full force and effect on the date specified by the authorized officer.

Dated: July 24, 1979.

Guy R. Martin,

*Assistant Secretary of the Interior.*

[FR Doc. 79-23291 Filed 7-27-79; 8:45 am]

BILLING CODE 4310-84-M

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Monday  
July 30, 1979

**REGULATIONS**

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**Part III**

**Department of  
Housing and Urban  
Development**

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**Federal Housing Commissioner, Office of  
Assistant Secretary for Housing**

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**Fair Market Rents for New Construction  
and Substantial Rehabilitation; Correction**

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT****Federal Housing Commissioner, Office  
of Assistant Secretary for Housing****24 CFR Part 888****[Docket No. R-79-677]****Low Income Housing; Fair Market  
Rents for New Construction and  
Substantial Rehabilitation***Correction*

In FR Doc. 79-21860, published at page 41092, Friday, July 13, 1979, several pages were illegible. The following pages 41096, 41110, 41114, 41115, 41116, 41119, 41123, 41124, 41129, and 41136 are reprinted.

BILLING CODE 1505-01-M

AREA OFFICE BUFFALO, N.Y. REGION II - NEW YORK

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
ALBANY/ GLEN FALLS/ MASSENA/ *	DETACHED			429	517	571
	SEMI-DETACHED/ROH		317	376	458	508
	WALKUP	249	309	361	424	479
	ELEVATOR-2-4 Sty 5 + Sty	273	339	426		
SYRACUSE	DETACHED	294	360	447		
	SEMI-DETACHED/ROH		317	376	458	508
	WALKUP	249	309	361	424	479
	ELEVATOR-2-4 Sty 5 + Sty	273	339	426		
ITHACA/ WATERLOO/ SCHNECTADY/ BINGHAMTON *	DETACHED	294	360	447		
	SEMI-DETACHED/ROH		317	376	458	508
	WALKUP	249	309	361	424	479
	ELEVATOR-2-4 Sty 5 + Sty	273	339	426		
PLATTSBURGH	DETACHED			438	517	571
	SEMI-DETACHED/ROH		370	404	466	526
	WALKUP	292	319	370	432	492
	ELEVATOR-2-4 Sty 5 + Sty	369	396	455		

\*Market areas are not combined. FGRs are identical for these market areas.

AREA OFFICE NEWARK, N.J. REGION II - NEW YORK

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
TRENTON	DETACHED			630	701	738
	SEMI-DETACHED/ROH	419	456	521	600	659
	WALKUP	384	416	475	546	601
	ELEVATOR-2-4 Sty 5 + Sty	453	488	557	639	697
VINELAND	DETACHED	495	539	621	717	780
	SEMI-DETACHED/ROH		363	419	498	557
	WALKUP	293	326	376	447	502
	ELEVATOR-2-4 Sty 5 + Sty	356	392	451	533	591
PLATTSBURGH	DETACHED	398	442	514	611	674
	SEMI-DETACHED/ROH					
	WALKUP					
	ELEVATOR-2-4 Sty 5 + Sty					

AREA, OFFICE GREENSBORO, N.C. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
WINSTON-SALEM	DETACHED			347	422	482
	SEMI-DETACHED/ROW		295	336	405	462
	WALKUP	254	295	336	405	462
	ELEVATOR-2-4 Sty 5 + Sty	278	318	359		
FAYETTEVILLE	DETACHED	306	348	397		
	SEMI-DETACHED/ROW		272	317	368	423
	WALKUP	240	272	317	368	423
	ELEVATOR-2-4 Sty 5 + Sty	263	295	339		
WILMINGTON	DETACHED	301	335	383		
	SEMI-DETACHED/ROW		271	318	380	443
	WALKUP	244	271	318	380	443
	ELEVATOR-2-4 Sty 5 + Sty	268	295	340		
	DETACHED	306	341	390		
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty 5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty 5 + Sty					

AREA, OFFICE GREENSBORO, N.C. REGION IV - ATLANTA

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
GREENSBORO	DETACHED			372	446	505
	SEMI-DETACHED/ROW		297	339	414	478
	WALKUP	263	297	339	414	478
	ELEVATOR-2-4 Sty 5 + Sty	287	321	362		
ASHEVILLE	DETACHED	309	351	401		
	SEMI-DETACHED/ROW		286	326	401	463
	WALKUP	246	286	326	401	463
	ELEVATOR-2-4 Sty 5 + Sty	270	310	349		
CHARLOTTE	DETACHED	303	344	391		
	SEMI-DETACHED/ROW		290	332	403	463
	WALKUP	255	290	332	403	463
	ELEVATOR-2-4 Sty 5 + Sty	280	314	356		
DURHAM	DETACHED	315	357	408		
	SEMI-DETACHED/ROW		279	326	391	448
	WALKUP	244	279	326	391	448
	ELEVATOR-2-4 Sty 5 + Sty	269	303	350		
GREENVILLE	DETACHED	309	351	401		
	SEMI-DETACHED/ROW		279	321	379	437
	WALKUP	244	279	321	379	437
	ELEVATOR-2-4 Sty 5 + Sty	269	303	344		
RALEIGH	DETACHED	309	351	401		
	SEMI-DETACHED/ROW		311	353	431	497
	WALKUP	276	311	353	431	497
	ELEVATOR-2-4 Sty 5 + Sty	301	335	377		

AREA	OFFICE	CHICAGO, ILLINOIS	REGION	NUMBER OF BEDROOMS				
				0	1	2	3	4 or more
LA SALLE		DETACHED	SEMI-DETACHED/ROW	422	485	552		
				333	398	458	523	
				274	314	381	439	491
				295	333	400	465	
QUINCY		DETACHED	SEMI-DETACHED/ROW	375	433	494		
				300	352	409	467	
				251	289	347	402	454
				272	311	366	418	
PEORIA		DETACHED	SEMI-DETACHED/ROW	467	528	591		
				381	444	501	564	
				333	372	439	496	549
				355	393	459	515	
		DETACHED	SEMI-DETACHED/ROW	467	528	591		
				381	444	501	564	
				333	372	439	496	549
				355	393	459	515	

AREA	OFFICE	CHICAGO, ILLINOIS	REGION	NUMBER OF BEDROOMS				
				0	1	2	3	4 or more
SPRINGFIELD		DETACHED	SEMI-DETACHED/ROW	433	490	552		
				361	411	468	524	
				309	338	406	462	515
				320	357	425	480	
BELLEVILLE		DETACHED	SEMI-DETACHED/ROW	391	450	517		
				304	367	425	488	
				255	294	362	419	474
				274	312	380	431	
CARROLLDALE		DETACHED	SEMI-DETACHED/ROW	415	475	539		
				322	393	449	511	
				271	312	387	441	491
				295	332	407	462	
CHRYSLER		DETACHED	SEMI-DETACHED/ROW	412	470	532		
				325	389	446	505	
				276	314	384	440	491
				295	332	402	455	
DANVILLE		DETACHED	SEMI-DETACHED/ROW	445	505	569		
				361	423	479	538	
				303	347	417	474	528
				333	370	441	492	
EAST ST. LOUIS		DETACHED	SEMI-DETACHED/ROW	381	442	508		
				300	357	416	479	
				249	299	353	411	465
				272	311	375	440	

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
LAWAYETTE	DETACHED			450	497	539
	SEMI-DETACHED/ROW		307	359	403	434
	WALKUP	270	303	355	394	433
	ELEVATOR-2-4 Sty 5 + Sty	292 343	326 379	400 449		
SOUTH BEND	DETACHED			494	541	584
	SEMI-DETACHED/ROW		335	406	443	481
	WALKUP		296	329	401	440
	ELEVATOR-2-4 Sty 5 + Sty	318 367	352 405	445 495		
TERRE HAUTE	DETACHED			448	496	540
	SEMI-DETACHED/ROW		308	355	399	433
	WALKUP		266	299	351	394
	ELEVATOR-2-4 Sty 5 + Sty	288 341	322 376	395 447		

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
BLOOMINGTON	DETACHED			440	476	523
	SEMI-DETACHED/ROW		273	356	389	423
	WALKUP	237	268	346	381	423
	ELEVATOR-2-4 Sty 5 + Sty	258 308	289 345	389 446		
INDIANAPOLIS	DETACHED			456	542	584
	SEMI-DETACHED/ROW		296	362	442	482
	WALKUP	257	290	352	437	472
	ELEVATOR-2-4 Sty 5 + Sty	278 329	312 365	395 455		
EVANSVILLE	DETACHED			449	488	534
	SEMI-DETACHED/ROW		294	377	410	444
	WALKUP	257	283	356	394	440
	ELEVATOR-2-4 Sty 5 + Sty	279 324	305 359	401 455		
FORT WAYNE	DETACHED			458	497	544
	SEMI-DETACHED/ROW		302	368	406	445
	WALKUP	259	293	346	386	444
	ELEVATOR-2-4 Sty 5 + Sty	281 333	314 367	390 453		
GARY	DETACHED			485	531	572
	SEMI-DETACHED/ROW		337	406	453	483
	WALKUP	299	328	391	434	476
	ELEVATOR-2-4 Sty 5 + Sty	320 373	351 412	434 499		
HAMMOND	DETACHED			465	541	586
	SEMI-DETACHED/ROW		340	403	450	489
	WALKUP	296	328	391	434	469
	ELEVATOR-2-4 Sty 5 + Sty	318 365	351 401	434 489		

AREA OFFICE GRAND RAPIDS, MICH. REGION V - CHICAGO.

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
GRAND RAPIDS	DETACHED		354	404	454	505
	SEMI-DETACHED/ROW					
	WALKUP	240	291	354	398	448
	ELEVATOR-2-4 Sty 5 + Sty	290	343	383		
		304	374	402		
BATTLE CREEK-KALAMAZOO	DETACHED					
	SEMI-DETACHED/ROW		363	417	469	516
	WALKUP	245	300	365	407	459
	ELEVATOR-2-4 Sty 5 + Sty	296	350	391		
		310	382	411		
BENTON HARBOR	DETACHED					
	SEMI-DETACHED/ROW		263	417	469	516
	WALKUP	245	300	365	407	459
	ELEVATOR-2-4 Sty 5 + Sty	296	350	391		
		310	382	411		
JACKSON/LANSING	DETACHED					
	SEMI-DETACHED/ROW		270	421	472	527
	WALKUP	250	300	355	415	468
	ELEVATOR-2-4 Sty 5 + Sty	302	353	400		
		317	363	400		
MICHIGAN	DETACHED					
	SEMI-DETACHED/ROW		268	417	469	516
	WALKUP	246	300	355	407	459
	ELEVATOR-2-4 Sty 5 + Sty	296	350	391		
		310	382	411		
MARQUETTE/TRAVERSE CITY*	DETACHED					
	SEMI-DETACHED/ROW		278	420	466	511
	WALKUP	257	311	370	425	473
	ELEVATOR-2-4 Sty 5 + Sty	310	367	410		
		325	400	430		

\*Market areas are not combined. FIGS are identical for these market areas.

AREA OFFICE DETROIT, MICH. REGION V - CHICAGO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
DETROIT/ANN ARBOR/ YPSILANTI *	DETACHED			497	533	561
	SEMI-DETACHED/ROW		428	459	488	533
	WALKUP	295	339	409	451	481
	ELEVATOR-2-4 Sty 5 + Sty	319	379	424		
		342	413	509		
FLINT/ SAGINAW *	DETACHED			456	491	519
	SEMI-DETACHED/ROW		346	415	462	496
	WALKUP	268	320	375	422	450
	ELEVATOR-2-4 Sty 5 + Sty	303	361	403		
		325	392	484		
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty 5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty 5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty 5 + Sty					

\*Market areas are not combined. FIGS are identical for these market areas.



OFFICE ALBUQUERQUE, N.M. REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SANTA FE	DETACHED		339	404	476	
	SEMI-DETACHED/ROW		286	318	382	451
	WALKUP	201	260	293	351	396
	ELEVATOR-2-4 Sty 5 + Sty	225	270	342		
SILVER CITY/ TAOS/TIERRA ANARILLA*	DETACHED	241	292	364		476
	SEMI-DETACHED/ROW		290	324	387	459
	WALKUP	212	264	307	363	417
	ELEVATOR-2-4 Sty 5 + Sty	235	271	342		
TRUTH OR CONSEQUENCES	DETACHED	251	293	364		441
	SEMI-DETACHED/ROW		263	293	351	420
	WALKUP	189	235	266	315	364
	ELEVATOR-2-4 Sty 5 + Sty	215	251	317		
FARMINGTON	DETACHED	231	272	338		476
	SEMI-DETACHED/ROW		290	324	387	459
	WALKUP	212	264	307	363	417
	ELEVATOR-2-4 Sty 5 + Sty	235	271	342		
	DETACHED	261	293	364		
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty 5 + Sty					

\*Market areas are not combined. Figs are identical for these market areas.

OFFICE OKLAHOMA CITY, OKLA. REGION VI - DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
OKLAHOMA CITY	DETACHED		366	442	484	
	SEMI-DETACHED/ROW	247	286	351	427	469
	WALKUP	203	239	298	366	394
	ELEVATOR-2-4 Sty 5 + Sty	229	269	334		
ADA	DETACHED	263	309	366		514
	SEMI-DETACHED/ROW	285	308	375	440	503
	WALKUP	242	264	323	380	428
	ELEVATOR-2-4 Sty 5 + Sty	270	296	362		
ARDMORE	DETACHED		376	433	487	
	SEMI-DETACHED/ROW	269	292	364	422	476
	WALKUP	228	248	314	364	403
	ELEVATOR-2-4 Sty 5 + Sty	256	281	354		
BARTLESVILLE	DETACHED		344	406	448	
	SEMI-DETACHED/ROW		385	329	392	433
	WALKUP	235	256	298	357	389
	ELEVATOR-2-4 Sty 5 + Sty	243	262	305		
ENID	DETACHED		424	457	519	
	SEMI-DETACHED/ROW	257	329	412	446	508
	WALKUP	211	280	355	379	425
	ELEVATOR-2-4 Sty 5 + Sty	237	310	392		
GUYTON	DETACHED		363	439	493	
	SEMI-DETACHED/ROW	228	251	352	427	480
	WALKUP	184	205	298	366	403
	ELEVATOR-2-4 Sty 5 + Sty	212	237	336		

AREA OFFICE OKLAHOMA CITY, OKLA. REGION VI-DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
WOODWARD	DETACHED			386	471	513
	SEMI-DETACHED/ROW	261	283	375	453	502
	WALKUP	218	238	383	392	426
	ELEVATOR-2-4 Sty 5 + Sty	246	270	362		
McALESTER	MOBILE HOMES		179	243	305	330
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty 5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty 5 + Sty					
	DETACHED					
	SEMI-DETACHED/ROW					
	WALKUP					
	ELEVATOR-2-4 Sty 5 + Sty					

AREA OFFICE OKLAHOMA CITY, OKLA. REGION VI-DALLAS

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
LAWTON	DETACHED			442	464	531
	SEMI-DETACHED/ROW	319	357	431	453	520
	WALKUP	278	312	381	394	446
	ELEVATOR-2-4 Sty 5 + Sty	305	343	418		
McALESTER	DETACHED			320	381	418
	SEMI-DETACHED/ROW		203	313	374	411
	WALKUP	159	178	286	342	368
	ELEVATOR-2-4 Sty 5 + Sty	171	188	298		
MUSKOGEE	DETACHED			299	368	405
	SEMI-DETACHED/ROW		250	288	350	393
	WALKUP	196	223	258	320	349
	ELEVATOR-2-4 Sty 5 + Sty	205	233	269		
SHAWNEE	DETACHED			346	389	429
	SEMI-DETACHED/ROW	227	260	335	378	415
	WALKUP	184	216	283	318	343
	ELEVATOR-2-4 Sty 5 + Sty	212	248	322		
STILLWATER	DETACHED			354	421	474
	SEMI-DETACHED/ROW	250	271	344	411	459
	WALKUP	208	228	293	352	386
	ELEVATOR-2-4 Sty 5 + Sty	236	259	332		
TULSA	DETACHED			380	427	484
	SEMI-DETACHED/ROW		315	366	413	469
	WALKUP	250	290	341	386	433
	ELEVATOR-2-4 Sty 5 + Sty	256	296	347	345	459

AREA OFFICE ST. LOUIS, MO REGION VII - KANSAS CITY

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
ST. LOUIS	DETACHED		337	397	479	564
	SEMI-DETACHED/ROW					
	WALKUP	244	306	373	452	501
	ELEVATOR-2-4 Sty 5 + Sty	282	352	425		
COLUMBIA	DETACHED	304	370	518		
	SEMI-DETACHED/ROW		285	365	447	501
	WALKUP		230	273	352	430
	ELEVATOR-2-4 Sty 5 + Sty		268	318	404	477
KIRKSVILLE	DETACHED					
	SEMI-DETACHED/ROW		278	349	441	484
	WALKUP		212	264	331	410
	ELEVATOR-2-4 Sty 5 + Sty		250	308	382	
ROLLA	DETACHED					
	SEMI-DETACHED/ROW		255	326	415	475
	WALKUP		191	242	313	385
	ELEVATOR-2-4 Sty 5 + Sty		238	285	363	419
CAPE GIRARDEAU	DETACHED					
	SEMI-DETACHED/ROW		259	332	425	475
	WALKUP		197	250	320	391
	ELEVATOR-2-4 Sty 5 + Sty		234	294	371	

AREA OFFICE KANSAS CITY, KANSAS REGION VII-KANSAS CITY

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
KANSAS CITY, MO.	DETACHED		367	419	448	
	SEMI-DETACHED/ROW		292	353	419	448
	WALKUP	244	279	325	385	421
	ELEVATOR-2-4 Sty 5 + Sty	268	307	379		
JOPLIN, MO.	DETACHED	302	341	492		
	SEMI-DETACHED/ROW		356	431	467	
	WALKUP	175	205	288	376	414
	ELEVATOR-2-4 Sty 5 + Sty	251	287	355		
ST. JOSEPH, MO.	DETACHED	283	322	462		
	SEMI-DETACHED/ROW		349	417	455	
	WALKUP	249	289	318	359	392
	ELEVATOR-2-4 Sty 5 + Sty	262	306	379		
SEDALIA, MO.	DETACHED	302	341	492		
	SEMI-DETACHED/ROW		322	349	413	
	WALKUP	187	211	296	368	404
	ELEVATOR-2-4 Sty 5 + Sty	235	268	338		
SPRINGFIELD, MO.	DETACHED	302	341	492		
	SEMI-DETACHED/ROW		331	395	431	
	WALKUP	173	202	261	343	389
	ELEVATOR-2-4 Sty 5 + Sty	222	266	328		

OFFICE SACRAMENTO, CA. REGION IX - SAN FRANCISCO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
SACRAMENTO	DETACHED			425	460	500
	SEMI-DETACHED/ROW		375	415	450	485
	WALKUP	270	310	360	445	480
	ELEVATOR-2-4 Sty 5 + Sty	360	405	460		
PLACERVILLE	DETACHED	440	495	575		
	SEMI-DETACHED/ROW		380	425	460	495
	WALKUP	275	315	365	455	490
	ELEVATOR-2-4 Sty 5 + Sty	365	415	470		
REDDING	DETACHED			435	470	510
	SEMI-DETACHED/ROW		385	425	460	495
	WALKUP	235	270	320	368	415
	ELEVATOR-2-4 Sty 5 + Sty	370	415	470		
SO. L. TAHOE	DETACHED			495	540	590
	SEMI-DETACHED/ROW		440	480	530	575
	WALKUP	315	360	420	525	570
	ELEVATOR-2-4 Sty 5 + Sty	420	475	540		
YREKA	DETACHED			425	460	500
	SEMI-DETACHED/ROW			415	450	495
	WALKUP	270	310	360	445	485
	ELEVATOR-2-4 Sty 5 + Sty	360	405	460		

OFFICE LOS ANGELES, CA. REGION IX - SAN FRANCISCO

MARKET AREA	STRUCTURE TYPE	NUMBER OF BEDROOMS				
		0	1	2	3	4 or more
PASA ROBLES	DETACHED		578	615	659	
	SEMI-DETACHED/ROW		372	440	541	590
	WALKUP	278	315	368	460	505
	ELEVATOR-2-4 Sty 5 + Sty	294	331	384	476	521
SAN DIEGO/ EL CAJON *	DETACHED	417	463	551		
	SEMI-DETACHED/ROW		470	525	572	
	WALKUP	297	352	411	475	515
	ELEVATOR-2-4 Sty 5 + Sty	366	422	530		
SANTA ANA	DETACHED	415	511	625		
	SEMI-DETACHED/ROW		472	530	570	
	WALKUP	295	351	417	461	495
	ELEVATOR-2-4 Sty 5 + Sty	310	367	435		
SAN BERNARDINO	DETACHED	424	491	592		
	SEMI-DETACHED/ROW		460	512	568	
	WALKUP	262	316	377	409	454
	ELEVATOR-2-4 Sty 5 + Sty	280	336	399		
	DETACHED	387	448	544		
	SEMI-DETACHED/ROW		348	425	471	535
	WALKUP	262	316	377	409	454
	ELEVATOR-2-4 Sty 5 + Sty	280	336	399		
	DETACHED	387	448	544		
	SEMI-DETACHED/ROW		348	425	471	535
	WALKUP	262	316	377	409	454
	ELEVATOR-2-4 Sty 5 + Sty	280	336	399		

\*Market areas are not combined. FIFs are identical for these market areas.

BILLING CODE 1505-01-C

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Monday  
July 30, 1979

Forest Reserves

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**Part IV**

**Department of  
Agriculture**

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**Forest Service**

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**National Environmental Policy Act  
Process; Final Implementation Procedures**

## DEPARTMENT OF AGRICULTURE

## Forest Service

## Forest Service NEPA Process, Final Implementation Procedures

## 1. Purpose and Background

These final guidelines establish Forest Service policy for implementing the procedural provisions of the National Environmental Policy Act (NEPA) as required by the Council on Environmental Quality's (CEQ) regulations (40 CFR Parts 1500-1508). The guidelines will be published as Forest Service Manual (FSM) Chapter 1950. These procedures become effective July 30, 1979. The provisions apply to the fullest extent practicable to analyses and documents started before July 30, 1979, but they do not require redoing or revising completed work.

This manual chapter provides one policy document for use by Forest Service personnel. It incorporates appropriate CEQ regulations by direct quotation and expands, where necessary, to further define Forest Service procedures. Forest Service procedures conform with proposed Department of Agriculture regulations for the implementation of NEPA.

Forest Service Manual Chapter 1950 follows the sequence of the decision process. It provides the same outline for environmental assessments and environmental impact statements, and focuses upon the total decisionmaking process rather than the environmental documents. To strengthen the integration of NEPA and the decisionmaking process, it provides for filing the record of decision with the final environmental impact statement where the National Forest System is involved and the provision for administrative review is applicable (36 CFR 211.19).

The revised manual incorporates applicable laws, regulations and Executive Orders of the President. The Executive Orders are referenced periodically, and copies are available at the Office of the Chief or the Offices of the Regional Foresters throughout the country. Other referenced material—such as the Inform and Involve Handbook, Secretary of Agriculture's memoranda and other sections of the Forest Service Manual—is either available upon request or may be reviewed in the Office of the Environmental Coordinator. An index is provided at the end of the manual text to assist users.

The Forest Service published the draft procedures in the Federal Register, April 23, 1979, and requested comments by May 31, 1979. Response was not voluminous. The comments we did receive aided us in preparing the final procedures. We received eleven letters of comment from outside the Forest Service. The Forest Service staff read and analyzed each comment and considered them in preparing our final procedures. When, after discussion and review, we determined that the comments raised valid concerns, we changed the procedures accordingly. When we decided that reasons supporting the procedures were stronger than those suggesting changes, we left the procedures unchanged. In addition to comments from organizations and individuals, there were several comments from units within the Forest Service. Part 2 of this preamble describes, section by section, the major comments received and the Forest Service response. In addition to changes made in response to comments, numerous editorial and organizational changes were made in the text.

## 2. Comments and the Forest Service Response

*1950.1—Authorities and 1951.7—Estimate Effects.* A reviewer commented that these sections contain such single-gender references as "man and nature" and "man's environment," and should be changed to "human race" and "human environment." We did not make these changes because the wording in sections 1950.1 and 1951.7 was used in order to be consistent with NEPA and the Council's regulations. The phrase referred to in 1951.7 is a direct quote from CEQ regulations and could not be changed.

*1950.3—Policies.* More than one reviewer pointed out that the relationship between environmental analysis and decision process was confusing. They also suggested that our policies could be stated in more direct terms. We agreed with these comments and made appropriate changes in wording.

*1950.5—Definitions.* One reviewer commented that the definition of "evaluation criteria" was too limiting. We agree and changed the definition as they suggested.

The same reviewer questioned the need for defining the terms "irretrievable" and "irreversible" in this section. We believe that definitions are necessary because of the use of these words in NEPA and the Council's regulations.

Several reviewers were confused by our use of the terms "environmental analysis" and "environmental assessment." We reworded the definitions of the two terms to make it clear that "environmental analysis" is a process and "environmental assessment" is a document.

Another reviewer suggested substituting "several" for "two or more" areas of knowledge in the definition of interdisciplinary approach. No change was made. The existing definition was established in the Wildland Planning Glossary (Pacific Southwest Forest and Range Experiment Station General Technical Report PSW-13/1976).

One reviewer wanted us to define "scoping," and another to define "record of decision." We provided definitions for both terms.

One reviewer suggested we use all appropriate definitions from the Council's regulations. We accepted this suggestion.

*1950.7—Elimination of Duplication with State and Local Procedures.* One reviewer suggested that simply "initiating contact with appropriate State and local officials to determine if cooperative analysis and documentation is desirable" was not in conformance with CEQ regulations. We agreed and corrected this section as suggested, by adding a quotation from the regulations.

*1951.7—Public Participation.* One reviewer suggested that notices and publications related to NEPA be prepared in other languages in addition to English and that hearings and meetings be made accessible to the handicapped. We feel that this suggestion is not unique to NEPA and have referred it to the staff group that has responsibilities for public participation in the Forest Service.

A reviewer suggested that the various means of public notification of actions with effects primarily of local concern be made mandatory. In many cases, some form of public notice is desirable. However, because of the wide range of Forest Service actions for which an environmental assessment is prepared, the means of public notification should be left to the discretion of the responsible official.

One reviewer expressed a major concern that FSM 1951.1 indicates that environmental documents other than EIS's would be made available for public review only when requested. Our quotation of 40 CFR 1506(b)(3) makes clear that this is not the intent. The last paragraph of 1951.1 is a provision to require that a person in the named Forest Service office be designated as a point of contact for the public.

**1951.2—Identify Issues, Concerns and Opportunities.** A reviewer pointed out that the Council's regulations require setting time limits if an applicant for the proposed action requests them. We agree and have incorporated a quotation from the regulations.

**1951.31—Evaluation Criteria.** Several reviewers commented on this section. One suggested that criteria developed from the listed sources would be limiting and could circumvent the purposes of NEPA. We have decided that including this material in the manual is inappropriate, and that it would be better treated as handbook contents. Accordingly, 1951.31 was deleted and will be reserved for use by Regions, Areas and Stations in FSH 1909.15, The NEPA Process Handbook.

**1951.5—Situation Assessment.** A major concern of one reviewer was the definition of the "no action" alternative and its use as a baseline for analysis of alternatives. This concern relates to FSM sections 1951.5, 1951.6, 1951.7, and 1952.4(8)(c). We believe that this concern is valid, and appropriate changes were made. Section 1951.5 was changed by deleting the reference to estimating future conditions based on current management direction, and emphasis was added to define assessment of current and future conditions more clearly.

**1951.6—Formulate Alternatives.** Two reviewers were concerned with the limitation on developing alternatives implied by the phrase "consistent with goals and objectives from legislation or higher order Forest Service plans, programs, and policies." We agree. This sentence was rewritten to make clear that these are guides and do not limit the range of alternatives.

This section was modified to delete the parenthetical definition of the "no action" alternative. The Council's regulations do not define "no action," and we believe that there are two distinct interpretations that should be considered depending on the nature of the proposal to be evaluated. The first situation is land and resource management planning where ongoing and historical programs initiated under existing legislation and regulations will continue even as new plans are initiated. In these cases "no change" from current management direction and associated output is a means of assessing environmental effects. To construct an alternative that was based on no management or use of the National Forest would be academic. The second situation applies to new actions or projects, and particularly those actions that are discretionary on the

part of the Forest Service. "No action," in this case, would mean the proposed activity would not take place, and the resulting environmental effects can be evaluated against the effects of alternatives that would permit the activity.

**1951.7—Estimate Effects.** A reviewer recommended that section 1951.4 include a reference to "worst-case analysis." The suggestion was adopted by a direct quotation from the Council's regulations that was placed in FSM section 1951.7.

This section was modified to delete the reference to the expected future condition associated with the "no action" alternative.

It was suggested that the estimated mitigation and monitoring costs associated with each alternative should be included. We agree that mitigation could be included and this provision was added. Monitoring takes many diverse forms, such as the management review system on one side, and physical monitoring (such as water quality sampling) on another. The costs would be very difficult to estimate for many actions, so monitoring was not included. It may be appropriate for site-specific projects and for specific monitoring activity, and in those cases would be included.

**1951.9—Identification of the Forest Service Preferred Alternative.** A reviewer pointed out that the effects on unquantified environmental values discussed in 1951.7 were vague and that more direction was needed. We agree and have added a direct quotation from the Council's regulations.

Two reviewers suggested that a preferred alternative always be identified in a draft environmental impact statement, and one of them recommended that if the provision is retained as written, a supplement to the draft EIS identifying the preferred alternative should be circulated for 60 days public review prior to preparing the final EIS. The other reviewer said that the procedure was not in compliance with NEPA. The procedures conform to the Council's regulations, 1502.14(e) and, therefore, are judged to comply with NEPA. However, we have added an optional provision that circulation of a supplement that identifies a preferred alternative may be desirable at the discretion of the responsible official. There have been very few statements where a preferred alternative was not identified, and we would expect it to be an infrequent occurrence in the future. However, there may be cases where there is no preferred alternative, and a decision

cannot be made without further public involvement and comment. We feel it is not always necessary to recirculate a draft for additional review before preparing a final environmental impact statement, although recirculation may sometimes be needed. The Forest Service policy is to delay implementation for 45 days after the final EIS is transmitted to EPA and circulated to the public, for actions subject to the administrative review process. While comments are not requested, there is ample opportunity for public review and reaction to the decision.

We have deleted the requirement for Chief's approval for circulation of draft EIS's which do not identify a preferred alternative because we feel it is unnecessary and merely causes further delay.

**1952.1—Categorical Exclusions.** One reviewer wanted to further emphasize the exclusion of one class of actions. We did not make this change as we believe that this emphasis was not needed. We did clarify that the use of herbicides for routine improvement maintenance is not categorically excluded.

**1952.21—Environmental Assessment (EA).** One reviewer suggested that a finding of no significant impact be made a part of the decision notice. We adopted this suggestion and modified this section accordingly.

**1952.22—Environmentally Impact Statement (EIS).** In response to a review comment, this section was modified to show more clearly that an EIS shall be prepared for Regional and National Forest land and resource management plans.

**1952.22a—Legislative Environmental Impact Statements.** A reviewer suggested that legislative EIS's be transmitted to the Congress at the same time the legislative proposal is made. This suggestion was not adopted. We prefer to retain the option as shown in the Council's regulations for the same reasons stated by the Council.

**1952.24—Finding of No Significant Impact (FONSI).** In response to a suggestion, this section was modified to make the FONSI a part of the decision notice instead of the environmental assessment.

**1952.4—Contents.** A reviewer pointed out the difficulty of obtaining some reference material, particularly in rural western areas. We recognize that this is a problem. A partial solution to the problem would be for reviewers to request assistance in obtaining copies of reference materials from the informational contact shown on the EIS cover sheet.

In response to a suggestion, the discussion of the affected environment contents was expanded to include other considerations—specifically those not within the control of the FS.

**1952.54a—Filing.** This section was modified to emphasize that scheduled distribution of EIS's must be done either before the EIS is filed with EPA, or simultaneously with transmittal to EPA.

**1952.6—Corrections, Supplements, or Revisions.** This section was modified in response to a comment discussed above to suggest that a supplement to a draft EIS may be desirable when the draft is circulated without identification of a preferred alternative. A reviewer pointed out that in this section "revision" and "supplement" were used synonymously which is not consistent with the Council's regulations. We agree and have clarified the meaning of "revision" of draft EIS's.

**1953.1—Record of Decision.** The requirement that the record of decision explain the timing and public right of administrative review was added.

A reviewer pointed out that there is a need to differentiate between actions that are subject to administrative review and those that are not. Actions involving the National Forest System, other than land and resource management plans as provided for in proposed regulations published in the Federal Register (Vol. 44, No. 88, May 4, 1979, pp. 26583-26599), are subject to administrative review. The record of decision for these actions must be attached to the final EIS at the time it is transmitted to EPA and the public. For decisions not subject to administrative review, such as land and resource management under the proposed regulations, the Council's regulations require that a decision not be made until 30 days after the notice of availability of the final EIS is published in the Federal Register. Section 1953, Exhibit 1, and other manual references have been modified to reflect this situation. Two new sections, 1953.11 and 1953.12, provide direction.

A reviewer pointed out that the 90-day period between the notice of availability of a draft EIS and the decision was not consistent with the 60-day period shown in Exhibit 1. 1953.1 was changed to agree with Exhibit 1.

**1953.2—Decision Notice.** This section was changed to include the FONSI as a part of the decision notice.

#### Exhibit 1

Typographical errors in Decision Condition No. 2 were corrected to show that a final EIS must have been completed before a decision.

Exhibit No. 1 was modified further to show which conditions are required before decision and implementation for actions not subject to administrative review procedures.

### 3. Conclusion

The Forest Service NEPA procedures will change to meet changing conditions in the future. FSM chapter 1950 will be amended as necessary to reflect these changes. When significant changes are proposed in this manual chapter, we will provide adequate public notice of the proposed changes.

We appreciate the comments and help we have received in developing these procedures. The text of FSM 1950 is printed below.

R. Max Peterson,  
Chief,  
July 25, 1979.

#### Title 1900—Planning

##### Chapter 1950—The Forest Service NEPA Process

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"The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2)(C) contains 'action-forcing' provisions to make sure that Federal agencies act according to the letter and spirit of the Act \* \* \* ."

"\* \* \* it is not better documents, but better decisions that count. NEPA's purpose is not to generate paperwork \* \* \* but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore and enhance the environment." (40 CFR 1500.1)<sup>1</sup>

"All policies and programs of the various USDA agencies shall be planned, developed and implemented so as to achieve the policies declared by NEPA in order to assure responsible stewardship of the environment for present and future generations." (7 CFR 3100.21)<sup>1</sup>

The Forest Service NEPA process includes measures necessary for compliance with Section 2 and Title I of the National Environmental Policy Act of 1969 (Pub. L. 91-190 NEPA). The process recognizes that environmental analysis is an integral part of Forest Service planning and decisionmaking, and it is used to insure that decisions

<sup>1</sup> See Section 720, FSH 1909.15, the NEPA Process Handbook for the Council's Regulations 40 CFR 1500-1508.28 and U.S. Department of Agriculture Regulations 7 CFR 3100.21.

conform to other applicable laws under which the Forest Service operates.

This chapter constitutes Forest Service procedures for implementing the National Environmental Policy Act, Department of Agriculture and Council on Environmental Quality regulations. It incorporates as quotations those portions of the Council's regulations of primary concern to the Forest Service.

**1950.1—Authorities.** The Forest Service is authorized and directed by the NEPA to carry out its programs in ways that will create and maintain conditions under which man and nature can exist in productive harmony, and fulfill social and economic needs of present and future generations of Americans.

Several laws require a systematic interdisciplinary approach to planning and decisionmaking. These include the National Environmental Policy Act, the Forest and Rangeland Renewable Resources Planning Act, as amended by the National Forest Management Act. The NEPA also requires detailed statements on proposed major Federal actions significantly affecting the quality of the human environment (Section 102(2)(C)).

**1950.2—Objectives.** The objectives of the Forest Service NEPA Process with its accompanying documents are to:

1. Integrate the requirements of NEPA with other planning and decisionmaking procedures required by law or by Forest Service practice so that all such procedures run concurrently rather than consecutively.

2. Provide careful and appropriate consideration of physical, biological, social and economic concerns in planning and decisionmaking.

3. Provide for early and continuing participation of other agencies, organizations, and individuals having appropriate responsibilities, expertise, or interest.

4. Determine if there is a need for an environmental impact statement.

5. Assure that planning and decisionmaking is open and available for public review.

6. Emphasize decisionmaking rather than the environmental documents.

7. " \* \* \* make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. \* \* \* " (40 CFR 1500.2(b)).

8. "Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these

actions upon the quality of the human environment." (40 CFR 1500.2(e)).

9. "Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment." (40 CFR 1500.2(f)).

10. Identify a preferred alternative when considering alternative policies, plans, programs, or projects.

11. Document the rationale of the decisionmaker.

12. Provide a basis for determining management requirements, mitigation measures, and contract provisions or stipulations.

**1950.3—Policies.** 1. An environmental analysis shall be made for all policies, plans, programs, and projects affecting resources, other land uses, or the quality of the physical, biological, economic, and social environment.

Environmental analysis is the decision process used to determine the significance of environmental impacts. This, in turn, determines which and when environmental documents are appropriate.

2. Environmental analyses should be documented in either an environmental assessment (EA) or an environmental impact statement (EIS) (See FSM 1952). The length and detail of analyses and the degree of documentation varies according to the type of decisions being made, and is determined by the official responsible for the decision(s). This determination is made through consideration of the importance of the effects of the decision(s) (FSM 1951.7). Documents must present a brief explanation of the purpose and need for the action; the criteria for evaluating alternatives; the alternatives considered; the anticipated effects of implementing the alternatives; and, in most cases, the Forest Service preferred alternative. Environmental assessments or impact statements are not required for those classes of actions identified as "categorical exclusions" (FSM 1952.1).

3. Environmental documents such as EA's, EIS's, Notices of Intent, and Findings of No Significant Impact replace, and should not duplicate, other reports previously used to serve similar purposes. This is intended to reduce paperwork and delay.

4. Analyses must be conducted as early as possible and be used for decisions and recommendations. EA's and EIS's document the analysis, and identify the line officer responsible for the decision.

5. Responsible officials shall " \* \* \* encourage and facilitate public involvement in decisions which affect the quality of the human environment" (40 CFR 1500.2(d)). Agencies, organizations, and individuals having responsibilities, expertise, or expressed interest shall be consulted as appropriate at the beginning of the analysis activity. The A-95 project notification process shall be used, when appropriate, to notify State and local agencies. Consultations must be documented.

6. Analyses will impartially consider reasonable alternatives and the anticipated effects associated with each alternative.

7. Environmental assessments and environmental impact statements " \* \* \* shall be prepared using an interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts (Section 102(2)(a) of the Act). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process." (40 CFR 1502.6).

8. Costs of environmental analyses and documents for *In-Service* originated programs are a part of the regular budgetary process for the plan, program or project. Costs are borne by the *benefitting activity(ies)* unless special provision is made at the Washington Office level. For *Out-Service* originated activities, see FSM 1950.4.

9. Responsible officials "shall not commit resources prejudicing selection of alternatives before making a final decision." (40 CFR 1502.2(f)). This applies both to actions for which an EA or EIS is required.

10. Any plan, program, or project: (a) Located in or that may affect flood plains or wetlands must be responsive to E.O. 11988 and 11990 (see FSM 2527 and 2528), or (b) that may affect significant cultural resources must be responsive to E.O. 11593 (see FSM 2361).

11. The Chief, Regional Foresters, Area and Station Directors and Forest Supervisors shall designate a person in their office to serve as Environmental Coordinator who shall be responsible for providing information on status of EIS's and other elements of the NEPA process.

12. Responsible officials shall conduct environmental analyses "concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. Sec. 661 et seq.), the National Historic Preservation Act of 1966 (16 U.S.C. Sec. 470 et seq.), the Endangered Species Act

of 1973 (16 U.S.C. sec. 1531 et seq.), and other environmental review laws and executive orders." (40 CFR 1502.25).

13. Information about Forest Service policies, and the NEPA process requirements, shall be provided upon request, to agencies, organizations and individuals so that they are aware of studies and information that may be required before Forest Service action on their application.

14. Responsible officials shall contact Federal, State, and local agencies to determine if cooperative analyses and documentation are desirable.

**1950.4—Responsibilities.** The Chief is responsible for environmental analysis and documentation relating to legislation and national policies, plans, programs, and projects including but not limited to plans, programs, or projects affecting areas involved in pending legislation for wilderness designation or study. The Forest Service Environmental Coordinator shall be responsible for overall review of Forest Service NEPA compliance. Delegations of authority are specified in FSM 1230. Officials delegated responsibility for proposed actions are responsible for environmental analyses and documentation. (Also see FSM 1952.54a). Project proponents by be required to provide data and documentation, subject to the following requirements:

"Information. If an agency requires an applicant to submit environmental information for possible use by the agency in preparing an environmental impact statement, then the agency should assist the applicant by outlining the types of information required. The agency shall independently evaluate the information submitted and shall be responsible for its accuracy. If the agency chooses to use the information submitted by the applicant in the environmental impact statement, either directly or by reference, then the names of the persons responsible for the independent evaluation shall be included in the list of preparers. It is the intent of this subparagraph that acceptable work not be redone, but that it be verified by the agency." (40 CFR 1506.5a).

"Environmental assessments. If an agency permits an applicant to prepare an environmental assessment, the agency, besides fulfilling the requirements of paragraph (a) of this section, shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental assessment." (40 CFR 1506.5b).

"Environmental impact statements \* \* \* any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared either directly, by a contractor selected by the lead agency or, where appropriate, by a cooperating agency. It is the intent of these regulations that the contractor be chosen solely by the lead

agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate, by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate, the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract, the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents. Nothing in this section is intended to prohibit any agency from requesting any person to submit information to it or to prohibit any person from submitting information to any agency." (40 CFR 1506.5c).

When an applicant is permitted to prepare an environmental assessment, or a contractor is employed to prepare an environmental impact statement, their activities shall be limited to those shown as the usual roles of the interdisciplinary team, (see FSM 1951). Applicants or contractors must comply with requirements of FSM 1950.

**1950.41—Lead Agency.** "A lead agency shall supervise the preparation of an environmental impact statement if more than one Federal agency either:

1. Proposes or is involved in the same action; or
2. Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity (40 CFR 1501.5a).

"Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement" \* \* \* (40 CFR 1501.5b).

"\* \* \* the potential lead agencies shall determine by letter or memorandum which agency shall be the lead agency and which shall be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

1. Magnitude of agency's involvement.
2. Project approval/disapproval authority.
3. Expertise concerning the action's environmental effects.
4. Duration of agency's involvement.
5. Sequence of agency's involvement." (40 CFR 1501.5c)

"Any Federal agency, or any State or local agency or private person substantially affected by the absence of lead agency designation may make a written request to the potential lead agencies that a lead agency is designated." (40 CFR 1501.5d).

"If Federal agencies are unable to agree on which agency will be the lead agency" \* \* \* any of the agencies or persons concerned may file a request with the Council asking it to determine which Federal agency shall be the lead agency.

"A copy of the request shall be transmitted to each potential lead agency. The request shall consist of:

1. A precise description of the nature and extent of the proposed action.
2. A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified above \* \* \* (40 CFR 1501.5e)

"A response may be filed by a potential lead agency concerned within 20 days after a request is filed with the Council. The Council shall determine as soon as possible but not later than 20 days after receiving the request and all responses to it which Federal agency shall be the lead agency and which other Federal agencies shall be cooperating agencies." (40 CFR 1501.5f).

A Forest Service request that the Council determine which Federal Agency shall be the lead agency shall be sent to the Forest Service Environmental Coordinator in Washington, D.C., for processing. Where National Forest System lands are involved, the Forest Service should exert a strong role in environmental analysis.

**1950.42—Cooperating Agencies.** "Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition, any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency.

"The lead agency shall:

- (1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.
- (2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency."
- (3) Meet with a cooperating agency at the latter's request." (40 CFR 1501.6a).

"Each cooperating agency shall:

- (1) Participate in the NEPA process at the earliest possible time.
- (2) Participate in the scoping process.
- (3) Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.
- (4) Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability.

(5) Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests." (40 CFR 1501.6b)

"A cooperating agency may in response to a lead agency's request for assistance in preparing the environmental impact statement \* \* \* reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement. A copy of this reply shall be submitted to the Council." (40 CFR 1501.6c).

When National Forest System lands are involved, and the Forest Service is not the lead agency, the Regional Forester shall request that the Forest Service be a cooperating agency.

If the Forest Service is requested to be a cooperating agency and other program commitments preclude the requested involvement, a reply to this effect shall be prepared by the Regional Forester, Area or Station Director. A copy of the reply must be sent to the Forest Service Environmental Coordinator in Washington, D.C., within 10 working days of the date that the letter is transmitted.

1950.5—Definitions. In addition to the definitions in this section, also see FSM 1905—Definitions.

**Act:** "The National Environmental Policy Act, as amended (42 U.S.C. 4321, et seq.) which is also referred to as 'NEPA.'" (40 CFR 1508.2).

**Affecting:** "Means will or may have an effect on." (40 CFR 1508.3)

**Categorical Exclusion:** "Means a category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required." (40 CFR 1508.4)

**Cooperating Agency:** "Means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency." (40 CFR 1508.5)

**Cumulative Impact:** "Is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time." (40 CFR 1508.7)

**Decision Notice:** A concise public record of the responsible official's decision, including the finding of no significant impact, on actions for which an environmental assessment was prepared.

**Effects:** Include:

"(a) Direct effects, which are caused by the action and occur at the same time and place.

"(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems."

"Effects and impacts as used in \* \* \* (this title) are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial." (40 CFR 1508.8)

**Environment:** "The aggregate of physical, biological, economic, and social factors affecting organisms in an area. (See also human environment)." (40 CFR 1508.14)

**Environmental Analysis:** An analysis of alternative actions and their predictable short- and long-term environmental effects, which include physical, biological, economic and social factors and their interactions.

**Environmental Assessment:** \* \* \* concise public document that serves to (1) briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or finding of no significant impact (2) aid an agency's compliance with the (NEPA) Act when no environmental impact statement is necessary \* \* \* (40 CFR 1508.9a)

**Environmental Design Arts:** Those disciplines such as architecture, civil and environmental engineering, and landscape architecture which directly influence the physical environment as a result of the design of projects of all kinds.

**Environmental Documents:** A set of concise documents to include, as applicable, the environmental assessment, environmental impact statement, finding of no significant impact, and notice of intent.

**Environmental Impact Statement:** "Means a detailed written statement as required by Sec. 102(2)(C) of the Act. (40 CFR 1508.11)

**Evaluation Criteria:** Standards developed for appraising alternatives.

**Finding Of No Significant Impact:** "Means a document briefly presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it. If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference." (40 CFR 1508.13)

**Flood Plains:** "Lowland and relatively flat areas adjoining inland and coastal water including as a minimum, that area subject to a one percent or greater chance of flooding in any given year. Floodprone wetlands and sinkholes, and sheet flow or shallow flooding areas such as debris cones or alluvial fans

built up by material carried by mountain streams, are special flood plain areas." (E.O. 11988)

**Human Environment:** "Shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of 'effects.')

This means that economic or social effects are not intended by themselves to require preparation of environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment." (40 CFR 1508.14).

**Implementation:** Those activities necessary to respond to the decision.

**Interdisciplinary Approach:** The utilization of individuals representing two or more areas of knowledge and skills focusing on the same subject. The participants develop solutions through frequent interaction so that each discipline may provide insights to any state of the problems, and disciplines may combine to provide new solutions. This is different from a multidisciplinary team where each specialist is assigned a portion of the problem and their partial solutions are linked together at the end to provide the final solution.

**Irreversible:** Applies primarily to the use of nonrenewable resources, such as minerals or cultural resources or to those factors which are renewable only over long time spans, such as soil productivity. "Irreversible" also includes loss of future options.

**Irretrievable:** Applies to losses of production, harvest or use of renewable natural resources. For example, some or all of the timber production from an area is irretrievably lost while an area is used as a winter sports site. If the use is changed, timber production can be resumed. The production lost is "irretrievable," but the action is not irreversible.

**Issue:** A point, matter, or question to be resolved.

**Jurisdiction by Law:** "Means agency authority to approve, veto, or finance all or part of the proposal." (40 CFR 1508.15)

**Lead Agency:** "Means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement." (40 CFR 1508.16)

**Legislation:** "Includes a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations. The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement." (40 CFR 1508.17)

**Major Federal Action:** "Includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not

have a meaning independent of significantly. Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans policies, or procedures; and legislative proposals. Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 I.S.C. 1221 et seq., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

(1) Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

(2) Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of federal resources, upon which future agency actions will be based.

(3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities." (40 CFR 1508.18)

**Matter:** Includes for purposes of pre-decision referral:

"(a) With respect to the Environmental Protection Agency, any proposed legislation, project, action or regulation as those terms are used in Section 309(a) of the Clean Air Act (42 U.S.C. 7609).

(b) With respect to all other agencies, any proposed major federal action to which section 102(2)(C) of NEPA applies." (40 CFR 1508.19)

**Mitigation:** "Includes:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environmentals." (40 CFR 1508.20)

**NEPA Process:** "Means all measures necessary for compliance with the requirements of Section 2 and Title I of NEPA." (40 CFR 1508.21)

**Notice of Intent:** "Means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:

(a) Describe the proposed action and possible alternatives.

(b) Describe the proposed scoping process including whether, when and where any scoping meeting will be held.

(c) State the name and address of a person who can answer questions about the proposed action and the environmental impact statement." (40 CFR 1508.22)

**Proposal:** "Exists at that stage in the development of an action when (the Forest Service) has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated." (40 CFR 1508.23)

**Record of Decision:** A concise public record of the responsible official's decision on actions for which an environmental impact statement was prepared.

**Referring Agency:** "Means the Federal agency which has referred any matter to the Council after a determination that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality." (40 CFR 1508.24)

**Responsible Official:** The Forest Service line officer who has been delegated the authority to approve or adopt policies, plans, programs, or projects.

**Scope:** "Consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements \* \* \*. To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

(a) Actions (other than unconnected single actions) which may be:

(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements.

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

(2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.

(3) Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental

consequencies together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include: (1) No action alternative. (2) Other reasonable courses of actions. (3) Mitigation measures (not in the proposed action).

(c) Impacts, which may be: (1) Direct. (2) Indirect. (3) Cumulative." (40 CFR 1508.25)

**Scoping:** ". . . and early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action." (40 CFR 1501.7).

**Special expertise:** "Means statutory responsibility, agency mission, or related program experience." (40 CFR 1508.26).

**Significantly:** "As used in NEPA requires considerations of both context and intensity:

(a) Context. This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the local rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) Intensity. This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment." (40 CFR 1508.27).

*Substantive Comment:* A comment which provides factual information, professional opinion, or informed judgment which is germane to the decision being considered.

*Tiering:* "Refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporated by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific or analysis.

(b) From an environmental impact statement on a specific action at an early stage (such as need a site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps to focus on the issues already decided or not yet ripe.

*Wetlands:* "Areas that are inundated by surface or ground water with a frequency

sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction." (E.O. 11990)

*1950.6—Limitations On Actions After It Has Been Determined That An Environmental Impact Statement Will Be Prepared.* After a notice of intent has been established and "until an agency issues a record of decision, no action concerning the proposal shall be taken which would:

(1) Have an adverse environmental impact; or

(2) Limit the choice of reasonable alternatives." (40 CFR 1506.1a).

"If any agency is considering an application from a non-Federal entity, and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either one of the criteria shown above, then the agency shall promptly notify the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved." (40 CFR 1506.1b).

The requirement applies to applications for use of National Forest System lands where the environmental analysis indicates or the determination by the responsible official requires the preparation of an EIS. On-going plans or programs, initiated and conducted under law, regulation, and Forest Service policy, are properly authorized and may continue during preparation of an EIS that addresses the particular plan or program.

"While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

(1) Is justified independently of the program;

(2) Is itself accompanied by an adequate environmental impact statement; and

(3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives." (40 CFR 1506.1c)

"This section does not preclude development by applicants of plans or designs or performance of other work necessary to support an application for Federal, State or local permits or assistance \* \* \*." (40 CFR 1506.1d).

"Required," as used in this section means required by law as opposed to a voluntary or discretionary EIS.

*1950.7—Elimination Of Duplication With State And Local Procedures.*

The Forest Service \* \* \* shall cooperate with State and local agencies to the fullest

extent possible to reduce duplication between NEPA and comparable State and local requirements \* \* \* such cooperation shall, to the fullest extent possible, include joint environmental impact statements. In such cases, one or more Federal agencies and one or more State and local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to, but not in conflict with those in NEPA, the (Forest Service) shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws \* \* \*." (40 CFR 1506.2).

*1951—ENVIRONMENTAL ANALYSIS* (See FSM 1950.3). An analysis must be conducted systematically to help insure that required information is considered in a logical manner which leads to identification of a preferred alternative. The analysis may be carried out in separate, but interrelated steps. The analysis steps may be combined or expanded depending on the situation.

A systematic, interdisciplinary approach is required. The disciplines involved in an analysis "shall be appropriate to the scope and the issues identified in the scoping process. (40 CFR 1502.6). In each analysis, use should be made of earlier documented analysis information to avoid duplication of previous effort and to maximize use of available information.

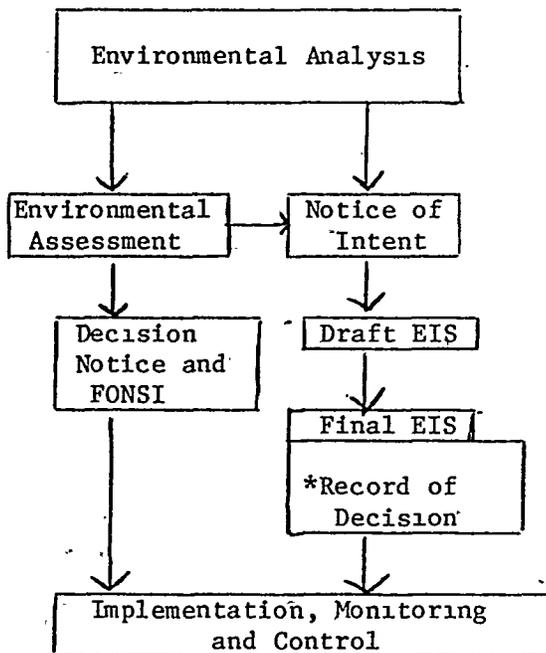
"Whenever a broad environmental impact statement (or environmental assessment) has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site-specific action) the subsequent statement or environment assessment need only summarize the issue discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issue specific to the subsequent action. The subsequent document shall state where the earlier document is available \* \* \*." (40 CFR 1502.20).

Normally, environmental analyses are completed and documented in an EA or EIS. If the need to complete the analysis and/or documentation is eliminated (i.e., the project application is withdrawn, or for other reasons) the analysis and/or documentation should be terminated and the interested parties informed.

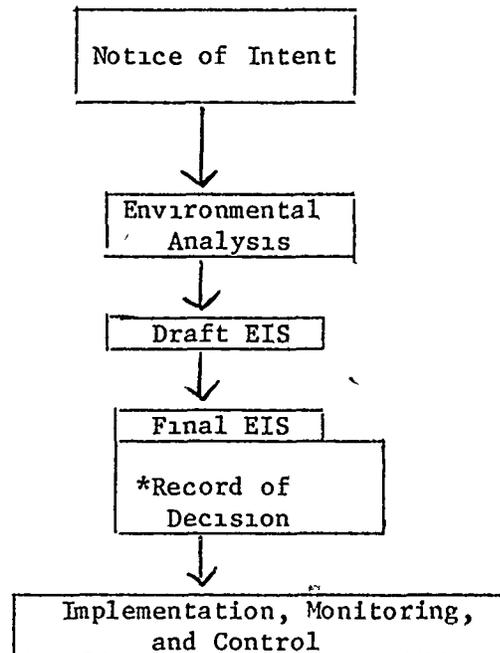
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The usual relationships between the environmental analysis, the environmental documents and implementation are shown in diagrams below.

If the need for an EIS has not been determined:



If the need for an EIS has been determined (FSM 1952.22):



\*If the action is not subject to administrative review (36 CFR 211.19), the record of decision should not be signed and dated until at least 30 days after the notice of availability of the final EIS has been published in the Federal Register.

The usual roles of participants in the major steps of the NEPA process are shown in the chart below:

## USUAL ROLE OF PARTICIPANTS

The NEPA Process (the decision process)	The Responsible Official	Interdisciplinary Team	Agencies, Organizations, and Individuals
1. Environmental analysis:			
A. Identify issues, concerns, and opportunities.....	Approval.....	Responsible.....	Recommend...
B. Development of criteria.....	Approval.....	Responsible.....	Recommend...
C. Data collection....	Review.....	Responsible.....	Provide information...
D. Analyze the situation....	Review.....	Responsible.....	Provide information...
E. Formulate alternatives.....	Review.....	Responsible.....	Recommend...
F. Estimate effects.....	Review.....	Responsible.....	Provide information...
G. Evaluate alternatives....	Review.....	Responsible.....	Provide information...
H. Identify the FS preferred alternative.....	Responsible.....	Recommend.....	Recommend...
2. Documentation.....	Review.....	Responsible.....	Review.....
3. Decision.....	Responsible.....	Recommend.....	Review.....
4. Implementation, monitoring and control.....	Responsible.....	Assist.....	Assist.....

**1951.1—Public Participation.** Public participation is an integral part of the Forest Service NEPA Process. Public participation may be involved in each step of the analysis. See FSM 1626 and Inform and Involve Handbook and Secretary of Agriculture Memo No. 1695, Supp. No. 5. See Section 111 of FSH 1909.15, The NEPA Process Handbook for a list of agencies with legal jurisdiction or expertise.

Responsible officials shall:

1. Make diligent efforts to involve the public in implementing the Forest Service NEPA procedures; and

2. "Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.

\* \* \* In all cases the agency shall mail notice to those who have requested it on an individual action.

\* \* \* In the case of an action with effects of national concern, notice shall include publication in the Federal Register and notice by mail to national organizations reasonably expected to be interested in the matter and may include listing in the 102 Monitor.

\* \* \* In the case of an action with effects primarily of local concern the notice may include:

(i) Notice to State and areawide clearinghouses pursuant to OMB Circular A-95 (Revised).

(ii) Notice to Indian tribes when effects may occur on reservations.

(iii) Following the affected State's public notice.

(iv) Publication in local newspapers (in papers of general circulation rather than legal papers).

(v) Notice through other local media.

(vi) Notice to potentially interested community organizations including small business associations.

(vii) Publication in newsletters that may be expected to reach potentially interested persons.

(viii) Direct mailing to owners and occupants of nearby or affected property.

(ix) Posting of notice on-and off-site in the area where the action is to be located." (40 CFR 1506.6b)

3. "Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:

\* \* \* Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.

\* \* \* A request of a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft environmental impact statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement)." (40 CFR 1506.6c).

4. "Solicit appropriate information from the public." (40 CFR 1506.6d).

5. "Explain \* \* \* where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process." (40 CFR 1506.6e).

6. "Make environmental impact statements, the comments received and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual cost of reproducing copies required to be sent to other Federal agencies, including the Council." (40 CFR 1506.6f).

The composite list of environmental impact statements under preparation (FSM 1952.23) identifies the person to contact for further information about environmental impact statements. Information about other environmental analyses and their documentation shall be furnished to the public by designated Environmental Coordinators in the Washington Office, Regional Offices, Forest Supervisor's Offices, Research Stations and S&PF Area Offices when requested. Other personnel may make documents available as appropriate.

Where flood plains or wetlands are involved, there must be sufficient public participation to satisfy the requirements for early public review as shown in Section 2.A(4) of E.O. 11988, and Section 2(B) of E.O. 11990. (See FSM 2527 and 2528).

**1951.2—Identify Issues, Concerns, and Opportunities.** (Scoping).

The environmental analysis begins by identifying the major issues, concerns or opportunities and the need for a decision.

"There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping \* \* \* (40 CFR 1501.7).

See section 141 of FSH 1909.15, The NEPA Process Handbook, for a list of environmental factors that might be involved.

When the action is such that an environmental impact statement is required (FSM 1952.22), or is highly probable, the responsible official shall:

\* \* \* Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds).

"Determine the scope and the significant issues to be analyzed in depth in the environmental impact statement.

"Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review, narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.

"Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies with the lead agency retaining responsibility for the statement.

"Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.

"Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement.

"Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decisionmaking schedule \* \* \*." (40 CFR 1501.7).

During the public involvement the responsible official may set time limits on environmental analyses and page limits on environmental documents. The Forest Service "shall set time limits if an applicant for the proposed action requests them. State or local agencies or members of the public may request the \* \* \* (Forest Service) to set time limits." (40 CFR 1501.8). Setting of time limits is mandatory only if requested by applicants. The responsible official may set overall time limits or time limits for each constituent part of the NEPA process.

The scoping process described above is not mandatory for the preparation of a legislative environmental impact statement. (See FSM 1952.22a).

**1951.3—Development of Criteria.** Criteria or standards must be agreed upon early in the analysis process, as they guide subsequent steps of the process. As used here, standards and criteria do not refer to the policy type of standards, criteria and guidelines discussed in section 14 of RPA, as amended (Sec. 11 of NFMA).

The major issues and concerns to be addressed in detail during the analysis determine the criteria for the subsequent steps in the analysis.

Criteria are frequently needed in regard to the following items:

1. Information collection standards such as: the kind, amount, intensity and accuracy desired.

2. Alternative formulation standards such as: the kinds of alternatives the responsible official considers to be included in the reasonable range of alternatives and monitoring requirements.

3. Analysis standards such as: time periods to be covered by the analysis, techniques to be used and discount rates to be applied.

4. Evaluation standards such as: goals of management, program objectives and tests of feasibility that will be used to compare alternatives.

5. Criteria for identifying the preferred alternative.

6. Documentation standards that will be used in the writing and processing of the EA or EIS.

**1951.4—Data Collection.** After the issues, concerns and opportunities are identified, appropriate data must be collected. The type and amount of data depends on the situation, the issues, concerns, opportunities and the scope of anticipated effects. Data collection should focus on the present and expected future conditions of those physical, biological, economic and social factors affecting and affected by the decision. Sources of data should be documented. See FSM 1951.7 for worst-case analysis procedures in the event that essential information is not available.

**1951.5—Situation Assessment.** Situation assessment is a means of translating collected data and information into an understanding of the current and expected future conditions related to the issues and concerns. This may include assessment of supply and demand relationships and other relevant physical, biological, economic and social factors. Assumptions and other methods used in the analysis should be recorded for subsequent use in the EA or EIS.

**1951.6—Formulate Alternatives.** A reasonable range of alternatives is developed to provide different ways to address major issues, concerns and opportunities. Consistency with goals and objectives from legislation or higher-order FS plans, programs and policies guides, but does not necessarily limit, the range of alternatives. The range of alternatives must be broad enough to respond to major issues, concerns and opportunities. All reasonable alternatives must be considered in the process of developing the reasonable range.

"The phrase 'all reasonable alternatives' is firmly established in the case law interpreting the NEPA. The phrase has not been interpreted to require that an infinite or unreasonable number of alternatives be

analyzed" (Supplementary information for the Council's Regulations, Federal Register, Vol. 43, No. 230, Nov. 29, 1978, p. 55983). Alternatives should be fully and impartially developed.

Care should be taken to insure that the range of alternatives does not prematurely foreclose options which might enhance environmental quality or have fewer detrimental effects. The alternative of taking no action must always be included. Public involvement is important in formulating alternatives. The extent of involvement depends on the issues, concerns, opportunities involved and the kind and magnitude of the decision. Alternatives are often modified and new alternatives developed as the analysis proceeds.

Alternatives should be formulated to include management requirements, mitigation measures and monitoring needed to avoid adverse environmental effects and conform to all other applicable laws relating to Forest Service activities. In the development of mitigation measures, it may be desirable to contact other Federal, State, or local agencies regarding specific environmental values.

If the plan, program or project is located in, or may affect, flood plains or wetlands, alternatives must be responsive to E.O. 11988 and 11990. (See FSM 2527 and 2528).

**1951.7—Estimate Effects.** The appropriate effects of implementing each alternative must be estimated. Direct, indirect and cumulative effects should all be considered. Effects are expressed in terms of future outputs, expenditures, costs (including costs of mitigation) and changes in the physical, biological, economic and social components of the environment for each alternative. The changes should be those associated with implementation of the alternative, and expressed, when possible, in terms of differences from the present condition. Changes are usually described in terms of their magnitude, duration and significance. See Section 141 of FSH 1909.15. The NEPA Process Handbook, for a list of environmental factors which may change as a result of implementation of the various alternatives. It is not always necessary to deal with all factors and components of the environment. The effects considered in analysis should be only those of significance to the issue, concerns, opportunities and the evaluation criteria.

Unquantified environmental amenities and values must be given appropriate consideration.

"If (1) the information relevant to adverse impacts is essential to a reasoned choice

among alternatives and is not known and the overall costs of obtaining it are exorbitant, or (2) the information relevant to adverse impacts is important to the decision and the means to obtain it are not known \* \* \* the agency shall weigh the need for the action against the risks and severity of possible adverse impacts were the action to proceed in the fact of uncertainty. If the agency proceeds, it shall include a worst-case analysis and an indication of probability or improbability of its occurrence (in the EA or EIS)" (40 CFR 1502.22b).

If indicators of economic efficiency are appropriate to the issues or concerns, they are developed in this step. When this is done, the relationship of economic efficiency and any analysis of unquantified environmental impacts, values and amenities should be identified.

Although separate analysis is not necessary, the following effects must be considered for all alternatives:

1. \* \* \* the relationship between local, short-term uses of man's environment and maintenance and enhancement of long-term productivity \* \* \*
2. \* \* \* any adverse environmental effects which cannot be avoided \* \* \*
3. \* \* \* any irreversible or irretrievable commitments of resources \* \* \* (40 CFR 1502.16).
4. Effects upon minority groups, women, and civil rights. (Secretary's memorandum 1662, Supplemental 8 and OMB Circular A-10). (See also FSM 1730).
5. Effects upon prime farmland, range and forest lands.
6. Effects upon wetlands and flood plains.
7. \* \* \* direct effects and their significance \* \* \* \* \* indirect effects and their significance \* \* \*
8. "Possible conflicts between the proposed action and the objectives of Federal, Regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned \* \* \*
9. "Energy requirements and conservation potential of various alternatives and mitigation measures.
10. "Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.
11. "Urban quality, historic and cultural resources and the design of the built environment, including the re-use and conservation potential of various alternatives and mitigation measures \* \* \*." (40 CFR 1502.16).
12. Effects upon threatened and endangered species.

**1951.8—Evaluate Alternatives.** Alternatives are evaluated by comparing current and future outputs, costs and physical, biological, economic and social changes for each alternative with evaluation criteria. This evaluation provides a basis for identifying (a) the environmentally preferable alternative, (b) the Forest Service preferred

alternative and (c) the need for an EIS— if not otherwise required.

The evaluation should identify possible conflicts between alternatives " \* \* \* and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned." (40 CFR 1502.16(c)).

When the need for an EIS has not already been established (FSM 1952.22), the significance of effects should be considered in terms of context and intensity in evaluating the need for an EIS:

"Context \* \* \* means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

"Intensity \* \* \* refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect exists even if the Federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical area.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment." (40 CFR 1508.27).

**1951.9—Identification Of The Forest Service Preferred Alternative.** Based on evaluation of the alternatives, the responsible official identifies a preferred alternative.

The rationale used in identification of the preferred alternative must be documented in the EA or EIS. In some situations, it may not be desirable to identify a preferred alternative until the draft EIS has been circulated. In these situations, the action of identifying the preferred alternative is not taken.

"To assess the adequacy of compliance with Sec. 102(2)(B) of the Act, the statement (or assessment) shall, when a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations. In any event, an environmental impact statement (or assessment) should at least indicate those considerations, including factors not related to environmental quality which are likely to be relevant and important to a decision." (40 CFR 1502.23).

**1952—Documentation.** This section discusses environmental assessments, environmental impact statements, notices of intent and findings of no significant impact. These documents describe the results of the environmental analysis and are most often prepared from interim records developed during the various steps of the analysis. Environmental assessments are prepared to document the environmental analysis for those actions when an EIS is not required. They may be supplemented or revised as necessary.

Environmental impact statements are prepared first in draft form and are filed with the EPA and circulated for public review and comment.

Following the review period, a final environmental impact statement is prepared. Both draft and final environmental impact statements may be supplemented or revised.

"An agency may adopt a Federal draft or final environmental impact statement or portion thereof provided that the statement or portion thereof meets the standards for an adequate statement under these regulations." (40 CFR 1506.3a).

"If the actions covered by the original environmental impact statement and the proposed actions are substantially the same, the agency adopting another agency's statement is not required to recirculate it

except as a final statement. Otherwise the adopting agency shall treat the statement as a draft and recirculate it (except as provided in paragraph (c) of this section)." (40 CFR 1506.3b).

"A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied." (40 CFR 1506.3c).

"When an agency adopts a statement which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under 40 CFR part 1504, or when the statement's adequacy is the subject of a judicial action which is not final, the agency shall so specify." (40 CFR 1506.3d).

"Responsible officials shall make sure the proposal which is the subject of an environmental impact statement (or assessment) is properly defined. Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaluated in a single impact statement." (40 CFR 1502.4a).

"Environmental impact statements (or assessments) may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs or regulations. Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking." (40 CFR 1502.4b).

"When preparing statements or assessments on broad actions, including proposals by more than one agency, agencies may find it useful to evaluate the proposal(s) in one of the following ways:

"(1) Geographically, including actions occurring in the same general location, such as a body of water, region, or metropolitan area.

"(2) Generically, including actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.

"(3) By stage of technological development including Federal or federally-assisted research, development or demonstration programs for new technologies which, if applied, could significantly affect the quality of the human environment. Statements shall be prepared on such programs and shall be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives." (40 CFR 1502.4c).

"Statements (and assessments) shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses." (40 CFR 1502.1)

When an environmental analysis deals with the establishment of standards, criteria and guidelines as discussed in section 14 of RPA, as amended (section 11 of NFMA), the documentation step will record the

determinations made and accompanying rationale, regarding the degree of public participation.

**1952.1—Categorical Exclusions.** The following classes of actions do not require an environmental assessment or an environmental impact statement:

1. Internal organizational changes, personnel actions and other similar internal, operational administrative decisions.

2. Funding or scheduling of projects—budget proposals and allocations at all administrative levels of the Forest Service. (This does not relieve officials of the responsibility to prepare environmental documents when otherwise required for the projects involved in the program).

3. Unanticipated emergency situations that require immediate action to prevent or reduce risks to public health or safety or serious resource losses—including, but not limited to, fire suppression, search and rescue and reduction of flood losses.

4. Routine, generally repetitive, operation and/or maintenance to established standards of transportation, transmission, administrative, fire management or resource improvements unless herbicides are involved.

5. Inventories, studies or research activities that have limited context and no or minimal intensity in terms of changes in the physical, biological, economic or social components of the environment.

Categories not listed herein require documentation of the analysis. The responsible official should recognize, however, that there may be circumstances when the environmental analysis will indicate that an action listed above should be documented.

**1952.2—Actions Requiring Documentation.**

**1952.21—Environmental Assessment (EA).** An environmental assessment is prepared to document an environmental analysis for which an EIS is not necessary.

**1952.22—Environmental Impact Statement (EIS).** An environmental impact statement shall be an integral part of the national program required by the Forest and Rangeland Renewable Resources Planning Act (Pub. L. 93-378). Environmental impact statements shall be prepared for:

1. Legislation recommended by the Forest Service.

2. Regional and National Forest land and resource management plans as required by regulations issued pursuant to redesignated section 6 of the Forest and Rangeland Renewable Resources

Planning Act of 1974 as amended (Pub. L. 88-476).

3. Programs, projects or other discretionary actions adversely affecting the existing wilderness characteristics of areas identified as "further planning" in the RARE II process.

4. Other major Federal actions significantly affecting the quality of the human environment that have not been adversely addressed in another environmental impact statement.

"Major" actions and "significant" effects are difficult to define precisely and uniformly because of the great variation in social, economic, physical and biological conditions.

The responsible official must determine through an environmental analysis when environmental impact statements are appropriate. (See FSM 1950.3(2) and FSM 1951.8.)

**1952.22a—Legislative Environmental Impact Statements.**

"(a) The NEPA process for proposals for legislation significantly affecting the quality of the human environment shall be integrated with the legislative process of the Congress. A legislative environmental impact statement is the detailed statement required by law to be included in a recommendation or report on a legislative proposal to Congress. A legislative environmental impact statement shall be considered part of the formal transmittal of a legislative proposal to Congress; however, it may be transmitted to Congress up to 30 days later in order to allow time for completion of an accurate statement which can serve as the basis for public and Congressional debate. The statement must be available in time for Congressional hearings and deliberations.

"Preparation of a legislative environmental impact statement shall conform to the requirements of these regulations except as follows:

"(1) There need not be a scoping process.

"(2) The legislative statement shall be prepared in the same manner as a draft statement, but shall be considered the 'detailed statement' required by statute, provided, that when any of the following conditions exist both the draft and final environmental impact statement on the legislative proposal shall be prepared and circulated as provided by 40 CFR 1503.1 and 1506.10:

"(i) A Congressional committee with jurisdiction over the proposal has a rule requiring both draft and final environmental impact statements.

"(ii) The proposal results from a study process required by statute (such as those required by the Wild and Scenic Rivers Act (116 U.S.C. 1271 et seq.) and the Wilderness Act (16 U.S.C. 1131 et seq.)).

"(iii) Legislative approval is sought for Federal or federally-assisted construction or other projects which the agency recommends be located at specific geographic locations.

"(iv) The agency decides to prepare draft and final statements" (40 CFR 1506.6b).

"Comments on the legislative statement shall be given to the lead agency which shall forward them along with its own responses to the Congressional committees with jurisdiction" (40 CFR 1506.8c).

**1952.23—Notice Of Intent (NOI).** When it is determined that an EIS is needed, the responsible official will prepare a notice of intent. The notice shall briefly:

"(a) Describe the proposed action and possible alternatives.

"(b) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.

"(c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement," (40 CFR 1508.22).

"(d) The estimated dates for filing the draft and final environmental impact statements."

Notices of intent are used to develop lists of environmental impact statements under preparation. Environmental Coordinators in the Washington, Regional, Station and Area offices shall maintain composite lists of EIS's under preparation. (See section 210, The NEPA Process Handbook.) These composite lists may be distributed to other agencies, organizations, and individuals.

The responsible official for preparation of the EIS shall notify the appropriate Washington, Regional, Station or Area Environmental Coordinators whenever information shown in the notice of intent changes. Significant changes may require publication of a revised notice of intent. If a notice of intent has been distributed and the project application is withdrawn or for some other reason it is no longer necessary to make the decision, the process can be terminated (at any time prior to the record of decision) by preparation of a notice and distributing it in the same manner as the notice of intent.

The notice of intent documents the decision to prepare an EIS. This decision is based on the responsible official's analysis of the need for an EIS pursuant to FSM 1951.8.

**1952.24—Finding of No Significant Impact (FONSI).**

"Finding of No Significant Impact means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement therefor will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it. If the assessment is included, the finding need not repeat any of the discussion in the assessment, but may incorporate it by

reference." (40 CFR 1508.13). (See Section 213 of FSH 1909.15, The NEPA Process Handbook.)

The FONSI shall be included as an integral part of the decision notice.

Responsible officials " \* \* \* shall make the finding of no significant impact available for public review (including State and areawide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin when:

"(i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement.

"(ii) The nature of the proposed action is one without precedent." (40 CFR 1501.4).

In these two situations, the decision notice, and its integral FONSI, shall be made available for a 30-day public review period prior to implementation of the plan, policy, program or project.

**1952.3—Format.** Environmental assessments and environmental impact statements should generally conform to the following outline. The outline follows the sequence of steps in the environmental analysis (FSM 1951). Sections of the outline may be combined or rearranged in the interest of clarity and brevity.

#### EA or EIS Outline

1. Cover Sheet. (optional for EA).
  2. Summary. (optional for EA).
  3. Table of Contents. (optional for EA).
  4. Introduction.
  5. Affected Environment.
  6. Evaluation Criteria.
  7. Alternatives Considered.
  8. Effects of Implementation.
  9. Evaluation of Alternatives.
  10. Identification of the Forest Service Preferred Alternative.
  11. Consultation With Others.
  12. Index. (optional for EA).
  13. Appendix. (optional for EA).
- (a) list of preparers.  
 (b) list of Federal, State and local agencies to whom the the EIS or EA is being sent.  
 (c) substantive review comments or summaries (final EIS only).

**1952.4—Contents.** Writers of environmental assessments or environmental impact statements should be concerned with content, clarity and brevity.

Writers " \* \* \* shall incorporate material into an environmental impact statement (or environmental assessment) by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement (or assessment) and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available

for review and comment shall not be incorporated by reference." (40 CFR 1502.21).

Material incorporated by reference is considered reasonably available when:

(a) It is an environmental impact statement that has been filed with the Council or EPA, or

(b) It is a book or other publication generally available in technical libraries, or

(c) It may be obtained (at the usual cost of furnishing such information) from the person listed on the cover sheet as the source of further information.

In final environmental impact statements, the material listed in items 4 through 10 in FSM 1952.3 shall normally not exceed 150 pages (and preferably shorter) or 300 pages for proposals of unusual scope or complexity.

Responsible officials " \* \* \* shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements (and environmental assessments). They shall identify and methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement (or assessment)." (40 CFR 1502.24).

"The draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements." (40 CFR 1502.9).

1. **Cover sheet.** (optional for EA). See section 231, FSH 1909.15, The NEPA Process Handbook, for a sample cover sheet. The cover sheet shall not exceed one page. It shall include:

"(a) A list of the responsible agencies including the lead agency and any cooperating agencies.

"(b) The title of the proposed action that is the subject of the statement, together with the State(s) and County(ies) (or other jurisdiction if applicable) where the action is located.

"(c) The name, address, and telephone number of the person at the agency who can supply further information.

"(d) A designation of the statement as a draft, final, or draft or final supplement.

"(e) A one-paragraph abstract of the statement.

"(f) The date by which comments must be received." (40 CFR 1502.11). (Draft EIS only).

"(g) The name of the responsible official."

2. **Summary.** (Optional for EA). The responsible official will determine the need for an environmental assessment summary. It is desirable for lengthy and detailed environmental assessments.

"Each environmental impact statement contain a summary which adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among

alternatives). The summary will normally not exceed 15 pages. (40 CFR 1502.12).

If a summary is distributed as a separate document, it must:

(a) State how the complete EIS or EA can be obtained or reviewed.

(b) Have a cover sheet attached.

3. **Table of contents.** (Optional for EA). Self-explanatory.

4. **Introduction.** (Purpose of and need for action). The introduction briefly describes the nature of the decision to be made. A map showing the general location of the plan or project should be included. Major issues and concerns identified as a result of "scoping" and other essential background information are presented only if important to understanding the decision.

"The statement (or assessment) shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives the proposed action." (40 CFR 1502.15).

Statements must (and assessments may) " \* \* \* list all Federal permits, licenses, and other entitlements which must be obtained in implementing the proposal. If it is uncertain whether a Federal permit, license, or other entitlement is necessary, the draft environmental impact statement shall and (assessment may) so indicate " \* \* \*"

5. **Affected environment.** This section is based on the situation analysis and " \* \* \* shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement." (40 CFR 1502.15).

This description should include major factors affecting and affected by the decision—not just those which are within the control of the Forest Service.

6. **Evaluation criteria.** This section describes the evaluation criteria which were used to evaluate alternatives. The sources of these criteria should be shown. (Also see FSM 1951.3)

7. **Alternatives considered.** This section is usually in two parts: The first briefly describes the process used in formulating the alternatives; and the second describes each alternative—including mitigation measures, management and monitoring requirements, as appropriate.

The alternatives described must include:

(a) " \* \* \* alternatives which were eliminated from detailed study and a brief discussion of the reasons for their having been eliminated.

(b) " \* \* \* reasonable alternatives not within the jurisdiction of the lead agency.

(c) " \* \* \* the alternative of no action \* \* \* " (40 CFR 1502.14).

The detail of description should be similar for all alternatives.

8. *Effects of implementation.* This section describes consequences of implementing each alternative in term of outputs, costs and environmental changes. Objectivity is important. Significant differences of opinion about the kind, amount or duration of effects should be discussed. (See FSM 1951.6).

The description should (commensurate with the importance of the issue):

(a) Identify the assumptions used in estimating the effects of implementation.

(b) Make use of appropriate analyses, data and information. Cite sources used instead of including lengthy analyses in EA's or EIS's.

(c) Express expected environmental changes in quantitative or qualitative terms as applicable, and as necessary to indicate relative differences between the alternative in terms of significance, duration and magnitude of the changes.

(d) Indicate the expected outputs, in terms of goods, services and uses that will result from implementing each alternative. Express the outputs in Service-wide standard terminology. See FSH 1309.11, Management Information Handbook. Use RPA program planning time periods.

(e) Indicate estimated Forest Service expenditures for implementing each alternative. Other public and private expenditures may be shown, as appropriate.

(f) Discuss significant changes (effects) in physical, biological, economic and social components of the environment associated with implementation of each alternative. This includes direct, indirect, cumulative and unavoidable effects, long- and short-term relationships and irreversible and irretrievable resource commitments. It is not mandatory to use separate headings for these items.

"The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action." (40 CFR 1502.9a)

If analyses of economic efficiency (benefit/cost, etc.) have been made, show the results of the analyses here.

"When an agency is evaluating significant adverse effects on the human environment

in an environmental impact statement (or assessment) and there are gaps in relevant information or scientific uncertainty, the agency shall always make clear that such information is lacking or that uncertainty exists.

"If the information relevant to adverse impacts is essential to a reasoned choice among alternatives and is not known and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement (or assessment)." (40 CFR 1502.22).

"If (1) the information relevant to adverse impacts is essential to a reasoned choice among alternatives and is not known and the overall costs of obtaining it are exorbitant or (2) the information relevant to adverse impacts is important to the decision and the means to obtain it are not known (e.g., the means for obtaining it are beyond the state of the art) the agency shall weigh the need for the action against the risk and severity of possible adverse impacts were the action to proceed in the face of uncertainty. If the agency proceeds, it shall include a worst-case analysis and an indication of the probability or improbability of its occurrence." (40 CFR 1502.22b).

9. *Evaluation of alternatives.* This section discusses how the alternatives compare with each other in terms of the evaluation criteria. This provides the basis for identification of a preferred alternative. (Also see FSM 1951.8.)

"Statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned)." (40 CFR 1506.2d).

10. *Identification of the Forest Service preferred alternative.* This section identifies the preferred alternative and the rationale for preference. If the preferred alternative has not been identified, this should be clearly stated. (Also see FSM 1951.8).

"When a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations. In any event, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision." (40 CFR 1502.23).

*Consultation with others.* Document the methods used to obtain public participation and list the agencies and groups consulted during scoping and other steps in the analysis. Individuals may be listed when appropriate. This discussion should relate to substantive information received and used and not

be directed solely to responses and rebuttals.

"Final environmental impact statements shall respond to comments. The agency shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised." (40 CFR 1502.9).

This section of a final EIS should describe how the substantive information contained in the review comments (that are included in the appendix) was used, or not used, in the preparation of the final EIS.

Final environmental impact statements should identify changes in the draft EIS content as a result of substantive review comments. Possible changes are to modify the proposed action; formulate, analyze and evaluate alternatives not previously considered; supplement, improve, or modify analyses, or make factual corrections. In addition, it may be desirable to explain why some comments did not warrant changes in the draft EIS content.

12. *Index (optional in EA).* Environmental impact statements must include an index. The purpose of an index is to make the information in the EIS or EA fully available to the reader without delay. See Chapter 500, FSH 1909.15, The NEPA Process Handbook.

13. *Appendix.* "The appendix shall: "(a) Consist of material prepared in connection with an Environmental Impact Statement (or assessment) (as distinct from material which is not so prepared and which is incorporated by reference).

"(b) Normally consist of material which substantiates any analysis fundamental to the impact statement (or assessment).

"(c) Normally be analytic and relevant to the decision to be made.

"(d) Be circulated with the environmental impact statement (or assessment) or be readily available on request." (40 CFR 1502.18).

"(e) The EIS appendix shall, and the EA appendix may, "list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement. Where possible the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified. Normally the list will not exceed two pages." (40 CFR 1502.17).

Copies of all substantive comments received on a draft EIS should be included in the appendix of the final EIS. If response has been exceptionally voluminous, it may be summarized. Copies, or summaries of all substantive comments should be included in the

appendix, regardless of whether or not the comments are thought to merit individual attention in the text of the EIS.

The appendix shall contain the list of Federal, State and local agencies to whom copies of the statement are sent.

**1952.5—Processing.**

**1952.51—Environmental Assessments.** Regional Foresters, Area and Station Directors shall develop procedures as necessary for processing environmental assessments.

**1952.52—Finding Of No Significant Impact.** See FSM 1952.24 and Sections 240 and 320 of FSH 1909.15, The NEPA Process Handbook, regarding processing of the finding of no significant impact. In the case of an action with effects of national concern, the finding shall be published in the Federal Register and be sent to State and areawide clearinghouses, the Washington Office Environmental Coordinator, national organizations reasonably expected to be interested and to those who have requested it. For actions of local concern, see FSM 1951.1 for circulation requirements.

**1952.53—Notice of Intent.** See FSM 1952.23 and Section 210 of FSH 1909.15, The NEPA Process Handbook. The notice of intent should be published in the Federal Register and a newspaper of general circulation in the area affected by the decision. The appropriate State or areawide clearinghouses should be notified. Copies of the notice may also be distributed to agencies, organizations and individuals as the responsible official feels is appropriate. One copy of the notice of intent must be sent to the Washington Office Environmental Coordinator for use in reporting to the Department.

**1952.54—Environmental Impact Statement.** The following steps are to be taken after a draft EIS has been prepared:

1. File the draft EIS with the EPA and circulate it to agencies and the public.
2. Conduct public participation sessions if appropriate.
3. Review, analyze, evaluate and respond to substantive comments on the draft EIS.
4. Prepare a final EIS.
5. For actions subject to administrative review, (36 CFR 211) file the final EIS, record of decision, (FSM 1953.11) and copies of all substantive comments or summaries thereof on the draft EIS with EPA. Circulate the final EIS and record of decision to other agencies and the public.
6. For actions not subject to administrative review, file the final EIS with EPA and wait 30 days after EPA's

notice of availability is published in the Federal Register before signing and dating the record of decision (FSM 1953.12). File the record of decision with EPA and circulate it the same as the final EIS.

**1952.54a—Filing.** Regional Foresters, Station Directors and Area Directors are authorized to file statements directly with the EPA for actions within their authority.

"Environmental impact statements shall be filed with EPA no earlier than they are also transmitted to commenting agencies and made available to the public." (40 CFR 1506.9). This means that the scheduled distribution must be completed before the EIS is filed with the EPA.

Regional Foresters and Station Directors may redelegate as appropriate the authority to file Statements directly with the EPA.

Statements involving legislation, regulations, multi-agency actions at the national level, and Service-wide policy will be filed with the EPA by the Chief's Office.

If the Chief is the responsible official, other levels of the Forest Service may assist with the analysis and preparation of documents. However, each step of the analysis process must be coordinated with the Chief or designated acting.

If the final EIS deals with plans, or projects which make allocations to non-wilderness uses in RARE II "further planning areas," the responsible official shall file the final EIS with the EPA and make public distribution the same as for other EIS's. Three copies of the final EIS and record of decision must be sent to the Washington Office (Office of the Environmental Coordinator) on the day that the record of decision is signed for transmittal to Congressional committees.

See Chapter 400 of FSH 1909.15, The NEPA Process Handbook, for instructions regarding filing procedures.

**1952.54b—Circulation.** Responsible officials shall circulate the entire draft and final environmental impact statements. However, if the statement is unusually long, a summary may be circulated instead, except that the entire statement shall be furnished to:

"Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State or local agency authorized to develop and enforce environmental standards.

"The applicant, if any.

"Any person, organization, or agency requesting the entire environmental impact statement.

"In the case of a final environmental impact statement any person, organization, or agency which submitted substantive comments on the draft.

"If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period." (40 CFR 1502.19).

When the EIS is filed with the EPA, the responsible official shall insure that a reasonable number of copies of the statement is available free of charge.

When a summary of an EIS is circulated as a separate document, it must contain a cover sheet as per FSM 1952.4(1).

Copies of all review comments should be available for public and In-Service review in the office of the responsible official or administrative unit affected by the policy, plan, program or project.

Responsible officials should insure that lists of individuals, groups, organizations and governmental agencies which may be interested in reviewing Forest Service environmental impact statements are maintained. Regions are encouraged to develop specific distribution lists. State and areawide clearinghouses should be used, by mutual agreement, for securing reviews of the draft EIS. The responsible official may also deal directly with appropriate State or local officials or agencies if clearinghouses are unwilling or unable to handle this phase of the process. However, clearinghouses should always receive copies of environmental impact statements.

**1952.6—Corrections, Supplements or Revisions.** Environmental assessments and environmental impact statements may be corrected through use of errata sheets or modified by supplements. Draft environmental impact statements may be revised (See FSM 1952.62). Supplements or revisions are prepared, circulated, filed and reviewed the same as the document being modified.

**1952.61—Environmental Assessments.** Additional information may emerge after an EA has been prepared. If the new information involves minor changes, such as typographical corrections, that would not affect public response or the decision, the corrections should be noted in the file copy of the EA.

If the new information may change the decision, the EA should be supplemented or revised.

**1952.62—Draft Environmental Impact Statement.** Errata sheets should be used when minor corrections are necessary that will not materially change the public response or the decision. Typical

items include terminology and typographical corrections.

Responsible officials shall insure preparation of \* \* \* supplements to either draft or final environmental impact statements if:

- (i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns, or
- (ii) There are significant new circumstances, or information relevant to environmental concerns and bearing on the proposed action or its impacts \* \* \* (40 CFR 1502.9).

Supplements to the draft EIS are used when new or more accurate information may significantly change the public response or the decision.

A supplement to the draft EIS may be desirable whenever a draft was circulated without identification of a preferred alternative.

A revision to a draft EIS is necessary when, in the judgment of the responsible official, comments on the draft clearly indicate that meaningful analysis was not possible.

When a supplement or revision is circulated the transmittal letter should establish a review period of at least 60 days from the date of transmittal of the supplement or revision.

**1952.63—Final Environmental Impact Statements.** Additional information may emerge after a final EIS has been prepared and circulated. If the new information involves minor changes that would not affect public reaction or the decision, the corrections should be noted in the file copy of the final EIS.

If the responsible official determines that the new information might change the decision and require additional public comment, a supplement to the final EIS should be prepared, filed and circulated in the same manner as the original document. When the supplement is circulated in draft form, the transmittal letter shall establish a review period of at least 60 days from the date of transmittal of the supplement, and notify reviewers that a final supplement and a record of decision will be prepared, filed and circulated.

#### **1952.7—COMMENTING**

**1952.71—Forest Service Environmental Impact Statements.**

**1952.71a—Draft Environmental Impact Statements.**

"After preparing a draft environmental impact statement and before preparing a final environmental impact statement, the agency shall:

"Obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is

authorized to develop and enforce environmental standards.

"Request the comments of:

- (i) Appropriate State and local agencies which are authorized to develop and enforce environmental standards;
- (ii) Indian tribes, when the effects may be on a reservation; and,
- (iii) Any agency which has requested that it receive statements on actions of the kind proposed.

"Request comments from the applicant, if any.

"Request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected." (40 CFR 1503.1(a)).

A period of at least 60 days from the date of transmittal to the Environmental Protection Agency, and the public will be allowed for comment. The responsible official may extend the comment period. Comments on the draft EIS may be received after the review period is closed and before the final EIS is filed. They should be used, if possible to do so without major difficulty. If it is too late to incorporate them in the final EIS, they should be made available to the responsible official for consideration prior to making the decision.

**1952.71b—Final Environmental Impact Statements.** For decisions subject to the administrative review process, a period of not less than 30 days from the date of publication in the Federal Register of EPA's notice of availability of the FEIS, will be allowed before decisions are implemented.

For decisions not subject to the administrative review process, the record of decision will be filed 30 days after EPA has published the notice of availability in the Federal Register and implementation may take place immediately. Comments received after the final EIS is filed should be answered on an individual basis.

"(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

- (1) Modify alternatives including the proposed action.
- (2) Develop and evaluate alternatives not previously given serious consideration by the agency.
- (3) Supplement, improve or modify its analyses.
- (4) Make factual corrections.
- (5) Explain why the comments do not warrant further agency response, citing the sources, authorities or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

"(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous) should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

"(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a) (4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need to be circulated. The entire document with a new cover sheet shall be filed as the final statement." (40 CFR 1503.4).

**1952.72—Review of Other Agency Environmental Impact Statements.** When requested to do so, the Forest Service must review and comment on environmental impact statements prepared by other agencies because of special expertise. When another agency proposal involves or affects National Forest System lands, or prime timber lands, the Forest Service shall review the environmental impact statement.

Unless otherwise assigned by the Chief, review and comment on legislative or other major policies, regulations or national program proposals will be made by the Washington Office. The Regional Forester or Area Director in whose region or area a proposal is located will review other environmental impact statements and submit comments directly to the appropriate agency. Where appropriate, statements should be sent to Station Directors or other Forest Service officials for comment. When another agency's environmental impact statement involves more than one Region, the responses shall be coordinated with the Washington Office Environmental Coordinator.

When reviewing other agency's statements, responsible officials shall insure \* \* \* comment within the time period specified for comment." (40 CFR 1503.2). If appropriate, a no-comment response can be made. If the Forest Service is a cooperating agency and \* \* \* is satisfied that its views are adequately reflected in the environmental impact statement, it should reply that it has no comment." (40 CFR 1503.2).

"Comments on an environmental impact statement or on a proposed action shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both.

"When a commenting agency criticizes a lead agency's predictive methodology, the commenting agency should describe the alternative methodology which it prefers and why.

"A cooperative agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or entitlements.

"When a cooperating agency with jurisdiction by law objects to or expresses reservations about the proposal on grounds of environmental impacts, the agency expressing the objection or reservation shall specify the mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements of concurrences." (40 CFR 1503.3).

One copy of Forest Service comments on other agency environmental impact statements should be sent to the Washington Office Environmental Coordinator. If comments are made on final environmental impact statements, one copy should also be sent to EPA.

**1952.72a—Referrals.** When it has been determined, after review of another agency's environmental impact statement, that the proposal would be environmentally unsatisfactory, the matter will be referred to the Council by the Secretary's Office. Referrals should reflect a careful determination that the proposed action raises significant environmental issues of national importance. However, referrals will only be made to Council after concerted, timely, but unsuccessful attempts to resolve the differences with the proposing agency.

If an agreement cannot be reached, the lead agency shall be advised at the earliest possible time (in a letter signed by the Secretary of Agriculture) of the Department's intent to refer a proposal to the Council. Such advice shall be included in Forest Service comments on the lead agency's draft EIS unless the draft EIS contains insufficient information to permit an assessment of the proposal's environmental acceptability. (Where such needed information is not contained in the draft EIS, the Forest Service shall identify the needed information and request that it be made available by the lead agency at the earliest possible time).

The referral package shall be sent to the Chief's Office and shall consist of: A draft letter to be signed by the Secretary informing the lead agency of the referral, the reasons for it and requesting that the lead agency take no action to implement the proposal until the referral is acted upon by the Council. The letter shall

include a statement supported by evidence as to the specific facts, or controverted facts, leading to the conclusion that the proposal is unsatisfactory from the standpoint of public health or welfare or environmental quality. The statement shall:

1. Identify any material facts in controversy as well as incorporate (by reference if appropriate) agreed upon facts.
2. Identify any existing environmental laws or policies which would be violated by the proposal.
3. Present the reasons the Forest Service believes the proposal is environmentally unsatisfactory.
4. Contain a finding as to whether the issue raised is one of national importance because of the threat to national environmental resources or policies for some other reason.
5. Review the steps taken by the Forest Service to bring our concerns to the attention of the lead agency at the earliest possible time, and
6. Give Forest Service recommendations as to what mitigation, alternatives, further study or other course of action (including abandonment of the proposal) are necessary to remedy the situation.

The referral shall be delivered by the Secretary's Office to the Council not later than 25 days after the final EIS is made available to the EPA, commenting agencies and the public, except where an extension has been granted by the lead agency. The 25-day time period is extremely short; therefore, referral documentation must begin when another agency draft EIS proposes an environmentally unacceptable action. Usually such situations will only occur when National Forest System lands are involved. The Forest Service official responsible for commenting on the statement should notify the originating agency that a referral will be recommended to the Secretary if the condition is not remedied in the final EIS. Upon receipt of the final EIS, if the condition is not remedied, documentation and request for referral should be sent immediately to the Chief for handling.

#### 1953—DECISION

**1953.1—Record of Decision.** A record of decision is a separate document which records the decision of the responsible official. The record of decision shall:

1. " \* \* state what the decision was.
2. " \* \* identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be

environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.

3. " \* \* state whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation." (40 CFR 1502.2)

4. Explain the timing and public right of administrative review when appropriate.

See Exhibit 1 for a listing of conditions that must be met prior to a decision.

The record of decision should be sent to:

1. Individuals, organizations or agencies affected by the decision.
2. Others who have requested such notice in writing.
3. The Washington Office Environmental Coordinator for use in Departmental reporting.

In addition, the public may be notified by publishing the record of decision in a newspaper of general circulation in the area affected by the decision. See section 310 of FSH 1909.15, The NEPA Process Handbook for a sample record of decision. When joint lead agencies are identified in an EIS, the responsible official from each agency shall sign and date the record of decision for those actions within their authority. Separate records of decision may be prepared by each responsible official.

**1953.11—Record Of Decision For Actions Subject To Administrative Review.** (36 CFR 271.19). The record of decision establishes the date of decision and must be dated on the date that it and the final EIS are transmitted to the EPA and made available to the public. The 45-day period for administrative reviews (appeals) (36 CFR 211.19d) therefore starts with the date on the record of decision. Records of decision must not be predated nor postdated. Records of decision shall not be signed and dated until at least 60 days after the EPA publishes the notice of availability of the draft EIS in the Federal Register, unless the EPA has reduced or extended the standard period for comment.

If a separate summary of the final EIS is distributed, the record of decision should also be attached to each summary before distribution.

The record of decision for actions subject to administrative review should

state that implementation will not take place until at least 45 days from the date that the record is transmitted to the EPA and made available to the public.

**1953.12—Record of Decision For Actions Not Subject To Administrative Review (36 CFR 211.19).** Land and resource management plans prepared under the National Forest Management Act, section 6 regulations, are excluded from administrative review in proposed regulations issued May 4, 1979, if the selected harvest schedule is not the base timber harvest schedule for the designated forest planning area (36 CFR 219.12).

Forest Service actions that do not involve the National Forest System are also excluded.

The record of decision shall not be signed and dated until 30 days after the notice of availability of the final EIS is published by EPA in the Federal Register.

**1953.2—Decision Notice.** A decision notice is normally a separate document

which is attached to environmental assessments. It may be an integral part of simple EA's, rather than a separate document. (See section 320 of FSH 1909.15, The NEPA Process Handbook, sample 2).

The responsible official should insure that the public is notified of the decision, as appropriate. (FSM 1951.1 and 1952.52). The decision notice shall be dated on the date that it and the EA are made available to the public. Decision notices must not be predated nor postdated. The 45-day period for administrative review (appeals) (36 CFR 211.19c) starts with the date of the decision, which is the date on the decision notice.

The decision notice should clearly identify (a) the decision, (b) the rationale used, (c) the environmental consideration used in the decisionmaking and (d) the finding of no significant impact.

**1953.21—Decision Notice For Unprecedented Actions Or Actions**

Exhibit 1

**Similar To Those Which Normally Require An EIS.** The decision notice shall not be signed and dated until after the finding of no significant impact has been available for public review for a 30-day period (including State and areawide clearinghouses) when:

- (1) The proposed action is, or is closely similar to one which normally requires preparation of an EIS, or
- (2) The nature of the proposed action is without precedent.

In these cases, the decision notice constitutes the final determination that an EIS is not needed. This should be stated in the decision notice.

**1953.22—Decision Notice For Actions Involving Flood Plains Or Wetlands.**

The decision notice shall be signed and dated as specified in FSM 1953.2, and shall state that implementation will not take place until 30 days have elapsed to allow a reasonable period of public review as required by E.O. 11988 and E.O. 11990.

If an EIS is required for	These conditions must be met prior to a decision	These conditions must be met prior to implementation
Plans, programs or projects other than (a) land management plans, (b) decisions affecting the existing wilderness character of RARE II "further planning" areas or (c) areas involved in pending legislation for wilderness designation.	<ol style="list-style-type: none"> <li>1. 45 days have elapsed since the notice of availability of the draft EIS was published in the FEDERAL REGISTER by EPA.</li> <li>2. A final EIS that responds to comments on the draft EIS has been prepared.</li> </ol>	<ol style="list-style-type: none"> <li>1. 45 days have elapsed since the record of decision was signed and dated.</li> <li>2. 30 days have elapsed since the date of publication of the notice of the final EIS in the FEDERAL REGISTER by EPA.</li> </ol>
Plans (other than land management plans), programs or projects adversely affecting the existing wilderness character of RARE II "further planning" areas.	<ol style="list-style-type: none"> <li>1. 45 days have elapsed since the notice of availability of the draft EIS was published in the FEDERAL REGISTER by EPA.</li> <li>2. A final EIS that responds to comments on the draft EIS has been prepared.</li> </ol>	<ol style="list-style-type: none"> <li>1. 45 days have elapsed since the record of decision was signed and dated.</li> <li>2. 30 days have elapsed since the date of publication of the notice of the final EIS in the FEDERAL REGISTER by EPA.</li> <li>3. 90 days while Congress is in session have elapsed since the date of publication of the notice of availability of the final EIS in the FEDERAL REGISTER.</li> <li>4. An extension of time has not been requested by the appropriate Congressional committee chairman.</li> <li>5. The Washington Office has notified the responsible official that condition 4 above has been met.</li> </ol>
Land management or other plans, programs or projects affecting areas involved in pending legislation for wilderness designation.	<ol style="list-style-type: none"> <li>1. 45 days have elapsed since the notice of availability of the draft EIS was published in the FEDERAL REGISTER by EPA.</li> <li>2. A final EIS that responds to comments on the draft EIS has been prepared.</li> <li>3. Approval has been received from the Chief.</li> </ol>	<ol style="list-style-type: none"> <li>1. 45 days have elapsed since the record of decision was signed and dated.</li> <li>2. 30 days have elapsed since the date of publication of the notice of availability of the final EIS in the FEDERAL REGISTER by EPA.</li> <li>3. The W.O. has notified the responsible official that the Department has no objections.</li> </ol>
Land management plans <sup>1</sup>	<ol style="list-style-type: none"> <li>1. 90 days or 3 months, whichever is longer, have elapsed since the notice of availability of the draft EIS was published in the FEDERAL REGISTER.</li> <li>2. A final EIS that responds to comments on the draft EIS has been prepared.</li> <li>3. 30 days have elapsed since the notice of availability of the final EIS was published in the FEDERAL REGISTER.</li> </ol>	<ol style="list-style-type: none"> <li>1. A record of decision has been signed and dated.</li> <li>2. The W.O. has notified the responsible official that the Department has no objections.</li> <li>3. An extension of time has not been requested by the appropriate Congressional committee chairman.</li> <li>4. The W.O. has notified the responsible official that condition 3 above has been met.</li> </ol>
Actions not concerning the National Forest System (i.e., not subject to administrative review) (36 CFR 211.19).	<ol style="list-style-type: none"> <li>1. 90 days have elapsed since the notice of availability of the draft EIS was published in the FEDERAL REGISTER.<sup>2</sup></li> <li>2. 30 days have elapsed since the notice of availability of the final EIS was published in the FEDERAL REGISTER.</li> </ol>	<ol style="list-style-type: none"> <li>1. A record of decision has been signed and dated.</li> </ol>

<sup>1</sup>Implementation conditions 2, 3, and 4 apply only to those plans that allocate RARE II "further planning" areas to wilderness or nonwilderness uses.  
<sup>2</sup>This 90-day period and the 30-day period may run concurrently provided a 45-day period for comment is provided.

**1954—IMPLEMENTATION, MONITORING, AND CONTROL.**

**1954.1—Implementation.** Conditions listed in Exhibit 1 must be met prior to

implementation of the decision, if an EIS is required. Implementation of actions documented in an environmental

assessment not involving flood plains and wetlands may take place immediately after the decision notice is signed and dated.

Implementation specifically includes responding to any commitments for mitigation or monitoring included in the EA, final EIS, record of decision or decision notice.

1954.2—*Monitoring*. Actions will be implemented and monitored to insure that (1) environmental safeguards are executed according to plan, (2) necessary adjustments are made to achieve desired environmental effects and (3) anticipated results and projections are reviewed.

Responsible officials "may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation . . . and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The lead agency shall:

(a) Include appropriate conditions in grants, permits, or other approvals.

(b) Condition funding of actions on mitigation.

(c) Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision.

(d) Upon request, make available to the public the results of relevant monitoring." (40 CFR 1505.3).

1954.3—*Control*. Management reviewers (FSM 1410) will discuss the results and environmental effects of plans, projects and programs as part of activity, program and general management reviews at all organizational levels. Such a review should compare the actual on-the-ground results with anticipated effects described in the EA or final EIS.

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**FEDERAL LABOR RELATIONS  
AUTHORITY, GENERAL COUNSEL OF  
THE FEDERAL LABOR RELATIONS  
AUTHORITY, AND FEDERAL SERVICE  
IMPASSES PANEL**

**[5 CFR Chapter XIV]**

**Processing of Cases; Interim Rules**

**AGENCY:** Federal Labor Relations Authority (including the General Counsel of the Federal Labor Relations Authority) and Federal Service Impasses Panel.

**ACTION:** Interim rules and regulations; request for comments.

**SUMMARY:** These interim rules and regulations principally govern the processing of cases by the Federal Labor Relations Authority (Authority), the General Counsel of the Federal Labor Relations Authority (General Counsel), and the Federal Service Impasses Panel (Panel) under chapter 71 of title 5 of the United States Code. These interim rules and regulations are required by Title VII of the Civil Service Reform Act of 1978 and will expire no later than January 31, 1980.

**DATES:** Effective Date: July 30, 1979.

Comment Date: Written comments will be considered if received no later than October 31, 1979.

**ADDRESS:** Send written comments relating to subchapters A, B and C of the interim rules and regulations to the Federal Labor Relations Authority, 1900 E Street, NW., Washington, DC 20424.

Send written comments relating to subchapter D of the interim rules and regulations to the Federal Service Impasses Panel, 1730 K Street, NW., Suite 209, Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:**

Jerome P. Hardiman, Director, Office of Operations, Authority, (202) 254-7362.  
S. Jesse Reuben, Associate General Counsel, (202) 523-7262.

Howard W. Solomon, Executive Director, Panel (202) 653-7078.

David L. Feder, Attorney-Advisor/Trial Office of the General Counsel (202) 523-7262.

**SUPPLEMENTARY INFORMATION:** Effective January 1, 1979, the Authority and the Panel issued the first of two documents (here republished) revising chapter XIV of title 5 of the Code of Federal Regulations in its entirety (44 FR 5). That first document set forth subchapter A of this chapter and, consistent with the requirements of Reorganization Plan No. 2 of 1978, provided the transition rules and regulations: to govern the processing of cases pending on

December 31, 1978, before the Federal Labor Relations Council, the Assistant Secretary of Labor for Labor-Management Relations (and the Vice Chairman of the Civil Service Commission when performing the duties of the Assistant Secretary), and the Panel; to govern the processing of cases filed with the Authority and the Panel during the period of January 1 through January 10, 1979; and to govern the processing of all unfair labor practice cases filed with the Authority on or after January 11, 1979, based on occurrences prior to January 11, 1979.

The present document amends § 2400.2 of the above-mentioned transition rules and regulations to delete those provisions for the processing of all unfair labor practice cases filed with the Authority on or after January 11, 1979, based on occurrences prior to January 11, 1979, consistent with the previously issued Notice of the Authority relating to practices under the Transition Rules and Regulations of the Authority dated March 7, 1979 (44 FR 14634).

The second document previously issued by the Authority and here also republished contained provisions concerning public observation of meetings of the Authority (44 FR 10047).

The present document renames Chapter XIV of title 5 of the Code of Federal Regulations. It further sets forth the balance of the revision of this chapter, namely, subchapters B, C and D of this chapter, and, consistent with the provisions of chapter 71 of title 5 of the United States Code, covers the following matters:

Subchapter B of the interim rules and regulations contains general provisions concerning public access to information from the Authority, the General Counsel, or the Panel; procedures authorizing an individual's access to records maintained about the individual, limiting the access of other persons to those records, and permitting an individual to request the amendment or correction of records about the individual; public observation of meetings of the Authority; prohibitions of ex parte communications to or by any Authority member, Administrative Law Judge, or other Authority employees; and the standards of conduct and responsibilities to be maintained by officers and employees, including special Government employees, of the Authority, the General Counsel, and the Panel.

Subchapter C of the interim rules and regulations contains procedures, basic principles or criteria under which the Authority of the General Counsel, as applicable, will determine the

appropriateness of units; supervise or conduct elections; resolve issues relating to determining the appropriateness of units; supervise or conduct elections; resolve issues relating to national consultation rights; resolve issues relating to determining compelling need for agency rules or regulations; resolve issues relating to the duty to bargain in good faith; resolve issues relating to the granting of consultation rights on Government-wide rules or regulations; conduct hearings and resolve complaints of unfair labor practices; resolve exceptions to arbitrators' awards; and take such other actions as are necessary and appropriate effectively to administer the provisions of chapter 71 of title 5 of the United States Code.

Subchapter D of the interim rules and regulations contains procedures and methods which the Panel will utilize in the resolution of negotiation impasses when voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve the disputes.

The Authority, the General Counsel, and the Panel find that the purposes of the interim rules and regulations here involved, along with the urgent need to avert a serious disruption of the Federal labor-management relations program and to avoid any prejudice to the rights of interested parties, establish good cause for immediately publishing these interim rules and regulations in the Federal Register. The interim rules and regulations will continue to be applied until their expiration on January 31, 1980, or upon the effective date of final rules and regulations prior to January 31, 1980. Interested labor organizations, agencies and other persons may comment in writing and such comments should be submitted no later than October 31, 1979.

Accordingly, chapter XIV of title 5 of the Code of Federal Regulations is revised in its entirety to read as follows:

**CHAPTER XIV—FEDERAL LABOR  
RELATIONS AUTHORITY, GENERAL  
COUNSEL OF THE FEDERAL LABOR  
RELATIONS AUTHORITY AND  
FEDERAL SERVICE IMPASSES PANEL**

**Subchapter A—Transition Rules and  
Regulations**

Part  
2400 Processing of Cases Pending as of  
December 31, 1978 and Cases Filed  
During the Period of January 1 Through  
January 10, 1979

**INTERIM RULES AND REGULATIONS****Subchapter B—General Provisions**

- Part  
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2415 Employee Responsibility and Conduct

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- 2420 Purpose and Scope  
2421 Meaning of Terms As Used in this Subchapter  
2422 Representation Proceedings  
2423 Unfair Labor Practice Proceedings  
2424 Review of Negotiability Issues  
2425 Review of Arbitration Awards  
2426 National Consultation Rights and Consultation Rights on Government-wide Rules or Regulations  
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**Subchapter D—Federal Service Impasses Panel**

- 2470 General  
2471 Procedures of the Panel  
Appendix A—Temporary Addresses and Geographic Jurisdictions.  
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**SUBCHAPTER A—TRANSITION RULES AND REGULATIONS****PART 2400 PROCESSING OF CASES PENDING AS OF DECEMBER 31, 1978 AND CASES FILED DURING THE PERIOD OF JANUARY 1 THROUGH JANUARY 10, 1979.**

## Sec.

- 2400.1 Scope and purpose.  
2400.2 Processing of unfair labor practice, representation, grievability/arbitrability and national consultation rights cases.  
2400.3 Processing of standards of conduct cases.  
2400.4 Processing of negotiability cases.  
2400.5 Processing of arbitration cases.  
2400.6 Processing of Panel cases.

Authority: Reorganization Plan No. 2 of 1978, 43 FR 36037; 5 U.S.C. 3301, 7301; E.O. 11491, 34 FR 17605, 3 CFR, 1966-1970 Comp., p. 861; as amended by E.O. 11616, 36 FR 17319, 3 CFR, 1971-1975 Comp., p. 605; E.O. 11636, 36 FR 24901, 3 CFR, 1971-1975 Comp., p. 634, E.O. 11838, 40 FR 5743 and 7391, 3 CFR, 1971-1975 Comp., p. 957; E.O. 11901, 41 FR 4807, 3 CFR, 1976 Comp., p. 87; E.O. 12027, 42 FR 61851, 3 CFR, 1977 Comp., p. 159; and E.O. 12107, 44 FR 1055.

**§ 2400.1 Scope and purpose.**

This subchapter contains transition rules and regulations issued pursuant to Section 307 of Reorganization Plan No. 2 of 1978, and section 4(b) and 5(c) of Executive Order 11491, as amended, to govern the processing of all cases which are pending on December 31, 1978, before the Federal Labor Relations Council (Council), the Assistant Secretary of Labor for Labor-Management Relations (Assistant Secretary), the Vice Chairman of the Civil Service Commission (Vice Chairman) when performing the duties of the Assistant Secretary, and the Federal Service Impasses Panel (Panel); and to govern the processing of all cases filed with the Authority and the Panel during the period January 1 through January 10, 1979.

**§ 2400.2 Processing of unfair labor practice, representation, grievability/arbitrability and national consultation rights cases.**

All unfair labor practice, representation, grievability/arbitrability and national consultation rights cases pending before the Assistant Secretary and the Vice Chairman on December 31, 1978 (including cases the time limit for which an appeal to the Council has not expired under the Council's rules and regulations), all such cases pending before the Council on December 31, 1978, and all such cases filed with the Authority during the period January 1 through January 10, 1979, shall be processed by the Authority in accordance with the Rules and Regulations of the Office of the Assistant Secretary for Labor-Management Relations, Title 29, Code of Federal Regulations, Part 201 *et seq.* (Revised as of July 1, 1978) and the Rules and Regulations of the Federal Labor Relations Council, Title 5, Code of Federal Regulations, Part 2411 *et seq.* (Revised as of January 1, 1978); *except* that, as appropriate:

(a) The word "Authority" shall be substituted wherever the word "Council" appears in such rules and regulations;

(b) The word "Authority" shall be substituted wherever the words "Assistant Secretary" or "Vice Chairman" appear in the rules and regulations of the Office of the Assistant Secretary, except in Part 204 of such rules;

(c) Wherever the rules and regulations of the Office of the Assistant Secretary require action to be taken by subordinate personnel of the Assistant Secretary, such action shall be taken by

equivalent subordinate personnel of the Authority;

(d) Wherever the rules and regulations of the Council provide for the service of copies of documents on the Assistant Secretary, or provide a right of the Assistant Secretary to intervene in Council proceedings, such provisions shall be deemed inoperative; and

(e) The decision of the Authority when rendered in any case shall be final and not subject to further appeal within the Authority.

**§ 2400.3 Processing of standards of conduct cases.**

All standards of conduct cases pending before the Assistant Secretary on December 31, 1978 (including cases the time limit for which an appeal to the Council has not expired under the Council's rules and regulations), and all such cases filed with the Assistant Secretary during the period January 1 through January 10, 1979, may be appealed to the Authority under the Rules and Regulations of the Federal Labor Relations Council, Title 5, Code of Federal Regulations, Part 2411 *et seq.* (Revised as of January 1, 1978), except that the word "Authority" shall be substituted, as appropriate, wherever the word "Council" appears in such rules. All standards of conduct cases pending before the Council on December 31, 1978, shall be processed by the Authority in the same manner as Assistant Secretary cases pending before the Council on that date under § 2400.2.

**§ 2400.4 Processing of negotiability cases.**

All negotiability cases pending before the Council on December 31, 1978, and all negotiability cases filed with the Authority during the period of January 1 through January 10, 1979, shall be processed by the Authority in accordance with the Rules and Regulations of the Federal Labor Relations Council, Title 5, Code of Federal Regulations, Part 2411 *et seq.* (Revised as of January 1, 1978), except that the word "Authority" shall be substituted, as appropriate, wherever the word "Council" appears in such rules.

**§ 2400.5 Processing of arbitration cases.**

All arbitration cases pending before the Council on December 31, 1978, and all arbitration cases filed with the Authority during the period January 1 through January 10, 1979, shall be processed by the Authority in accordance with the Rules and Regulations of the Federal Labor

Relations Council, Title 5, Code of Federal Regulations, Part 2411 *et seq.* (Revised as of January 1, 1978), except that the word "Authority" shall be substituted, as appropriate, wherever the word "Council" appears in such rules.

#### § 2400.6 Processing of Panel cases.

All cases pending before the Panel on December 31, 1978, and all cases filed with the Panel during the period of January 1 through January 10, 1979, shall be processed by the Panel in accordance with the Rules and Regulations of the Federal Service Impasses Panel, Title 5, Code of Federal Regulations, Part 2470 *et seq.* (Revised as of January 1, 1978), except that the word "Authority" shall be substituted, as appropriate, wherever the word "Council" appears in such rules.

### Interim Rules and Regulations

#### SUBCHAPTER B—GENERAL PROVISIONS

#### PART 2411—AVAILABILITY OF OFFICIAL INFORMATION

##### Sec.

- 2411.1 Purpose and scope.
- 2411.2 Delegation of authority.
- 2411.3 Information policy.
- 2411.4 Procedure for obtaining information.
- 2411.5 Identification of information requested.
- 2411.6 Time limits for processing requests.
- 2411.7 Appeal from denial of request.
- 2411.8 Extension of time limits.
- 2411.9 Effect of failure to meet time limits.
- 2411.10 Fees.
- 2411.11 Compliance with subpoenas.
- 2411.12 Annual report.

Authority: 5 U.S.C. 552.

#### § 2411.1 Purpose and scope.

This part contains the regulations of the Federal Labor Relations Authority, the General Counsel of the Federal Labor Relations Authority and the Federal Service Impasses Panel providing for public access to information from the Authority, the General Counsel or the Panel. These regulations implement the Freedom of Information Act, as amended, 5 U.S.C. 552, and the policy of the Authority, the General Counsel and the Panel to disseminate information on matters of interest to the public and to disclose to members of the public on request such information contained in records insofar as is compatible with the discharge of their responsibilities, consistent with applicable law.

#### § 2411.2 Delegation of authority.

(a) *Federal Labor Relations Authority/General Counsel of the Federal Labor Relations Authority.*

Regional Directors of the Federal Labor Relations Authority, the Freedom of Information Officer of the Office of the General Counsel, Washington, D.C., and the Solicitor of the Federal Labor Relations Authority are delegated the exclusive authority to act upon all requests for information, documents and records which are received from any person or organization under § 2411.4(a).

(b) *Federal Service Impasses Panel.* The Executive Director of the Federal Service Impasses Panel is delegated the exclusive authority to act upon all requests for information, documents and records which are received from any person or organization under § 2411.4(b).

#### § 2411.3 Information policy.

(a) *Federal Labor Relations Authority/General Counsel of the Federal Labor Relations Authority.* (1) It is the policy of the Federal Labor Relations Authority and the General Counsel of the Federal Labor Relations Authority to make available for public inspection and copying: (i) Final decisions and orders of the Authority and administrative rulings of the General Counsel; (ii) statements of policy and interpretations which have been adopted by the Authority or by the General Counsel and are not published in the Federal Register; and (iii) administrative staff manuals and instructions to staff that affect a member of the public (except those establishing internal operating rules, guidelines, and procedures for the investigation, trial, and settlement of cases). Any person may examine and copy items (i) through (iii) at each regional office of the Authority and at the offices of the Authority and the General Counsel, respectively, in Washington, D.C., under conditions prescribed by the Authority and the General Counsel, respectively, and at reasonable times during normal working hours so long as it does not interfere with the efficient operations of the Authority and the General Counsel. To the extent required to prevent a clearly unwarranted invasion of personal privacy, identifying details may be deleted and, in each case, the justification for the deletion shall be fully explained in writing.

(2) It is the policy of the Authority and the General Counsel to make promptly available for public inspection and copying, upon request by any person, other records where the request reasonably describes such records and otherwise conforms with the rules provided herein.

(b) *Federal Service Impasses Panel.* (1) It is the policy of the Federal Service Impasses Panel to make available for

public inspection and copying: (i) Procedural determinations of the Panel; (ii) factfinding and arbitration reports; (iii) final decisions and orders of the Panel; (iv) statements of policy and interpretations which have been adopted by the Panel and are not published in the Federal Register; and (v) administrative staff manuals and instructions to staff that affect a member of the public. Any person may examine and copy items (i) through (v) at the Panel's offices in Washington, D.C., under conditions prescribed by the Panel, and at reasonable times during normal working hours so long as it does not interfere with the efficient operations of the Panel. To the extent required to prevent a clearly unwarranted invasion of personal privacy, identifying details may be deleted and, in each case, the justification for the deletion shall be fully explained in writing.

(2) It is the policy of the Panel to make promptly available for public inspection and copying, upon request by any person, other records where the request reasonably describes such records and otherwise conforms with the rules provided herein.

(c) The Authority, the General Counsel and the Panel shall maintain and make available for public inspection and copying the current indexes and supplements thereto which are required by 5 U.S.C. 552(a)(2) and, as appropriate, a record of the final votes of each member of the Authority and of the Panel in every agency proceeding. Any person may examine and copy such document or record of the Authority, the General Counsel or the Panel at the offices of either the Authority, the General Counsel, or the Panel, as appropriate, in Washington, D.C., under conditions prescribed by the Authority, the General Counsel or the Panel at reasonable times during normal working hours so long as it does not interfere with the efficient operations of either the Authority, the General Counsel, or the Panel.

(d) The Authority, the General Counsel or the Panel may decline to disclose any matters exempted from the disclosure requirements in 5 U.S.C. 552(b), particularly those that are:

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

(2) Related solely to internal personnel rules and practices of the Authority, the General Counsel or the Panel;

(3) Specifically exempted from disclosure by statute (other than 5 U.S.C. 552b), provided that such statute:

(i) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

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

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

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

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would:

(i) Interfere with an enforcement proceeding;

(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.

(e)(1) The formal documents constituting the record in a case or proceeding are matters of official record and, until destroyed pursuant to applicable statutory authority, are available to the public for inspection and copying at the appropriate regional office of the Authority, or the offices of the Authority, the General Counsel or the Panel in Washington, D.C., as appropriate, under conditions prescribed by the Authority, the General Counsel or the Panel at reasonable times during normal working hours so long as it does not interfere with the efficient operations of either the Authority, the General Counsel or the Panel.

(2) The Authority, the General Counsel or the Panel, as appropriate, shall certify copies of the formal documents upon request made a reasonable time in advance of need and payment of lawfully prescribed costs.

(f) (1) Copies of forms prescribed by the Authority for the filing of charges and petitions may be obtained without charge from any regional office of the Authority.

(2) Copies of forms prescribed by the Panel for the filing of requests may be obtained without charge from the Panel's offices in Washington, D.C.

#### § 2411.4 Procedure for obtaining information.

(a) *Federal Labor Relations Authority/General Counsel of the Federal Labor Relations Authority.* Any person who desires to inspect or copy any records, documents or other information of the Authority or the General Counsel, covered by this part, other than those specified in paragraphs (a)(1) and (c) of § 2411.3, shall submit a written request to that effect as follows:

(1) If the request is for records, documents or other information in a regional office of the Authority, it should be made to the appropriate Regional Director;

(2) If the request is for records, documents or other information in the Office of the General Counsel and located in Washington, D.C., it should be made to the Freedom of Information Officer, Office of the General Counsel, Washington, D.C.; and

(3) If the request is for records, documents or other information in the offices of the Authority in Washington, D.C., it should be made to the Solicitor of the Authority, Washington, D.C.

(b) *Federal Service Impasses Panel.* Any person who desires to inspect or copy any records, documents or other information of the Panel covered by this part, other than those specified in paragraphs (b)(1) and (c) of § 2411.3, shall submit a written request to that effect to the Executive Director, Federal Service Impasses Panel, Washington, D.C.

(c) All requests under this part should be clearly and prominently identified as a request for information under the Freedom of Information Act and, if submitted by mail or otherwise submitted in an envelope or other cover, should be clearly identified as such on the envelope or other cover. If a request does not comply with the provisions of this paragraph, it shall not be deemed received by the appropriate Regional Director, the Freedom of Information Officer of the Office of the General Counsel, the Solicitor of the Authority, or the Executive Director of the Panel, as appropriate, until the time it is actually received by such person.

#### § 2411.5 Identification of information requested.

(a) Each request under this part should reasonably describe the records being sought in a way that they can be identified and located. A request should include all pertinent details that will help identify the records sought.

(b) If the description is insufficient, the officer processing the request will so notify the person making the request and indicate the additional information needed. Every reasonable effort shall be made to assist in the identification and location of the record sought.

(c) Upon receipt of a request for records, the appropriate Regional Director, the Freedom of Information Officer of the Office of the General Counsel, the Solicitor of the Authority, or the Executive Director of the Panel, as appropriate, shall enter it in a public log. The log shall state the date and time received, the name and address of the person making the request, the nature of the records requested, the action taken on the request, the date of the determination letter sent pursuant to paragraphs (b) and (c) of § 2411.6, the date(s) any records are subsequently furnished, the number of staff-hours and grade levels of persons who spent time responding to the request, and the payment requested and received.

#### § 2411.6 Time limits for processing requests.

(a) All time limits established pursuant to this section shall begin as of the time at which a request for records is logged in by the appropriate Regional Director, the Freedom of Information Officer of the Office of the General Counsel, the Solicitor of the Authority, or the Executive Director of the Panel, as appropriate, processing the request pursuant to paragraph (c) of § 2411.5. An oral request for records shall not begin any time requirement. A written request for records sent to other than the appropriate officer will be forwarded to that officer by the receiving officer, but in that event the applicable time limit for response set forth in paragraph (b) of this section shall begin upon the request being logged in as required by paragraph (c) of § 2411.5.

(b) Except as provided in § 2411.8, the appropriate Regional Director, the Freedom of Information Officer of the Office of the General Counsel, the Solicitor of the Authority, or the Executive Director of the Panel, as appropriate, shall, within ten (10) working days following receipt of the request, respond in writing to the requester, determining whether, or the

extent to which, the request shall be complied with.

(1) If all the records requested have been located and a final determination has been made with respect to disclosure of all of the records requested, the response shall so state.

(2) If all of the records have not been located or a final determination has not been made with respect to disclosure of all the records requested, the response shall state the extent to which the records involved shall be disclosed pursuant to the rules established in this part.

(3) If the request is expected to involve an assessed fee in excess of \$25.00, the response shall specify or estimate the fee involved and shall require prepayment of any charges in accordance with the provisions of paragraph (a) of § 2411.10 before the records are made available.

(4) Whenever possible, the response relating to a request for records that involves a fee of less than \$25.00 shall be accompanied by the requested records. Where this is not possible, the records shall be forwarded as soon as possible thereafter, consistent with other obligations of the Authority, the General Counsel or the Panel.

(c) If any request for records is denied in whole or in part, the response required by paragraph (b) of this section shall notify the requester of the denial. Such denial shall specify the reason therefor, set forth the name and title or position of the person responsible for the denial, and notify the person making the request of the right to appeal the denial under the provisions of § 2411.7.

#### § 2411.7 Appeal from denial of request.

(a) *Federal Labor Relations Authority/General Counsel of the Federal Labor Relations Authority.* (1) Whenever any request for records is denied, a written appeal may be filed within thirty (30) days after the requester receives notification that the request has been denied or after the requester receives any records being made available, in the event of partial denial. If the denial was made by a Regional Director or by the Freedom of Information Officer of the Office of the General Counsel, the appeal shall be filed with the General Counsel in Washington, D.C. If the denial was made by the Solicitor of the Authority, the appeal shall be filed with the Chairman of the Authority in Washington, D.C.

(2) The Chairman of the Authority or the General Counsel, as appropriate, shall, within twenty (20) working days from the time of receipt of the appeal,

except as provided in § 2411.8, make a determination on the appeal and respond in writing to the requester, determining whether, or the extent to which, the request shall be complied with.

(i) If the determination is to comply with the request and the request is expected to involve an assessed fee in excess of \$25.00, the determination shall specify or estimate the fee involved and shall require prepayment of any charges due in accordance with the provisions of paragraph (a) of § 2411.10 before the records are made available.

(ii) Whenever possible, the determination relating to a request for records that involves a fee of less than \$25.00 shall be accompanied by the requested records. Where this is not possible, the records shall be forwarded as soon as possible thereafter, consistent with other obligations of the Authority or the General Counsel.

(b) *Federal Service Impasses Panel.* (1) Whenever any request for records is denied by the Executive Director, a written appeal may be filed with the Chairman of the Panel within thirty (30) days after the requester receives notification that the request has been denied or after the requester receives any records being made available, in the event of partial denial.

(2) The Chairman of the Panel, within twenty (20) working days from the time of receipt of the appeal, except as provided in § 2411.8, shall make a determination on the appeal and respond in writing to the requester, determining whether, or the extent to which the request shall be complied with.

(i) If the determination is to comply with the request and the request is expected to involve an assessed fee in excess of \$25.00, the determination shall specify or estimate the fee involved and shall require prepayment of any charges due in accordance with the provisions of paragraph (a) of § 2411.10 before the records are made available.

(ii) Whenever possible, the determination relating to a request for records that involves a fee of less than \$25.00 shall be accompanied by the requested records. Where this is not possible, the records shall be forwarded as soon as possible thereafter, consistent with other obligations of the Panel.

(c) If on appeal the denial of the request for records is upheld in whole or in part by the Chairman of the Authority, the General Counsel, or the Chairman of the Panel, as appropriate, the person making the request shall be notified of the reasons for the

determination, the name and title or position of the person responsible for the denial, and the provisions for judicial review of that determination under 5 U.S.C. 552(a)(4). Even though no appeal is filed from a denial in whole or in part of a request for records by the person making the request, the Chairman of the Authority, the General Counsel or the Chairman of the Panel, as appropriate, may, without regard to the time limit for filing of an appeal, sua sponte initiate consideration of a denial under this appeal procedure by written notification to the person making the request. In such event the time limit for making the determination shall commence with the issuance of such notification.

#### § 2411.8 Extension of time limits.

In unusual circumstances as specified in this section, the time limits prescribed with respect to initial determinations or determinations on appeal may be extended by written notice from the officer handling the request (either initial or on appeal) to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in a total extension of more than ten (10) working days. As used in this section, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request:

(a) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

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

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

#### § 2411.9 Effect of failure to meet time limits.

Failure by the Authority, the General Counsel or the Panel either to deny or grant any request under this part within the time limits prescribed by the Freedom of Information Act, as amended, 5 U.S.C. 552, and these regulations shall be deemed to be an exhaustion of the

administrative remedies available to the person making this request.

#### § 2411.10 Fees.

Persons requesting records from the Authority, the General Counsel or the Panel shall be subject to a charge of fees for the direct cost of document search and duplication in accordance with the following schedules, procedures and conditions:

(a) The following fees shall be charged for disclosure of any record pursuant to this part:

(1) *Copying of records.* Ten cents per copy of each page.

(2) *Clerical searches.* \$1.25 for each one-quarter hour spent by clerical personnel searching for and producing a requested record, including time spent copying any record.

(3) *Nonclerical searches.* \$2.50 for each one-quarter hour spent by professional or managerial personnel searching for and producing a requested record, including time spent copying any record.

(4) *Forwarding material to destination.* Postage, insurance and special fees will be charged on an actual cost basis.

(b) All charges may be waived or reduced whenever it is in the public interest to do so.

(c) Requests by parties for copies of transcripts of hearings should be made to the official hearing reporter.

(d) No charge shall be made for the time spent in resolving legal or policy issues or in examining records for the purpose of deleting nondisclosable portions thereof.

(e) Payment of fees shall be made by check or money order payable to the U.S. Treasury.

#### § 2411.11 Compliance with subpoenas.

No member of the Authority or the Panel, or the General Counsel, or other officer or employee of the Authority, the Panel, or the General Counsel shall produce or present any files, documents, reports, memoranda, or records of the Authority, the Panel or the General Counsel, or testify in behalf of any party to any cause pending in any arbitration or in any court or before the Authority or the Panel, or any other board, commission, or administrative agency of the United States, territory, or the District of Columbia with respect to any information, facts, or other matter to their knowledge in their official capacity or with respect to the contents of any files, documents, reports, memoranda, or records of the Authority, the Panel or the General Counsel, whether in answer to a subpoena, subpoena duces tecum, or

otherwise, without the written consent of the Authority, the Panel or the General Counsel, as appropriate. Whenever any subpoena, the purpose for which is to adduce testimony or require the production of records as described above, shall have been served on any member or other officer or employee of the Authority, the Panel or the General Counsel, such person will, unless otherwise expressly directed by the Authority, the Panel or the General Counsel, as appropriate, and as provided by law, move pursuant to the applicable procedure to have such subpoena invalidated on the ground that the evidence sought is privileged against disclosure by this rule.

#### § 2411.12 Annual report.

On or before March 1 of each calendar year, the Executive Director of the Authority shall submit a report of the activities of the Authority, the General Counsel and the Panel with regard to public information requests during the preceding calendar year to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committees of the Congress. The report shall include for such calendar year all information required by 5 U.S.C. 552(d) and such other information as indicates the efforts of the Authority, the General Counsel and the Panel to administer fully the provisions of the Freedom of Information Act, as amended.

### PART 2412—PRIVACY

#### Sec.

- 2412.1 Purpose and scope.
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  - 2412.15 Penalties.
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#### § 2412.1 Purpose and scope.

This part contains the regulations of the Federal Labor Relations Authority, the General Counsel of the Federal Labor Relations Authority and the Federal Service Impasses Panel implementing the Privacy Act of 1974, as

amended, 5 U.S.C. 552a. The regulations apply to all records maintained by the Authority, the General Counsel and the Panel that are contained in a system of records, as defined herein, and that contain information about an individual. The regulations in this part set forth procedures that: (a) authorize an individual's access to records maintained about the individual; (b) limit the access of other persons to those records; and (c) permit an individual to request the amendment or correction of records about the individual.

#### § 2412.2 Definitions.

For the purposes of this part—

(a) "Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

(b) "Maintain" includes maintain, collect, use or disseminate.

(c) "Record" means any item, collection or grouping of information about an individual that is maintained by the Authority, the General Counsel and the Panel including, but not limited to, the individual's education, financial transactions, medical history and criminal or employment history and that contains the individual's name, or the identifying number, symbol or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(d) "System of records" means a group of any records under the control of the Authority, the General Counsel and the Panel from which information is retrieved by the name of the individual or by some identifying particular assigned to the individual.

(e) "Routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

#### § 2412.3 Annual notice.

The Authority, the General Counsel and the Panel will publish in the Federal Register an annual notice describing the systems of records that the Authority, the General Counsel and the Panel maintain. Those notices shall include: (a) the system name; (b) the system location; (c) the categories of individuals covered by the system; (d) the categories of records in the system; (e) the authority of the Authority, the General Counsel and the Panel to maintain the system; (f) the routine uses of the system; (g) the policies and practices of the Authority, the General Counsel and the Panel for maintenance of the system; (h) the system manager; (i) the procedures for notification, access to and correction of records in the

system; and (j) the sources of information for the system. Notices shall also be published, as required by the Privacy Act of 1974, of significant changes in or additions to the systems of records of the Authority, the General Counsel and the Panel.

#### § 2412.4 Existence of records requests.

(a) An individual who desires to view if a system of records maintained by the Authority, the General Counsel and the Panel contains a record pertaining to the individual must submit a written inquiry as follows:

(1) If the system of records is located in a regional office of the Authority, it should be made to the appropriate Regional Director; and

(2) If the system of records is located in the offices of the Authority, the General Counsel or the Panel in Washington, D.C., it should be made to the Deputy Director of Administration of the Authority, Washington, D.C.

(b) The request shall be in writing and should be clearly and prominently identified as a Privacy Act request. If the request is submitted by mail or otherwise submitted in an envelope or other cover, it should bear the legend "Privacy Act Request" on the envelope or other cover. If a request does not comply with the provisions of this paragraph, it shall not be deemed received until the time it is actually received by the appropriate Regional Director or the Deputy Director of Administration of the Authority, as appropriate.

(c) The inquiry must include the name and address of the individual and reasonably describe the system of records in question by the individual. Descriptions of the systems of records maintained by the Authority, the General Counsel and the Panel have been published in the Federal Register.

(d) The appropriate Regional Director or the Deputy Director of Administration of the Authority, as appropriate, will advise the individual in writing within ten (10) working days from receipt of the request whether the system of records named by the individual contains a record pertaining to the individual.

#### § 2412.5 Individual access requests.

(a) Any individual who desires to inspect or receive copies of any record pertaining to the individual which is contained in a system of records maintained by the Authority, the General Counsel and the Panel must submit a written request reasonably identifying the records sought to be inspected or copied as follows:

(1) If the system of records is located in a regional office of the Authority, it should be made to the appropriate Regional Director; and

(2) If the system of records is located in the offices of the Authority, the General Counsel or the Panel in Washington, D.C., it should be made to the Deputy Director of Administration of the authority, Washington, D.C.

(b) The request shall be in writing and should be clearly and prominently identified as a Privacy Act request. If the request is submitted by mail or otherwise submitted in an envelope or other cover, it should bear the legend "Privacy Act Request" on the envelope or other cover. If a request does not comply with the provisions of this paragraph, it shall not be deemed received until the time it is actually received by the appropriate Regional Director or the Deputy Director of Administration of the Authority, as appropriate.

(c) An individual seeking access to a record may, if desired, be accompanied by another person during review of the records. If the requester does desire to be accompanied by another person during the inspection, the requester must sign a statement, to be furnished to the Authority, the General Counsel or the Panel representative, as appropriate, at the time of the inspection, authorizing such other person to accompany the requester.

(d) Satisfactory identification (i.e., employee identification number, current address, and verification of signature) must be provided to the Authority, the General Counsel or the Panel representative, as appropriate, prior to review of the record.

#### § 2412.6 Initial decision on access requests.

(a) Within ten (10) working days of the receipt of a request pursuant to § 2412.5, the appropriate Regional Director or the Deputy Director of Administration of the Authority, as appropriate, shall make an initial decision whether the requested records exist and whether they will be made available to the person requesting them. That initial decision shall immediately be communicated, in writing or other appropriate form, to the person who has made the request.

(b) Where the initial decision is to provide access to the requested records, the above writing or other appropriate communication shall:

(1) Briefly describe the records to be made available;

(2) State whether any records maintained, in the system of records in

question, about the individual making the request are not being made available;

(3) State that the requested records will be available during ordinary office hours at the appropriate regional office or offices of the Authority, the General Counsel or the Panel, as appropriate; and

(4) State whether any further verification of the identity of the requesting individual is necessary.

(c) Where the initial decision is not to provide access to requested records, the appropriate Regional Director or the Deputy Director of Administration of the Authority, as appropriate, shall by writing or other appropriate communication explain the reason for that decision. The appropriate Regional Director or the Deputy Director of Administration of the Authority, as appropriate, shall only refuse to provide an individual access where:

(1) There is inadequate verification of identity under § 2412.5(d);

(2) In fact no such records are maintained; or

(3) The requested records have been compiled in a reasonable anticipation of civil or criminal action or proceedings.

#### § 2412.7 Special procedures; medical records.

(a) If medical records are requested for inspection which, in the opinion of the appropriate Regional Director or the Deputy Director of Administration of the Authority, as appropriate, may be harmful to the requester if personally inspected by such person, such records will be furnished only to a licensed physician designated to receive such records by the requester. Prior to such disclosure, the requester must furnish a signed written authorization to make such disclosure and the physician must furnish a written request for the physician's receipt of such records to the appropriate Regional Director or the Deputy Director of Administration of the Authority, as appropriate.

(b) If such authorization is not executed within the presence of an Authority, General Counsel or Panel representative, the authorization must be accompanied by a notarized statement verifying the identification of the requester.

#### § 2412.8 Limitations on disclosures.

(a) Requests for records about an individual made by persons other than that individual shall also be directed as follows:

(1) If the system of records is located in a regional office of the Authority, it

should be made to the appropriate Regional Director; and

(2) If the system of records is located in the offices of the Authority, the General Counsel or the Panel in Washington, D.C., it should be made to the Deputy Director of Administration of the Authority, Washington, D.C.

(b) Such records shall only be made available to persons other than that individual in the following circumstances:

(1) To any person with the prior written consent of the individual about whom the records are maintained;

(2) To officers and employees of the Authority, the General Counsel and the Panel who need the records in the performance of their official duties;

(3) For a routine use compatible with the purpose for which it was collected;

(4) To any person to whom disclosure is required by the Freedom of Information Act, as amended, 5 U.S.C. 552;

(5) To the Bureau of the Census for uses pursuant to title 13 of the United States Code;

(6) In a form not individually identifiable to a recipient who has provided the Authority, the General Counsel and the Panel with adequate assurance that the record will be used solely as a statistical research or reporting record;

(7) To the National Archives of the United States or other appropriate entity as a record which has historical or other value warranting its preservation;

(8) To another agency or to an instrumentality of any governmental jurisdiction within or under control of the United States for a civil or criminal law enforcement activity that is authorized by law if the head of the agency or instrumentality has made a written request for the record to the Authority, the General Counsel or the Panel;

(9) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual, provided that notification of such a disclosure shall be immediately mailed to the last known address of the individual;

(10) To either House of Congress or to any committee thereof with appropriate jurisdiction;

(11) To the Comptroller General in the performance of the official duties of the General Accounting Office; or

(12) Pursuant to the order of a court of competent jurisdiction.

(c) The request shall be in writing and should be clearly and prominently identified as a Privacy Act request and, if submitted by mail or otherwise

submitted in an envelope or other cover, should bear the legend "Privacy Act Request" on the envelope or other cover. If a request does not comply with the provisions of this paragraph, it shall not be deemed received until the time it is actually received by the appropriate Regional Director or the Deputy Director of Administration of the Authority, as appropriate.

#### § 2412.9 Accounting of disclosures.

(a) All Regional Directors of the Authority and the Deputy Director of Administration of the Authority shall maintain a record ("accounting") of every instance in which records about an individual are made available, pursuant to this part, to any person other than:

(1) Officers or employees of the Authority, the General Counsel or the Panel in the performance of their duties; or

(2) Any person pursuant to the Freedom of Information Act, as amended, 5 U.S.C. 552.

(b) The accounting which shall be retained for at least five (5) years or the life of the record, whichever is longer, shall contain the following information:

(1) A brief description of records disclosed;

(2) The date, nature and, where known, the purpose of the disclosure; and

(3) The name and address of the person or agency to whom the disclosure is made.

#### § 2412.10 Requests for correction or amendment of records.

(a) After inspection of any records, if the individual disagrees with any information in the record, the individual may request that the records maintained about the individual be corrected or otherwise amended. Such request shall specify the particular portions of the record to be amended or corrected, the desired amendment or correction, and the reasons therefor.

(b) Such request shall be in writing and directed as follows:

(1) If the system of records is located in a regional office of the Authority, it should be made to the appropriate Regional Director; and

(2) If the system of records is located in the offices of the Authority, the General Counsel or the Panel in Washington, D.C., it should be made to the Deputy Director of Administration of the Authority, Washington, D.C.

#### § 2412.11 Initial decision on correction or amendment.

(a) Within ten (10) working days from the date of receipt of a request for correction or amendment, the appropriate Regional Director or the Deputy Director of Administration of the Authority, as appropriate, will acknowledge receipt of the request and, under normal circumstances, not later than 30 days from receipt of the request, will give the requesting individual notice, by mail or other appropriate means, of the decision regarding the request.

(b) Such notice of decision shall include:

(1) A statement whether the request has been granted or denied, in whole or in part;

(2) A quotation or description of any amendment or correction made to any records; and

(3) Where a request is denied in whole or in part, an explanation of the reason for that denial and of the requesting individual's right to appeal the decision to the Chairman of the Authority pursuant to § 2412.13.

#### § 2412.12 Amendment or correction of previously disclosed records.

Whenever a record is amended or corrected pursuant to § 2412.11 or a written statement filed pursuant to § 2412.13, the appropriate Regional Director or the Deputy Director of Administration of the Authority, as appropriate, shall give notice of that correction, amendment or written statement to all persons to whom the records or copies thereof have been disclosed, as recorded in the accounting kept pursuant to § 2412.9.

#### § 2412.13 Agency review of refusal to provide access to, or amendment or correction of, records.

(a) Any individual whose request for access to, or amendment or correction of, records of the Authority, the General Counsel or the Panel has been denied in whole or in part by an initial decision may, within thirty (30) days of the receipt of notice of the initial decision, appeal that decision by filing a written request for review of that decision with the Chairman of the Authority in Washington, D.C.

(b) The appeal shall describe:

(1) the request initially made by the individual for access to, or the amendment or correction of, records;

(2) the initial decision thereupon of the appropriate Regional Director or the Deputy Director of Administration; and

(3) The reasons why that initial decision should be modified by the Chairman of the Authority.

(c) Not later than thirty (30) working days from receipt of a request for review (unless such period is extended by the Chairman of the Authority for good cause shown), the Chairman of the Authority shall make a decision, and give notice thereof to the appealing individual, whether to modify the initial decision of the Regional Director or the Deputy Director of Administration, in any way. If the Chairman of the Authority upholds the Regional Director's or Deputy Director of Administration's initial decision not to provide access to requested records or not to amend or correct the records as requested, the Chairman of the Authority shall notify the appealing individual of the individual's right:

(1) To judicial review of the Chairman of the Authority's decision pursuant to 5 U.S.C. 552a(g)(1)(A); and

(2) To file with the Authority a written statement of disagreement setting forth the reasons why the record should have been amended or corrected as requested. That written statement of disagreement shall be made a part of the record and shall accompany that record in any use or disclosure of the record.

#### § 2412.14 Fees.

(a) As provided in this part, the Authority, the General Counsel or the Panel will provide a copy of the records to the individual to whom they pertain. There will be a charge of ten cents per copy of each page.

(b) Any charges may be waived or reduced whenever it is in the public interest to do so.

#### § 2412.15 Penalties.

Any person who knowingly and willfully requests or obtains any record concerning an individual from the Authority, the General Counsel or the Panel under false pretenses shall be subject to criminal prosecution under 5 U.S.C. 552a(i)(3) which provides that such person shall be guilty of a misdemeanor and fined not more than \$5,000.

### PART 2413—OPEN MEETINGS

#### Sec.

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Authority: 5 U.S.C. 552b.

#### § 2413.1 Purpose and scope.

This part contains the regulations of the Federal Labor Relations Authority implementing the Government in the Sunshine Act, 5 U.S.C. 552b.

#### § 2413.2 Public observation of meetings.

Every portion of every meeting of the Authority shall be open to public observation, except as provided in § 2413.4, and Authority members shall not jointly conduct or dispose of agency business other than in accordance with the provisions of this part.

#### § 2413.3 Definition of meeting.

For purposes of this part, "meeting" shall mean the deliberations of at least two members of the Authority where such deliberations determine or result in the joint conduct or disposition of official agency business, but does not include deliberations to determine whether a meeting should be closed to public observation in accordance with the provisions of this part.

#### § 2413.4 Closing of meetings; reasons therefor.

(a) Except where the Authority determines that the public interest requires otherwise, meetings, or portions thereof, shall not be open to public observation where the deliberations concern the issuance of a subpoena, the Authority participation in a civil action or proceeding or an arbitration, or the initiation, conduct or disposition by the Authority of particular cases of formal agency adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing, or any court proceedings collateral or ancillary thereto.

(b) Meetings, or portions thereof, may also be closed by the Authority, except where it determines that the public interest requires otherwise, when the deliberations concern matters or information falling within the reasons for closing meetings specified in 5 U.S.C. 552b(c)(1) (secret matters concerning national defense or foreign policy); (c)(2) (internal personnel rules and practices); (c)(3) (matters specifically exempted from disclosure by statute); (c)(4) (privileged or confidential trade secrets and commercial or financial information); (c)(5) (matters of alleged criminal conduct or formal censure); (c)(6) (personal information where disclosure would cause a clearly unwarranted invasion of personal

privacy); (c)(7) (certain materials or information from investigatory files compiled for law enforcement purposes); or (c)(9)(B) (disclosure would significantly frustrate implementation of a proposed agency action).

#### § 2413.5 Action necessary to close meeting; record of votes.

A meeting shall be closed to public observation under § 2413.4, only when a majority of the members of the Authority who will participate in the meeting vote to take such action.

(a) When the meeting deliberations concern matters specified in § 2413.4(a), the Authority members shall vote at the beginning of the meeting, or portion thereof, on whether to close such meeting, or portion thereof, to public observation and on whether the public interest requires that a meeting which may properly be closed should nevertheless be open to public observation. A record of such vote, reflecting the vote of each member of the Authority, shall be kept and made available to the public at the earliest practicable time.

(b) When the meeting deliberations concern matters specified in § 2413.4(b), the Authority shall vote on whether to close such meeting, or portion thereof, to public observation, and on whether there is a public interest which requires that a meeting which may properly be closed should nevertheless be open to public observation. The vote shall be taken at a time sufficient to permit inclusion of information concerning the open or closed status of the meeting in the public announcement thereof. A single vote may be taken with respect to a series of meetings at which the deliberations will concern the same particular matters where such subsequent meetings are scheduled to be held within thirty (30) days after the initial meeting. A record of such vote, reflecting the vote of each member of the Authority, shall be kept and made available for the public within one (1) day after the vote is taken.

(c) Whenever any person whose interests may be directly affected by deliberations during a meeting, or a portion thereof, requests that the Authority close that meeting, or portion thereof, to public observation for any of the reasons specified in 5 U.S.C. 552b(c)(5) (matters of alleged criminal conduct or formal censure), (c)(6) (personal information where disclosure would cause a clearly unwarranted invasion of personal privacy), or (c)(7) (certain materials or information from investigatory files compiled for law enforcement purposes), the Authority

members participating in the meeting, upon request of any one of its members, shall vote on whether to close such meeting, or a portion thereof, for that reason. A record of such vote, reflecting the vote of each member of the Authority participating in the meeting, shall be kept and made available to the public within one (1) day after the vote is taken.

(d) After public announcement of a meeting as provided in § 2413.6, a meeting, or portion thereof, announced as closed may be opened, or a meeting, or portion thereof, announced as open may be closed only if a majority of the members of the Authority who will participate in the meeting determine by a recorded vote that Authority business so requires and that an earlier announcement of the change was not possible. The change made and the vote of each member on the change shall be announced publicly at the earliest practicable time.

(e) Before a meeting may be closed pursuant to § 2413.4, the Solicitor of the Authority shall certify that in the Solicitor's opinion the meeting may properly be closed to public observation. The certification shall set forth each applicable exemptive provision for such closing. Such certification shall be retained by the agency and made publicly available as soon as practicable.

#### § 2413.6 Notice of meetings; public announcement and publication.

(a) A public announcement setting forth the time, place and subject matter of meetings, or portions thereof, closed to public observation pursuant to the provisions of § 2413.4(a), shall be made at the earliest practicable time.

(b) Except for meetings closed to public observation pursuant to the provisions of § 2413.4(a), the agency shall make public announcement of each meeting to be held at least seven (7) days before the scheduled date of the meeting. The announcement shall specify the time, place and subject matter of the meeting, whether it is to be open to public observation or closed, and the name, address, and phone number of an agency official designated to respond to requests for information about the meeting. The seven (7) day period for advance notice may be shortened only upon a determination by a majority of the members of the Authority who will participate in the meeting that agency business requires that such meeting be called at an earlier date, in which event the public announcements shall be made at the earliest practicable time. A record of the

vote to schedule a meeting at an earlier date shall be kept and made available to the public.

(c) With one (1) day after a vote to close a meeting, or any portion thereof, pursuant to the provisions of § 2413.4(b), the agency shall make publicly available a full written explanation of its action closing the meeting, or portion thereof, together with a list of all persons expected to attend the meeting and their affiliation.

(d) If after public announcement required by paragraph (b) of this section has been made, the time and place of the meeting are changed, a public announcement shall be made at the earliest practicable time. The subject matter of the meeting may be changed after the public announcement only if a majority of the members of the Authority who will participate in the meeting determine that agency business so requires and that no earlier announcement of the change was possible. When such a change in subject matter is approved, a public announcement of the change shall be made at the earliest practicable time. A record of the vote to change the subject matter of the meeting shall be kept and made available to the public.

(e) All announcements or changes thereto issued pursuant to the provisions of paragraphs (b) and (d) of this section or pursuant to the provisions of § 2413.5(d) shall be submitted for publication in the Federal Register immediately following their release to the public.

(f) Announcements of meetings made pursuant to the provisions of this section shall be made publicly available by the Executive Director.

#### § 2413.7 Transcripts, recordings or minutes of closed meeting; public availability; retention.

(a) For every meeting, or portion thereof, closed under the provisions of § 2413.4, the presiding officer shall prepare a statement setting forth the time and place of the meeting and the persons present, which statement shall be retained by the agency. For each such meeting, or portion thereof, there shall also be maintained a complete transcript or electronic recording of the proceedings, except that for meetings closed pursuant to § 2413.4(a), the Authority may, in lieu of a transcript or electronic recording, maintain a set of minutes fully and accurately summarizing any action taken, the reasons therefor and views thereon, documents considered and the members' vote on each rollcall vote.

(b) The agency shall make promptly available to the public copies of transcripts, recordings or minutes maintained as provided in accordance with paragraph (a) of this section, except to the extent the items therein contain information which the agency determines may be withheld pursuant to the provisions of 5 U.S.C. 552b(c). Copies of transcripts or minutes, or transcriptions of electronic recordings including the identification of speakers, shall to the extent determined to be publicly available, be furnished to any person, subject to the payment of duplication costs in accordance with the schedule of fees set forth in § 2411.10 of this subchapter and the actual cost of transcription.

(c) The agency shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two (2) years after such meeting or until one (1) year after the conclusion of any agency proceeding with respect to which the meeting or portion was held whichever occurs later.

### PART 2414—EX PARTE COMMUNICATIONS

#### Sec.

- 2414.1 Purpose and scope.
  - 2414.2 Unauthorized communications.
  - 2414.3 Definitions.
  - 2414.4 Duration of prohibition.
  - 2414.5 Communications prohibited.
  - 2414.6 Communications not prohibited.
  - 2414.7 Solicitation of prohibited communications.
  - 2414.8 Reporting of prohibited communications; penalties.
  - 2414.9 Penalties and enforcement.
- Authority: 5 U.S.C. 7134.

#### § 2414.1 Purpose and scope.

This part contains the regulations of the Federal Labor Relations Authority relating to ex parte communications.

#### § 2414.2 Unauthorized communications.

(a) No interested person outside this agency shall, in any agency proceeding subject to 5 U.S.C. 557(a), make or knowingly cause to be made any prohibited ex parte communication to any Authority member, Administrative Law Judge, or other Authority employee who is or may reasonably be expected to be involved in the decisional process of the proceeding.

(b) No Authority member, Administrative Law Judge, or other Authority employee who is or may reasonably be expected to be involved in the decisional process of the proceeding relevant to the merits of the

proceeding shall: (1) Request any prohibited ex parte communications; or (2) make or knowingly cause to be made any prohibited ex parte communications about the proceeding to any interested person outside this agency relevant to the merits of the proceeding.

#### § 2414.3 Definitions.

When used in this part:

(a) The term "person outside this agency," to whom the prohibitions apply, shall include any individual outside the Authority, labor organization, agency, or other entity, or an agent thereof, and the General Counsel or his representative when prosecuting an unfair labor practice proceeding before the Authority pursuant to 5 U.S.C. 7118.

(b) The term "ex parte communication" means an oral or written communication not on the public record with respect to which reasonable prior notice to all parties is not given, subject however, to the provisions of §§ 2414.5 and 2414.6.

#### § 2414.4 Duration of prohibition.

Unless otherwise provided by specific order of the Authority entered in the proceeding, the prohibition of § 2414.2 shall be applicable in any agency proceeding subject to 5 U.S.C. 557(a) beginning at the time of which the proceeding is noticed for hearing, unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of such person's acquisition of such knowledge.

#### § 2414.5 Communications prohibited.

Except as provided in § 2414.6, ex parte communications prohibited by § 2414.2 shall include:

(a) Such communications, when written, if copies thereof are not contemporaneously served by the communicator on all parties to the proceeding in accordance with the provisions of Part 2429 of this chapter; and

(b) Such communications, when oral, unless advance notice thereof is given by the communicator to all parties in the proceeding and adequate opportunity afforded to them to be present.

#### § 2414.6 Communications not prohibited.

Ex parte communications prohibited by § 2414.2 shall not include:

(a) Oral or written communications which relate solely to matters which the Hearing Officer, Regional Director, Administrative Law Judge, General Counsel or member of the Authority is

authorized by law or Authority rules to entertain or dispose of on an ex parte basis;

(b) Oral or written requests for information solely with respect to the status of a proceeding;

(c) Oral or written communications which all the parties to the proceeding agree, or which the responsible official formally rules, may be made on an ex parte basis;

(d) Oral or written communications proposing settlement or an agreement for disposition of any or all issues in the proceeding;

(e) Oral or written communications which concern matters of general significance to the field of labor-management relations or administrative practice and which are not specifically related to any agency proceeding subject to 5 U.S.C. 557(a); or

(f) Oral or written communications from the General Counsel to the Authority when the General Counsel is acting on behalf of the Authority under 5 U.S.C. 7123(d).

#### § 2414.7 Solicitation of prohibited communications.

No person shall knowingly and willfully solicit the making of an unauthorized ex parte communication by any other person.

#### § 2414.8 Reporting of prohibited communications; penalties.

(a) Any Authority member, Administrative Law Judge, or other Authority employee who is or may reasonably be expected to be involved in the decisional process of the proceeding relevant to the merits of the proceeding to whom a prohibited oral ex parte communication is attempted to be made, shall refuse to listen to the communication, inform the communicator of this rule, and advise such person that if the person has anything to say it should be said in writing with copies to all parties. Any such Authority member, Administrative Law Judge, or other Authority employee who is or may reasonably be expected to be involved in the decisional process of the proceeding relevant to the merits of the proceeding who receives, or who makes or knowingly causes to be made, an unauthorized ex parte communication, shall place or cause to be placed on the public record of the proceeding: (1) The communication, if it was written; (2) a memorandum stating the substance of the communication, if it was oral; (3) all written responses to the prohibited communication; and (4) memoranda stating the substance of all oral responses to the prohibited

communication. The Executive Director, if the proceeding is then pending before the Authority, the Administrative Law Judge, if the proceeding is then pending before any such judge, or the Regional Director, if the proceeding is then pending before a Hearing Officer or the Regional Director, shall serve copies of all such materials placed on the public record of the proceeding on all other parties to the proceeding and on the attorneys of record for the parties. Within ten (10) days after the mailing of such copies, any party may file with the Executive Director, Administrative Law Judge, or Regional Director serving the communication, as appropriate, and serve on all other parties, a statement setting forth facts or contentions to rebut those contained in the prohibited communication. All such responses shall be placed in the public record of the proceeding, and provision may be made for any further action, including reopening of the record, which may be required under the circumstances. No action taken pursuant to this provision shall constitute a waiver of the power of the Authority to impose an appropriate penalty under § 2414.9.

#### § 2414.9 Penalties and enforcement.

(a) Where the nature and circumstances of a prohibited communication made by or caused to be made by a party to the proceeding are such that the interests of justice and statutory policy may require remedial action, the Authority, Administrative Law Judge, or Regional Director, as appropriate, may issue to the party making the communication a notice to show cause, returnable before the Authority, Administrative Law Judge, or Regional Director, within a stated period not less than seven (7) days from the date thereof, why the Authority, Administrative Law Judge, or Regional Director should not determine that the interests of justice and statutory policy require that the claim or interest in the proceeding of a party who knowingly makes a prohibited communication or knowingly causes a prohibited communication to be made, should be dismissed, denied, disregarded or otherwise adversely affected on account of such violation.

(b) Upon notice and hearing, the Authority may censure, suspend, or revoke the privilege of practice before the agency of any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication. However, before the Authority institutes formal proceedings under this subsection, it shall first advise the person or persons

concerned in writing that it proposes to take such action and that they may show cause, within a period to be stated in such written advice, but not less than seven (7) days from the date thereof, why it should not take such action.

(c) The Authority may censure, or, to the extent permitted by law, suspend, dismiss, or institute proceedings for the dismissal of, any Authority agent who knowingly and willfully violates the prohibitions and requirements of this rule.

#### PART 2415—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Sec.

2415.1 Employee responsibilities and conduct.

Authority: E O 11222, 30 FR 6469, 3 CFR, 1964-65 Comp., p. 306; 5 CFR 735.101 *et seq.* and § 737.1 *et seq.*; Pub. L. 95-521; 44 FR 19974.

§ 2415.1 Employee responsibilities and conduct.

The Federal Labor Relations Authority, the General Counsel of the Federal Labor Relations Authority and the Federal Service Impasses Panel, respectively, hereby adopt the rules and regulations contained in Parts 735 and 737 of title 5 of the Code of Federal Regulations, prescribing standards of conduct and responsibilities, and governing statements reporting employment and financial interests for officers and employees, including special Government employees, for application, as appropriate, to the officers and employees, including special Government employees, of the Authority, the General Counsel and the Panel.

#### SUBCHAPTER C—FEDERAL LABOR RELATIONS AUTHORITY AND GENERAL COUNSEL OF THE FEDERAL LABOR RELATIONS AUTHORITY

#### PART 2420—PURPOSE AND SCOPE

Sec.

2420.1 Purpose and scope.

Authority: 5 U.S.C. 7134.

§ 2420.1 Purpose and scope.

The regulations contained in this subchapter are designed to implement the provisions of chapter 71 of title 5 of the United States Code. They prescribe the procedures, basic principles or criteria under which the Federal Labor Relations Authority or the General Counsel of the Federal Labor Relations Authority, as applicable, will:

(a) Determine the appropriateness of units for labor organization representation under 5 U.S.C. 7112;

(b) Supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit and otherwise administer the provisions of 5 U.S.C. 7111 relating to the according of exclusive recognition to labor organizations;

(c) Resolve issues relating to the granting of national consultation rights under 5 U.S.C. 7113;

(d) Resolve issues relating to determining compelling need for agency rules and regulations under 5 U.S.C. 7117(b);

(e) Resolve issues relating to the duty to bargain in good faith under 5 U.S.C. 7117(c);

(f) Resolve issues relating to the granting of consultation rights with respect to conditions of employment under 5 U.S.C. 7117(d);

(g) Conduct hearings and resolve complaints of unfair labor practices under 5 U.S.C. 7118;

(h) Resolve exceptions to arbitrators' awards under 5 U.S.C. 7122; and

(i) Take such other actions as are necessary and appropriate effectively to administer the provisions of chapter 71 of title 5 of the United States Code.

#### PART 2421—MEANING OF TERMS AS USED IN THIS SUBCHAPTER

Sec.

2421.1 Federal Service Labor-Management Relations program.

2421.2 Terms defined in 5 U.S.C. 7103(a); General Counsel; Assistant Secretary.

2421.3 National consultation rights; consultation rights on Government-wide rules or regulations; exclusive recognition; unfair labor practices.

2421.4 Activity.

2421.5 Primary national subdivision.

2421.6 Regional Director.

2421.7 Executive Director.

2421.8 Hearing Officer.

2421.9 Administrative Law Judge.

2421.10 Chief Administrative Law Judge.

2421.11 Party.

2421.12 Intervenor.

2421.13 Certification.

2421.14 Appropriate unit.

2421.15 Secret ballot.

2421.16 Showing of interest.

2421.17 Regular and substantially equivalent employment.

Authority: 5 U.S.C. 7134.

§ 2421.1 Federal Service Labor-Management Relations program.

The term "Federal Service Labor-Management Relations program" means the labor-management program established under chapter 71 of title 5 of the United States Code.

§ 2421.2 Terms defined in 5 U.S.C. 7103(a); General Counsel; Assistant Secretary.

(a) The terms "person," "employee," "agency," "labor organization," "dues," "Authority," "Panel," "collective bargaining agreement," "grievance," "supervisor," "management official," "collective bargaining," "confidential employee," "conditions of employment," "professional employee," "exclusive representative," "firefighter," and "United States," as used herein shall have the meanings set forth in 5 U.S.C. 7103(a).

(b) The term "General Counsel" means the General Counsel of the Authority.

(c) The term "Assistant Secretary" means the Assistant Secretary of Labor for Labor-Management Relations.

§ 2421.3 National consultation rights; consultation rights on Government-wide rules or regulations; exclusive recognition; unfair labor practices.

(a) "National consultation rights" has the meaning as set forth in 5 U.S.C. 7113.

(b) "Consultation rights on Government-wide rules or regulations" has the meaning as set forth in 5 U.S.C. 7117(d);

(c) "Exclusive recognition" has the meaning as set forth in 5 U.S.C. 7111; and

(d) "Unfair labor practices" has the meaning as set forth in 5 U.S.C. 7116.

§ 2421.4 Activity.

"Activity" means any facility, organizational entity, or geographical subdivision or combination thereof, of any agency.

§ 2421.5 Primary national subdivision.

"Primary national subdivision" of an agency means a first-level organizational segment which has functions national in scope that are implemented in field activities.

§ 2421.6 Regional Director.

"Regional Director" means the Director of a region of the Authority with geographical boundaries as fixed by the Authority.

§ 2421.7 Executive Director.

"Executive Director" means the Executive Director of the Authority.

§ 2421.8 Hearing Officer.

"Hearing Officer" means the individual designated to conduct a hearing involving a question concerning the appropriateness of a unit or such other matters as may be assigned.

**§ 2421.9 Administrative Law Judge.**

"Administrative Law Judge" means the Chief Administrative Law Judge or any Administrative Law Judge designated by the Chief Administrative Law Judge to conduct a hearing in cases under 5 U.S.C. 7116, and such other matters as may be assigned.

**§ 2421.10 Chief Administrative Law Judge.**

"Chief Administrative Law Judge" means the Chief Administrative Law Judge of the Authority.

**§ 2421.11 Party.**

"Party" means (a) any person: (1) Filing a charge, petition, or request; (2) named in a charge, complaint, petition, or request; (3) whose intervention in a proceeding has been permitted or directed by the Authority; (4) who participated as a party (i) in a matter that was decided by an agency head under 5 U.S.C. 7117, or (ii) in a matter where the award of an arbitrator was issued; and (b) the General Counsel, or the General Counsel's designated representative, in appropriate proceedings.

**§ 2421.12 Intervenor.**

"Intervenor" means a party in a proceeding whose intervention has been permitted or directed by the Authority, its agents or representatives.

**§ 2421.13 Certification.**

"Certification" means the determination by the Authority, its agents or representatives, of the results of an election, or the results of a petition to consolidate existing exclusively recognized units.

**§ 2421.14 Appropriate unit.**

"Appropriate unit" means that grouping of employees found to be appropriate for purposes of exclusive recognition under 5 U.S.C. 7111, and for purposes of allotments to representatives under 5 U.S.C. 7115(c), and consistent with the provisions of 5 U.S.C. 7112.

**§ 2421.15 Secret ballot.**

"Secret ballot" means the expression by ballot, voting machine or otherwise, but in no event by proxy, of a choice with respect to any election or vote taken upon any matter, which is cast in such a manner that the person expressing such choice cannot be identified with the choice expressed, except in that instance in which any determinative challenged ballot is opened.

**§ 2421.16 Showing of interest.**

"Showing of interest" means evidence of membership in a labor organization; employees' signed and dated authorization cards or petitions authorizing a labor organization to represent them for purposes of exclusive recognition; unaltered allotment of dues forms executed by an employee and the labor organization's authorized official; current dues records; an existing or recently expired agreement; current exclusive recognition or certification; employees' signed and dated petitions or cards indicating that they no longer desire to be represented for the purposes of exclusive recognition by the currently recognized or certified labor organization; employees' signed and dated petitions or cards indicating a desire that an election be held on a proposed consolidation of units; or other evidence approved by the Authority.

**§ 2421.17 Regular and substantially equivalent employment.**

"Regular and substantially equivalent employment" means employment that entails substantially the same amount of work, rate of pay, hours, working conditions, location of work, kind of work, and seniority rights; if any, of an employee prior to the cessation of employment in an agency because of any unfair labor practice under 5 U.S.C. 7116.

**PART 2422—REPRESENTATION PROCEEDINGS****Sec.**

2422.1 Who may file petitions.

2422.2 Contents of petition; procedures for consolidation of existing exclusively recognized units; filing and service of petition; challenges to petition.

2422.3 Timeliness of petition.

2422.4 Investigation of petition and posting of notice of petition; action by Regional Director.

2422.5 Intervention.

2422.6 Withdrawal, dismissal or deferral of petitions; consolidation of cases; denial of intervention; review of action by Regional Director.

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2422.16 Decision.

2422.17 Election procedure; request for authorized representation election observers.

2422.18 Challenged ballots.

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2422.20 Certification; objections to election; determination on objections and challenged ballots.

2422.21 Runoff elections.

2422.22 Inconclusive elections.

Authority: 5 U.S.C. 7134.

**§ 2422.1 Who may file petitions.**

(a) A petition for exclusive recognition may be filed by a labor organization requesting an election to determine whether it should be recognized as the exclusive representative of employees of an agency in an appropriate unit or should replace another labor organization as the exclusive representative of employees in an appropriate unit.

(b) A petition for an election to determine if a labor organization should cease to be the exclusive representative because it does not represent a majority of employees in the existing unit may be filed by any employee or employees or an individual acting on behalf of any employee(s).

(c) A petition seeking to clarify a matter relating to representation may be filed by an activity or agency where the activity or agency has a good faith doubt, based on objective considerations, that the currently recognized or certified labor organization represents a majority of the employees in the existing unit or that, because of a substantial change in the character and scope of the unit, it has a good faith doubt that such unit is now appropriate.

(d) A petition for clarification of an existing unit or for amendment of recognition or certification may be filed by an activity or agency or by a labor organization which is currently recognized by the activity or agency as an exclusive representative.

(e) A petition for determination of eligibility for dues allotment (pursuant to 5 U.S.C. 7115(c)) may be filed by a labor organization.

(f) A petition to consolidate existing exclusively recognized units may be filed by a labor organization, or by an activity or agency, or by a labor organization and an activity or agency jointly.

**§ 2422.2 Contents of petition; procedures for consolidation of existing exclusively recognized units; filing and service of petition; challenges to petition.**

(a) *Petition for exclusive recognition.* A petition by a labor organization for exclusive recognition shall be submitted on a form prescribed by the Authority and shall contain the following:

(1) The name of the activity and the agency involved, their addresses,

telephone numbers, and the persons to contact and their titles, if known;

(2) A description of the unit claimed to be appropriate for purposes of exclusive representation by the petitioner. Such description shall indicate generally the geographic locations and the classifications of employees sought to be included and those sought to be excluded and the approximate number of employees in the unit claimed to be appropriate;

(3) Name, address, and telephone number of the recognized or certified representative, if any, and the date of such recognition or certification and the expiration date of any applicable agreement, if known to the petitioner;

(4) Names, addresses, and telephone numbers of any other interested labor organizations, if known to the petitioner;

(5) Name and affiliation, if any, of the petitioner and its address and telephone number;

(6) A statement that the petitioner has submitted to the activity or the agency and to the Assistant Secretary a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives;

(7) A declaration by such person signing the petition, under the penalties of the Criminal Code (18 U.S.C. 1101), that its contents are true and correct to the best of such person's knowledge and belief;

(8) The signature of the petitioner's representative, including such person's title and telephone number; and

(9) The petition shall be accompanied by a showing of interest of not less than thirty percent (30%) of the employees in the unit claimed to be appropriate and an alphabetical list of names constituting such showing.

(b) *Activity or agency petition seeking clarification of a matter relating to representation; employee petition for an election to determine whether a labor organization should cease to be an exclusive representative.* (1) A petition by an activity or agency shall be submitted on a form prescribed by the Authority and shall contain the information set forth in paragraph (a) of this section, except subparagraphs (6) and (9), and a statement that the activity or agency has a good faith doubt, based on objective considerations, that the currently recognized or certified labor organization represents a majority of the employees in the existing unit, or a statement that because of a substantial change in the character and scope of the unit, the agency or activity has a good faith doubt that such unit is now appropriate. Attached to the petition

shall be a detailed explanation of the reasons supporting the good faith doubt.

(2) A petition by any employee or employees or an individual acting on behalf of any employee(s) shall contain the information set forth in paragraph (a) of this section, except subparagraphs (6) and (9), and it shall be accompanied by a showing of interest of not less than thirty percent (30%) of the employees in the unit indicating that the employees no longer desire to be represented for the purposes of exclusive recognition by the currently recognized or certified labor organization and an alphabetical list of names constituting such showing.

(c) *Petition for clarification of unit or for amendment of recognition or certification.* A petition for clarification of unit or for amendment of recognition or certification shall be submitted on a form prescribed by the Authority and shall contain the information required by paragraph (a) of this section, except subparagraphs (2), (6) and (9), and shall set forth:

(1) A description of the present unit and the date of recognition or certification;

(2) The proposed clarification or amendment of the recognition or certification; and

(3) A statement of reasons why the proposed clarification or amendment is requested.

(d) *Petition for determination of eligibility for dues allotment.* (1) A petition for determination of eligibility for dues allotment in a unit in which there is no exclusive representative shall be submitted on a form prescribed by the Authority and shall contain the information required in subparagraphs (1), (4), (5), (6), (7), and (8) of paragraph (a) of this section, and shall set forth:

(i) A description of the unit claimed to be appropriate. Such description shall indicate generally the geographic locations and the classifications of employees sought to be included and those sought to be excluded and the approximate number of employees in the unit claimed to be appropriate; and

(ii) The petition shall be accompanied by a showing of membership in the petitioner of not less than ten percent (10%) of the employees in the unit claimed to be appropriate and an alphabetical list of names constituting such showing.

(e) *Filing and service of petition and copies.* (1) A petition for exclusive recognition, for an election to determine if a labor organization should cease to be the exclusive representative, for clarification of unit, for amendment of recognition or certification, or for determination of eligibility for dues

allotment, filed pursuant to paragraphs (a), (b), (c), or (d) of this section respectively, shall be filed with the Regional Director for the region in which the unit exists, or, if the claimed unit exists in two or more regions, the petition shall be filed with the Regional Director for the region in which the headquarters of the activity is located.

(2) An original and four (4) copies of a petition shall be filed, together with a statement of any other relevant facts and of all correspondence relating to the question concerning representation.

(3) Copies of the petition together with any attachments shall be served by the petitioner on all known interested parties, and a written statement of such service shall be filed with the Regional Director: *Provided, however,* That the showing of interest or the showing of membership submitted with a petition filed pursuant to paragraphs (a), (b)(2), (d), or (h) of this section shall not be furnished to any other person.

(f) *Adequacy and validity of showing of interest or showing of membership.*

(1) The Regional Director shall determine the adequacy of the showing of interest or the showing of membership administratively, and such determination shall not be subject to collateral attack at a unit or representation hearing. If the petition is dismissed or the intervention sought pursuant to § 2422.5 is denied, a request for review of such dismissal or denial may be filed with the Authority in accordance with the procedures set forth in § 2422.6(d).

(2) Any party challenging the validity of any showing of interest or showing of membership of a petitioner, or a cross-petitioner filing pursuant to § 2422.5(b), or of a labor organization seeking to intervene pursuant to § 2422.5, must file its challenge with the Regional Director, with respect to the petitioner or a cross-petitioner, within ten (10) days after the initial date of posting of the notice of petition as provided in § 2422.4(a), and with respect to any labor organization seeking to intervene, within ten (10) days of service of a copy of the request for intervention on the challenging party. The challenge shall be supported with evidence including signed statements of employees and any other written evidence. The Regional Director shall investigate the challenge and thereafter shall take such action as the Regional Director deems appropriate which shall be final and not subject to review by the Authority, unless the petition is dismissed or the intervention is denied on the basis of the challenge. Such request for review shall be filed

with the Authority in accordance with the procedures set forth in § 2422.6(d).

(g) *Challenge to status of a labor organization.* Any party challenging the status of a labor organization under chapter 71 of title 5 of the United States Code must file its challenge with the Regional Director and support the challenge with evidence. With respect to the petitioner or a cross-petitioner filing pursuant to § 2422.5(b), such a challenge must be filed within ten (10) days after the initial date of posting of the notice of petition as provided in § 2422.4(a), and with respect to a labor organization seeking to intervene pursuant to § 2422.5, within ten (10) days after service of a copy of the request for intervention on the challenging party. The Regional Director shall investigate the challenge and thereafter shall take such action as the Regional Director deems appropriate, which shall be subject to review by the Authority. Such request for review shall be filed with the Authority in accordance with the procedures set forth in § 2422.6(d).

(h) *Petition and procedures for consolidation of existing exclusively recognized units.* (1) Action to be taken before filing a petition to consolidate existing exclusively recognized units:

(i) A request in writing must be served by a labor organization or by two or more labor organizations jointly within a single agency, on an activity(ies) or agency, or must be served by an activity(ies) or agency on a labor organization(s), requesting the consolidation of existing exclusively recognized units represented by the labor organization(s); and

(ii) The request shall contain a clear and concise description of the existing exclusively recognized units sought to be consolidated and whether the labor organization(s), activity(ies) or agency involved desire(s) the consolidation with or without an election.

(2) When and where a petition to consolidate existing exclusively recognized units may be filed:

(i) If the labor organization(s), activity(ies) or agency involved rejects in writing or fails to respond to the requested consolidation of units within thirty (30) days after the service of the request, the labor organization(s), activity(ies) or agency involved may file a petition to consolidate existing exclusively recognized units. The petition must be filed with the Regional Director for the region where the headquarters of the activity or agency of the proposed consolidated unit is located: *Provided, however,* That where a petition to consolidate existing exclusively recognized units involves

two or more activities, such petition may be filed with the Regional Director for the region where the headquarters of any of the activities involved is located;

(ii) If there is a bilateral agreement to consolidate existing exclusively recognized units, the labor organization(s), activity(ies) or agency involved, may individually or jointly file a petition for an election in the proposed unit with the appropriate Regional Director as set forth in paragraph (h)(2)(i) of this section; and

(iii) If the labor organization(s), activity(ies) or agency involved bilaterally agree to consolidate existing exclusively recognized units without an election, they may individually or jointly file a petition to consolidate such units without an election with the appropriate Regional Director as set forth in paragraph (h)(2)(i) of this section.

(3) A petition to consolidate existing exclusively recognized units shall contain the information required by paragraph (a) of this section, except subparagraphs (2), (3), (6), and (9) and shall set forth:

(i) A description of the proposed consolidated unit claimed to be appropriate for the purpose of exclusive representation. Such description shall indicate generally the geographic locations and the classifications of employees sought to be included and those sought to be excluded and the approximate number of employees in the consolidated unit claimed to be appropriate for the purpose of exclusive recognition;

(ii) A description of each existing exclusively recognized unit encompassed by the petition, the dates of recognition or certification, the name(s) and address(es) of the exclusively recognized labor organization(s) involved, and the approximate number of employees in each unit;

(iii) A statement that a request to consolidate existing exclusively recognized units has been served on the labor organization(s), activity(ies) or agency involved and the date of the service of such request; and

(iv) A statement as appropriate:

(A) That the labor organization(s), activity(ies) or agency involved agree to consolidate existing exclusively recognized units without an election;

(B) That the labor organization(s), activity(ies) or agency involved desire(s) the Authority to hold an election on the issue of the proposed consolidation;

(C) That the labor organization(s), activity(ies) or agency involved has rejected or has failed to respond to the request to consolidate together with the

date of the service of the written rejection, if any; and

(D) The name(s) of the labor organization(s), activity(ies) or agency involved that should appear on the certification on consolidation of units, if such a certificate is issued.

(4) The following govern petitions filed under this paragraph:

(i) Upon the request of the Regional Director, after the filing of a petition to consolidate existing exclusively recognized units, the activity(ies) or agency involved shall post copies of a notice to all employees in places where notices are normally posted affecting the employees in the exclusively recognized units involved in the proceeding; and

(ii) Such notice shall set forth, as appropriate:

(A) The name(s) of petitioner(s);

(B) The description of the proposed consolidated unit;

(C) A statement that a petition for an election in the proposed unit has been filed, or, in the event there is a bilateral agreement to consolidate without an election, a statement that if, within ten (10) days after the date of posting of such notice, thirty percent (30%) or more of the employees in the proposed consolidated unit have notified the Regional Director in writing that they desire the Authority to hold an election on the issue of the proposed consolidation, such an election will be conducted or supervised by the Regional Director.

(5) The notice shall remain posted for a period of ten (10) days. It shall be posted conspicuously and shall not be covered by other material, altered or defaced.

(6) The Regional Director shall make such investigation as the Regional Director deems necessary and thereafter shall issue and serve on the labor organization(s), activity(ies) or agency involved a report and findings with respect to the petition to consolidate existing exclusively recognized units. The labor organization(s), activity(ies) or agency involved or a labor organization granted intervention pursuant to § 2422.5(f), may obtain a review of such report and findings pursuant to § 2422.6(d). If no request for review is filed, or if one is filed and denied, the Regional Director shall take such action as may be appropriate, which may include issuance of a certification on consolidation of units: *Provided, however,* That where the Regional Director approves a withdrawal request, or determines to supervise or conduct an election, or to issue a notice of hearing, no such report and findings need be issued and such

action shall not be subject to review by the Authority. The Regional Director, if appropriate, may cause a notice of hearing to be issued where substantial factual issues exist warranting a hearing. Hearings shall be conducted by Hearing Officers in accordance with §§ 2422.9 through 2422.15.

(7) Agreement for Unit Consolidation Election:

(i) Where an election is appropriate because the petitioner(s) or thirty percent (30%) of the affected employees desire the Authority to hold an election on the consolidation issue, the labor organization(s), activity(ies) or agency involved must sign an agreement providing for such an election on a form prescribed by the Authority. The agreement shall be filed with the appropriate Regional Director;

(ii) The labor organization(s), activity(ies) or agency involved shall agree on the eligibility period for participation in the election, the date(s), hour(s) and place(s) of the election and other related election procedures. In the event that they cannot agree, the Regional Director, acting on behalf of the Authority, shall decide these matters; and

(iii) If the Regional Director approves the agreement, the election by secret ballot shall be conducted by the activity(ies) or agency, as appropriate, under the supervision of the Regional Director, in accordance with §§ 2422.17(a), (b), (c), and (f), 2422.18, 2422.19, and 2422.20. There shall be no runoff elections.

(8) Upon the issuance of a certification on consolidation of units, the terms and conditions of existing agreement covering those units embodied in the consolidation shall remain in effect except as mutually agreed to by the parties until a new agreement covering the consolidated unit becomes effective.

§ 2422.3 Timeliness of petition.

(a) When there is no certified exclusive representative of the employees, a petition will be considered timely filed provided the petition is not for the same unit or subdivision thereof in which a valid election has been held within the preceding twelve (12) month period.

(b) When there is a certified exclusive representative of the employees, a petition will not be considered timely if filed within twelve (12) months after the certification as the exclusive representative of employees in an appropriate unit, unless a signed and dated agreement covering the claimed unit has been entered into in which case

paragraphs (c) and (d) of this section shall be applicable.

(c) When an agreement covering a claimed unit has been signed and dated by the activity and the incumbent exclusive representative, a petition for exclusive recognition or other election petition will not be considered timely if filed during the period of review by the head of an agency as set forth in 5 U.S.C. 7114(c), absent unusual circumstances.

(d) A petition for exclusive recognition or other election petition will be considered timely when filed as follows:

(1) Not more than one hundred and five (105) days and not less than sixty (60) days prior to the expiration date of an agreement having a term of three (3) years or less from the date it became effective.

(2) Not more than one hundred and five (105) days and not less than sixty (60) days prior to the expiration of the initial three (3) year period of an agreement having a term of more than three (3) years from the date it became effective, and any time after the expiration of the initial three (3) year period of such an agreement; and

(3) Any time when unusual circumstances exist which substantially affect the unit or the majority representation.

(e) When an agreement having a term of three (3) years or less is in effect between the activity and the incumbent exclusive representative, and a petition has been filed challenging the representation status of the incumbent exclusive representative and the petition is subsequently withdrawn or dismissed less than sixty (60) days prior to the expiration date of that agreement, or any time thereafter, the activity and incumbent exclusive representative shall be afforded a ninety (90) day period from the date the withdrawal is approved or the petition is dismissed free from rival claim within which to consummate an agreement: *Provided, however,* That the provisions of this paragraph shall not be applicable when any other petition is pending which has been filed pursuant to paragraph (d)(1) of this section.

(f) When an extension of an agreement having a term of three (3) years or less, has been signed more than sixty (60) days before its expiration date, such extension shall not serve as a basis for the denial of a petition submitted in accordance with the time limitations provided herein.

(g) When an election has been held to consolidate existing exclusively recognized units and no certification on

consolidation of units has been issued, a petition to consolidate will be considered timely filed provided the petition is not for the same unit or subdivision thereof in which a valid consolidation election has been held within the preceding twelve (12) month period.

(h) When there is a certification of consolidation of units, a petition will not be considered timely if filed within twelve (12) months after the certification on consolidation of units has been issued: *Provided, however,* That after an agreement has been signed and dated for a claimed consolidated unit, the provisions of paragraphs (c) and (d) of this section shall apply.

(i) Agreements which go into effect automatically pursuant to 5 U.S.C. 7114(c) and which do not contain the date on which the agreement became effective shall not constitute a bar to an election petition.

(j) A petition filed pursuant to § 2422.2 (a) and (b) seeking an election in any existing exclusively recognized unit covered by a pending petition to consolidate existing exclusively recognized units must be filed timely in accordance with the requirements set forth in this section: *Provided, however,* That such petition will be dismissed if a certification on consolidation of units is issued.

(k) A petitioner who withdraws a petition after the issuance of a notice of hearing or after the approval of an agreement for an election, shall be barred from filing another petition for the same unit or any subdivision thereof for six (6) months, unless a withdrawal request has been received by the Regional Director not later than three (3) days before the date of the hearing.

(l) The time limits set forth in this section shall not apply to a petition for consolidation of units (except as provided in paragraphs (g) and (h) of the section), a petition for clarification of unit or for amendment of recognition or certification, or to a petition for dues allotment.

§ 2422.4 Investigation of petition and posting of notice of petition; action by Regional Director.

(a) Upon the request of the Regional Director, after the filing of a petition, the activity shall post copies of a notice to all employees in places where notices are normally posted affecting the employees in the unit involved in the proceeding.

(b) Such notice shall set forth:

- (1) The name of the petitioner;
- (2) The description of the unit involved;

(3) If appropriate, the proposed clarification of unit or the proposed amendment of recognition or certification; and

(4) A statement that all interested parties are to advise the Regional Director in writing of their interest and position within ten (10) days after the date of posting of such notice: *Provided, however,* That the notice in a petition for determination of eligibility for dues allotment shall contain the information required in subparagraphs (1), (2), and (4) of this paragraph.

(c) The notice shall remain posted for a period of ten (10) days. The notice shall be posted conspicuously and shall not be covered by other material, altered or defaced.

(d) The activity shall furnish the Regional Director and all known interested parties with the following:

(1) Names, addresses and telephone numbers of all labor organizations known to represent any of the employees in the claimed unit;

(2) A copy of all relevant correspondence;

(3) A copy of existing or recently expired agreement(s) covering any of the employees described in the petition.

(4) A current alphabetized list of employees included in the unit described in the petition, together with their job classifications; and

(5) A current alphabetized list of employees described in the petition as excluded from the unit, together with their job classifications.

(e) The parties are expected to meet as soon as possible after the expiration of the ten (10) day posting period of the notice of petition as provided in paragraph (a) of this section and use their best efforts to secure agreement on an appropriate unit, including, where appropriate, consulting with higher authority within the agency and the labor organizations involved.

(f) The Regional Director shall make such investigation as the Regional Director deems necessary and thereafter shall take action which may consist of the following, as appropriate:

(1) Approve an agreement for consent election in an agreed-upon appropriate unit as provided under § 2422.7;

(2) Approve a withdrawal request;

(3) Dismiss the petition; or

(4) Issue a notice of hearing.

(g) In processing a petition for clarification of unit or for amendment of recognition or certification, or dues allotment, where appropriate, the Regional Director shall prepare and serve a report and findings upon all parties to the proceedings and shall state therein, among other pertinent

matters, the Regional Director's conclusions and the action contemplated. A party may file with the Authority a request for review of such action of the Regional Director in accordance with the procedures set forth in § 2422.6(d). If no request for review is filed, or if one is filed and denied, the Regional Director shall take such action as may be appropriate, which may include issuing a clarification of unit or an amendment of recognition or certification, or determination of eligibility for dues allotment.

(h) A determination by the Regional Director to issue a notice of hearing shall not be subject to review by the Authority.

#### § 2422.5 Intervention.

(a) No labor organization will be permitted to intervene in any proceeding involving a petition filed pursuant to § 2422.2(a) or (b) unless it has submitted to the Regional Director a showing of interest of ten percent (10%) or more of the employees in the unit specified in the petition together with an alphabetical list of names constituting such showing, or has submitted a current or recently expired agreement with the activity covering any of the employees involved, or has submitted evidence that it is the currently recognized or certified exclusive representative of any of the employees involved: *Provided, however,* That an incumbent exclusive representative shall be deemed to be an intervenor in the proceeding unless it serves on the Regional Director a written disclaimer of any representation interest for the employees in the unit sought: *Provided, further,* That any such incumbent exclusive representative that declines to sign an agreement for consent election because of a disagreement on the matters contained in § 2422.7(c) as decided by the Regional Director, or fails to appear at a hearing held pursuant to § 2422.9, shall be denied its status as an intervenor.

(b) A labor organization seeking exclusive recognition in a unit different from the unit initially petitioned for, and which includes any or all of the employees in that unit, must file a petition with the Regional Director in accordance with § 2422.2(a) and (e) within ten (10) days after the date of posting of the notice of the initial petition as provided under § 2422.4(a), unless good cause is shown for extending the period.

(c) No labor organization may participate to any extent in any representation proceeding unless it has

notified the Regional Director in writing, accompanied by its showing of interest as specified in paragraph (a) of this section, of its desire to intervene within ten (10) days after the initial date of posting of the notice of petition as provided in § 2422.4(a), unless good cause is shown for extending the period. A copy of the request for intervention filed with the Regional Director, excluding the showing of interest, shall be served on all known interested parties, and a written statement of such service should be filed with the Regional Director: *Provided, however,* That an incumbent exclusive representative shall be deemed to be an intervenor in the proceeding in accordance with paragraph (a) of this section.

(d) Any labor organization seeking to intervene in a proceeding involving a petition for determination of eligibility for dues allotment filed pursuant to § 2422.2(d) may intervene solely on the basis it claims to be the exclusive representative of some or all the employees specified in the petition and shall submit to the Regional Director a current or recently expired agreement with the activity covering any of the employees involved, or evidence that it is the currently recognized or certified exclusive representative of any of the employees involved.

(e) Any labor organization seeking to intervene must submit to the Regional Director a statement that it has submitted to the activity or agency and to the Assistant Secretary a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives.

(f) The Regional Director may grant intervention to a labor organization in a proceeding involving a petition for clarification of unit or a petition for amendment of recognition or certification filed pursuant to § 2422.2(c), or a petition for determination of eligibility for dues allotment filed pursuant to § 2422.2(d), or a petition to consolidate existing exclusively recognized units filed pursuant to § 2422.2(h) based on a showing that the proposed clarification, amendment, dues allotment or consolidation affects that labor organization's existing exclusively recognized unit(s) in that it would cover one or more employees who are included in such unit(s).

#### § 2422.6 Withdrawal, dismissal or deferral of petitions; consolidation of cases; denial of intervention; review of action by Regional Director.

(a) If the Regional Director determines, after such investigation as the Regional Director deems necessary,

that the petition has not been timely filed, the claimed unit is not appropriate, the petitioner has not made a sufficient showing of interest, the petition is not otherwise actionable, or an intervention is not appropriate, the Regional Director may request the petitioner or intervenor to withdraw the petition or the request for intervention. In the absence of such withdrawal within a reasonable period of time, the Regional Director may dismiss the petition or deny the request for intervention.

(b) If the Regional Director determines, after investigation, that a valid issue has been raised by a challenge under § 2422.2(f) or (g), the Regional Director may take action which may consist of the following, as appropriate:

(1) Request the petitioner or intervenor to withdraw the petition or the request for intervention;

(2) Dismiss the petition and/or deny the request for intervention if a withdrawal request is not submitted within a reasonable period of time;

(3) Defer action on the petition or request for intervention until such time as issues raised by the challenges have been resolved pursuant to this part; or

(4) Consolidate such issues with the representation matter for resolution of all issues.

(c) If the Regional Director dismisses the petition and/or denies the request for intervention, the Regional Director shall serve on the petitioner or the party requesting intervention a written statement of the grounds for the dismissal or the denial, and serve a copy of such statement on the activity, and on the petitioner and any intervenors, as appropriate.

(d) The petitioner or party requesting intervention may obtain a review of such dismissal and/or denial by filing a request for review with the Authority within ten (10) days after service of the notice of such action. Copies of the request for review shall be served on the Regional Director and the other parties, and a statement of service shall be filed with the request for review. Requests for extensions of time shall be in writing and received by the Authority not later than three (3) days before the date the request for review is due. The request for review shall contain a complete statement setting forth facts and reasons upon which the request is based. Any party may file an opposition to a request for review with the Authority within seven (7) days after service of the request for review. Copies of the opposition to the request for review shall be served on the Regional Director and the other parties, and a statement of

service shall be filed with the opposition to the request for review. The Authority may issue a decision or ruling affirming or reversing the Regional Director in whole or in part or making any other disposition of the matter as it deems appropriate.

#### § 2422.7 Agreement for consent election.

(a) All parties desiring to participate in an election being conducted pursuant to this section or § 2422.16, including intervenors who have met the requirements of § 2422.5, must sign an agreement providing for such an election on a form prescribed by the Authority. An original and one (1) copy of the agreement shall be filed with the Regional Director.

(b) An agency, activity, or petitioner, and any intervenors who have complied with the requirements set forth in § 2422.5 may agree that a secret ballot election shall be conducted among the employees in the agreed-upon appropriate unit to determine whether the employees desire to be represented for purposes of exclusive recognition by any or none of the labor organizations involved.

(c) The parties shall agree on the eligibility period for participation in the election, the date(s), hour(s), and place(s) of the election, the designations on the ballot and other related election procedures.

(d) In the event that the parties cannot agree on the matters contained in paragraph (c) of this section, the Regional Director, acting on behalf of the Authority, shall decide these matters without prejudice to the right of a party to file objections to the procedural conduct of the election under § 2422.20(b).

(e) If the Regional Director approves the agreement, the election shall be conducted by the activity or agency, as appropriate, under the supervision of the Regional Director, in accordance with § 2422.17.

(f) Any qualified intervenor who refuses to sign an agreement for an election may express his objections to the agreement in writing to the Regional Director. The Regional Director, after careful consideration of such objections, may approve the agreement or take such other action as the Regional Director deems appropriate.

#### § 2422.8 Notice of hearing; contents; attachments; procedures.

(a) The Regional Director may cause a notice of hearing to be issued involving the appropriateness of unit(s) or other matters related to the petition.

(b) The notice of hearing shall be served on all interested parties and shall include:

(1) The name of the activity or agency, petitioner, and intervenors, if any;

(2) A statement of the time and place of the hearing, which shall be not less than ten (10) days after service of the notice of hearing, except in extraordinary circumstances;

(3) A statement of the nature of the hearing; and

(4) A statement of the authority and jurisdiction under which the hearing is to be held.

(c) A copy of the petition shall be attached to the notice of hearing.

(d) Hearings on the appropriateness of unit(s) or other matters related to the petition pursuant to paragraph (a) of this section shall be conducted by a Hearing Officer in accordance with §§ 2422.9 through 2422.15.

#### § 2422.9 Conduct of hearing.

(a) Hearings shall be conducted by a Hearing Officer and shall be open to the public unless otherwise ordered by the Hearing Officer. At any time another Hearing Officer may be substituted for the Hearing Officer previously presiding. It shall be the duty of the Hearing Officer to inquire fully into all matters in issue and the Hearing Officer shall obtain a full and complete record upon which the Authority can make an appropriate decision. An official reporter shall make the only official transcript of such proceedings. Copies of the official transcript may be examined in the appropriate regional office during normal working hours and copies of the transcript will be provided in accordance with Part 2411 of this chapter.

(b) Hearings under this section are considered investigatory and not adversary. Their purpose is to develop a full and complete factual record. The rules of relevancy and materiality are paramount; there are no burdens of proof and the technical rules of evidence do not apply.

#### § 2422.10 Motions.

(a) *General.* (1) A motion shall state briefly the order or relief sought and the grounds for the motion: *Provided, however,* That a motion to intervene will not be entertained by the Hearing Officer. Intervention will be permitted only to those who have met the requirements of § 2422.5.

(2) A motion prior to, and after a hearing and any response thereto, shall be made in writing. A response shall be filed within five (5) days after service of the motion. An original and two (2)

copies of such motion and any response thereto shall be filed and copies shall be served on the parties and the Regional Director. A statement of such service shall be filed with the original.

(3) During a hearing a motion may be made and responded to orally on the record.

(4) The right to make motions, or to make objections to rulings on motions, shall not be deemed waived by participation in the proceeding.

(5) All motions, rulings, and orders shall become part of the record.

(b) *Filing of motions.* (1) Motions and responses thereto prior to a hearing shall be filed with the Regional Director. During the hearing, motions shall be made to the Hearing Officer.

(2) After the transfer of the case to the Authority, except as otherwise provided, motions and responses thereto shall be filed with the Authority: *Provided*, That following the close of a hearing, motions to correct the transcript should be filed with the Hearing Officer within five (5) days after the transcript is received in the regional office.

(c) *Rulings on motions.* (1) Regional Directors may rule on all motions filed with them, or they may refer them to the Hearing Officer. A ruling by a Regional Director granting a motion to dismiss a petition may be reviewed by the Authority upon the filing by the petitioner of a request for review pursuant to § 2422.6(d).

(2) Hearing Officers shall rule, either orally on the record or in writing, on all motions made at the hearing or referred to them, except that a motion to dismiss a petition shall be referred for appropriate action at such time as the record is considered by the Regional Director or the Authority. Rulings by a Hearing Officer reduced to writing shall be served on the parties.

(3) The Authority shall consider the rulings by the Regional Director and the Hearing Officer when the case is transferred to it for decision.

#### § 2422.11 Rights of the parties.

(a) A party shall have the right to appear at any hearing in person, by counsel, or by other representative, and to examine and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence. Two (2) copies of documentary evidence shall be submitted and a copy furnished to each of the other parties. Stipulations of fact may be introduced in evidence with respect to any issue.

(b) A party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument,

which shall be included in the stenographic report of the hearing. Such oral argument shall not preclude a party from filing a brief under § 2422.14.

#### § 2422.12 Duties and powers of the Hearing Officer.

It shall be the duty of Hearing Officers to inquire fully into the facts as they relate to the matters before them. With respect to cases assigned to them between the time they are designated and the transfer of the case to the Authority, Hearing Officers shall have the authority to:

(a) Grant requests for subpoenas pursuant to § 2429.7 of this subchapter;

(b) Rule upon offers of proof and receive relevant evidence and stipulations of fact;

(c) Take or cause depositions or interrogatories to be taken whenever the ends of justice would be served thereby;

(d) Limit lines of questioning or testimony which are immaterial, irrelevant or unduly repetitious;

(e) Regulate the course of the hearing and, if appropriate, exclude from the hearing persons who engage in misconduct;

(f) Strike all related testimony of witnesses refusing to answer any questions ruled to be proper;

(g) Hold conferences for the settlement or simplification of the issues by consent of the parties or upon the Hearing Officer's own motion;

(h) Dispose of procedural requests, motions, or similar matters, which shall be made part of the record of the proceedings, including motions referred to the Hearing Officer by the Regional Director and motions to amend petitions;

(i) Call and examine and cross-examine witnesses and introduce into the record documentary or other evidence;

(j) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(k) Continue the hearing from day-to-day, or adjourn it to a later date or to a different place, by announcement thereof at the hearing or by other appropriate notice;

(l) Rule on motions to correct the transcript which are received within five (5) days after the transcript is received in the regional office; and

(m) Take any other action necessary under this section and not prohibited by the regulations in this subchapter.

#### § 2422.13 Objections to conduct of hearing.

Any objection to the introduction of evidence may be stated orally or in writing and shall be accompanied by a short statement of the grounds of such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing. Automatic exceptions will be allowed to all adverse rulings.

#### § 2422.14 Filing of briefs.

A party desiring to file a brief with the Authority shall file the original and six (6) copies within seven (7) days after the close of the hearing: *Provided, however*, That prior to the close of the hearing and for good cause, the Hearing Officer may allow time not to exceed fourteen (14) additional days for the filing of briefs with the Authority. Copies thereof shall be served on all other parties to the proceeding. Requests for additional time in which to file a brief under authority of this section not addressed to the Hearing Office during the hearing shall be made to the Regional Director, in writing, and copies thereof shall be served on the other parties and a statement of such service shall be filed with the Regional Director. Requests for extension of time shall be in writing and received not later than three (3) days before the date such briefs are due. No reply brief may be filed in any proceeding except by special permission of the Authority.

#### § 2422.15 Transfer of case to the Authority; contents of record.

Upon the close of the hearing the case is transferred automatically to the Authority. The record of the proceeding shall include the petition, notice of hearing, service sheet, motions, rulings, orders, official transcript of the hearing with any corrections thereto, stipulations, objections, depositions, interrogatories, exhibits, documentary evidence, and any briefs or other documents submitted by the parties.

#### § 2422.16 Decision.

The Authority will issue a decision determining the appropriate unit, directing an election or dismissing the petition, or making other disposition of the matters before it.

#### § 2422.17 Election procedure; request for authorized representation election observers.

This section governs all elections conducted under the supervision of the Regional Director pursuant to § 2422.7 or § 2422.16. The Regional Director may conduct elections in unusual circumstances in accordance with terms

and conditions set forth in the notice of election.

(a) Appropriate notices of election shall be posted by the activity. Such notices shall set forth the details and procedures for the election, the appropriate unit, the eligibility period, the date(s), hour(s) and place(s) of the election and shall contain a sample ballot.

(b) The reproduction of any document purporting to be a copy of the official ballot, other than one completely unaltered in form and content and clearly marked "sample" on its face, which suggests either directly or indirectly to employees that the Authority endorses a particular choice, may constitute grounds for setting aside an election upon objections properly filed.

(c) All elections shall be by secret ballot. An exclusive representative shall be chosen by a majority of the valid ballots cast. The results of an election to consolidate existing exclusively recognized units shall be determined by a majority of the valid ballots cast in the proposed consolidated unit.

(d) Whenever two or more labor organizations are included as choices in an election, any intervening labor organization may request the Regional Director to remove its name from the ballot. The request must be in writing and received not later than seven (7) days before the date of the election. Such request shall be subject to the approval of the Regional Director whose decision shall be final.

(e) In a proceeding involving an election to determine if a labor organization should cease to be the exclusive representative filed by an agency or any employee or employees or an individual acting on behalf of any employee(s) under § 2422.2(b), an organization currently recognized or certified may not have its name removed from the ballot without having served the written request submitted pursuant to paragraph (d) of this section on all parties. Such request shall contain an express disclaimer of any representation interest among the employees in the unit.

(f) Any party may be represented at the polling place(s) by observers of its own selection, subject to such limitations as the Regional Director may prescribe.

(g) A party's request to the Regional Director for named observers shall be in writing and filed with the Regional Director not less than fifteen (15) days prior to an election to be supervised or conducted pursuant to this part. The request shall name and identify the

authorized representation election observers sought, and state the reasons therefor. Copies thereof shall be served on the other parties and a written statement of such service shall be filed with the Regional Director. Within five (5) days after service of a copy of the request, a party may file objections to the request with the Regional Director and state the reasons therefor. Copies thereof shall be served on the other parties and a written statement of such service shall be filed with the Regional Director. The Regional Director shall rule upon the request not later than five (5) days prior to the date of the election. However, for good cause shown by a party, or on the Regional Director's own motion, the Regional Director may vary the time limits prescribed in this paragraph.

#### § 2422.18 Challenged ballots.

Any party or the representative of the Authority may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded.

#### § 2422.19 Tally of ballots.

Upon the conclusion of the election, the Regional Director shall cause to be furnished to the parties a tally of ballots.

#### § 2422.20 Certification; objections to election; determination on objections and challenged ballots.

(a) The Regional Director shall issue to the parties a certification of results of the election or a certification of representative, where appropriate: *Provided, however,* That no objections are filed within the time limit set forth below; the challenged ballots are insufficient in number to affect the results of the election; and no runoff or rerun election is to be held.

(b) Within five (5) days after the tally of ballots has been furnished, a party may file objections to the procedural conduct of the election, or to conduct which may have improperly affected the results of the election, setting forth a clear and concise statement of the reasons therefor. The objecting party shall bear the burden of proof at all stages of the proceeding regarding all matters raised in its objections. An original and two (2) copies of the objections shall be filed with the Regional Director and copies shall be served on the parties. A statement of such service shall be filed with the Regional Director. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. Within ten

(10) days after the filing of the objections, unless an extension of time has been granted by the Regional Director, the objecting party shall file with the Regional Director evidence, including signed statements, documents and other material supporting the objections.

(c) If objections are filed or challenged ballots are sufficient in number to affect the results of the election, the Regional Director shall investigate the objections or challenged ballots, or both.

(d) When the Regional Director determines that no relevant question of fact exists, the Regional Director (1) shall find whether improper conduct occurred of such a nature as to warrant the setting aside of the election and, if so, indicate an intention to set aside the election, or (2) shall rule on determinative challenged ballots, if any, or both. The Regional Director shall issue a report and findings on objections and/or challenged ballots which shall be served upon all parties to the proceeding. Such report and findings shall state therein any additional pertinent matters such as an intent to rerun the election or count ballots at a specified date, time, and place, and if appropriate, that the Regional Director will cause to be issued a revised tally of ballots.

(e) When the Regional Director determines that no relevant question of fact exists, but that a substantial question of interpretation or policy exists, the Regional Director shall notify the parties in the report and findings and transfer the case to the Authority in accordance with § 2429.1(a) or (b) of this subchapter.

(f) Any party aggrieved by the findings of a Regional Director with respect to objections to an election or challenged ballots may obtain a review of such action by the Authority by following the procedure set forth in § 2422.6(d) of this subchapter. *Provided, however,* That a determination by the Regional Director to issue a notice of hearing shall not be subject to review by the Authority.

(g) Where it appears to the Regional Director that the objections or challenged ballots raise any relevant question of fact which may have affected the results of the election, the Regional Director shall cause to be issued a notice of hearing. Hearings shall be conducted and decisions issued by Administrative Law Judges and exceptions and related submissions filed with the Authority in accordance with §§ 2423.13 through 2423.27 of this subchapter excluding § 2423.17 and

§ 2423.18(j), with the following exceptions:

(1) The Administrative Law Judge may not recommend remedial action to be taken or notices to be posted, as provided under § 2423.25(a); and

(2) Reference to "charge, complaint" in § 2423.25(b) shall be read as "report and findings of the Regional Director."

(h) At a hearing conducted pursuant to paragraph (g) of this section the party filing the objections shall have the burden of proving all matters alleged in its objections by a preponderance of the evidence. With respect to challenged ballots, no burden of proof is imposed on any party.

(i) The Authority shall take action which may consist of the following, as appropriate:

(1) Issue a decision adopting, modifying, or rejecting the Administrative Law Judge's decision;

(2) Issue a decision in any case involving a substantial question of interpretation or policy transferred pursuant to paragraph (e) of this section; or

(3) Issue a ruling with respect to a request for review filed pursuant to paragraph (f) of this section affirming, or reversing, in whole or in part, the Regional Director's findings, or make such other disposition as may be appropriate.

#### § 2422.21 Runoff elections.

(a) The agency or activity may conduct a runoff election under supervision of the Regional Director when an election in which the ballot provided for not less than three (3) choices (i.e., at least two representatives and "neither" or "none") results in no choice receiving a majority of the valid ballots cast, and any objections which had been filed have been disposed of, and any challenged ballots have been disposed of or are not sufficient in number to affect the results of the election, as provided herein. Only one runoff election shall be held pursuant to this section.

(b) Employees who were eligible to vote in the original election and who also are in an eligible category on the date of the runoff election shall be eligible to vote in the runoff election.

(c) The ballot in the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of votes.

#### § 2422.22 Inconclusive elections.

(a) An inconclusive election is one in which none of the choices on the ballot has received a majority of the valid ballots cast. If there are no challenged

ballots that would affect the results of the election, the Regional Director may declare the election a nullity and may order another election providing for a selection from among the choices afforded in the previous ballot in the following situations:

(1) The ballot provided for a choice among two or more representatives and "neither" or "none," and the votes are equally divided among the several choices;

(2) The number of ballots cast for one choice in an election is equal to the number cast for another choice but less than the number cast for the third choice; or

(3) The runoff ballot provides for a choice between two representatives and the votes are equally divided.

(b) Only one further election pursuant to this section may be held.

### PART 2423—UNFAIR LABOR PRACTICE PROCEEDINGS

Sec.

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Authority: 5 U.S.C. 7134.

#### § 2423.1 Applicability of this part.

This part is applicable to any charge of alleged unfair labor practices filed with the Authority on or after January 11, 1979.

#### § 2423.2 Informal proceedings.

(a) The purposes and policies of the Federal Service Labor-Management Relations program can best be achieved by the cooperative efforts of all persons covered by the program. To this end, it shall be the policy of the Authority and the General Counsel to encourage all persons alleging unfair labor practices and persons against whom such allegations are made to meet and, in good faith, attempt to resolve such matters prior to the filing of unfair labor practice charges with the authority.

(b) In furtherance of the policy referred to in paragraph (a) of this section, and noting the six (6) month period of limitation set forth in 5 U.S.C. 7118(a)(4), it shall be the policy of the Authority and the General Counsel to encourage the informal resolution of unfair labor practice allegations subsequent to the filing of a charge and prior to the issuance of a complaint by the Regional Director.

#### § 2423.3 Who may file charges.

A charge that an activity, agency or labor organization has engaged in any act prohibited under 5 U.S.C. 7116 may be filed by any person.

#### § 2423.4 Contents of the charge; supporting evidence and documents.

(a) A charge alleging a violation of 5 U.S.C. 7116 shall be submitted on forms prescribed by the Authority and shall contain the following:

(1) The name, address and telephone number of the person(s) making the charge;

(2) The name, address and telephone number of the activity, agency, or labor organization against whom the charge is made;

(3) A clear and concise statement of the facts constituting the alleged unfair labor practice, a statement of the section(s) and subsection(s) of chapter 71 of title 5 of the United States Code alleged to have been violated, and the date and place of occurrence of the particular acts; and

(4) A statement of any other procedure invoked involving the subject matter of the charge and the results, if any, including whether the subject matter raised in the charge had previously been raised in a grievance procedure or had been referred to the Federal Service Impasses Panel, the Federal Mediation and Conciliation

Service, the Equal Employment Opportunity Commission, the Merit Systems Protection Board or the Special Counsel of the Merit systems Protection Board for consideration or action.

(b) Such charge shall be in writing and signed and shall contain a declaration by the person signing the charge, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of that person's knowledge and belief.

(c) When filing a charge, the charging party shall submit to the Regional Director any supporting evidence and documents.

#### § 2423.5 Filing and service of copies.

(a) An original and four (4) copies of the charge together with one copy for each additional charged party named shall be filed with the Regional Director for the region in which the alleged unfair labor practice has occurred or is occurring. A charge alleging that an unfair labor practice has occurred or is occurring in two or more regions may be filed with the Regional Director for any such region.

(b) Upon the filing of a charge, the charging party shall be responsible for the service of a copy of the charge (without the supporting evidence and documents) upon the person(s) against whom the charge is made, and for filing a written statement of such service with the Regional Director. The Regional Director will, as a matter of course, cause a copy of such charge to be served on the person(s) against whom the charge is made, but shall not be deemed to assume responsibility for such service.

#### § 2423.6 Investigation of charges.

(a) The Regional Director, on behalf of the General Counsel, shall conduct such investigation of the charge as the Regional Director deems necessary.

(b) During the course of the investigation all parties involved will have an opportunity to present their evidence and views to the Regional Director.

(c) In connection with the investigation of charges, all persons are expected to cooperate fully with the Regional Director.

(d) The Regional Director shall give priority to the following cases:

(1) Whenever a charge is filed alleging the commission of an unfair labor practice within the meaning of 5 U.S.C. 7116(b)(7), the regional office in which such charge is filed or to which it is referred shall give it priority over all other cases in the office except cases of like character.

(2) Whenever a charge is filed alleging the commission of an unfair labor practice within the meaning of 5 U.S.C. 7116(a)(6) or (b)(6), or alleging the commission of an unfair labor practice based on the failure to comply with an arbitration award, the regional office in which such a charge is filed or to which it is referred shall give it priority over all other cases in the office except cases of like character and cases under 5 U.S.C. 7116(b)(7).

(3) Whenever a charge is filed alleging the commission of an unfair labor practice within the meaning of 5 U.S.C. 7116(a)(2) or (b)(2), the regional office in which such a charge is filed or to which it is referred shall give it priority over all other cases in the office, except cases of like character and cases under 5 U.S.C. 7116(b)(7), (a)(6) and (b)(6), and cases based on the failure to comply with an arbitration award.

#### § 2423.7 Amendment of charges.

Prior to the issuance of a complaint, the charging party may amend the charge in accordance with the requirements set forth in § 2423.5.

#### § 2423.8 Action by the Regional Director.

(a) The Regional Director shall take action which may consist of the following, as appropriate:

- (1) Approve a request to withdraw a charge;
- (2) Refuse to issue a complaint;
- (3) Approve a written settlement agreement in accordance with the provisions of § 2423.10;
- (4) Issue a complaint;
- (5) Transfer to the Authority for decision, after issuance of a complaint, a stipulation of facts; or
- (6) Withdraw a complaint.

(b) Upon a determination to issue a complaint, whenever it is deemed advisable by the Authority to seek appropriate temporary relief (including a restraining order) under 5 U.S.C. 7123(d), the Regional Attorney or other designated agent of the authority to whom the matter has been referred will make application for appropriate temporary relief (including a restraining order) in the district court of the United States within which the unfair labor practice is alleged to have occurred or in which the party sought to be enjoined resides or transacts business. Such temporary relief will not be sought unless the record establishes probable cause that an unfair labor practice is being committed, or if such temporary relief will interfere with the ability of the agency to carry out its essential functions.

(c) Whenever temporary relief has been obtained pursuant to 5 U.S.C. 7123(d) and thereafter the Administrative Law Judge hearing the complaint, upon which the determination to seek such temporary relief was predicated, recommends dismissal of such complaint, in whole or in part, the Regional Attorney or other designated agent of the Authority handling the case for the authority shall inform the district court which granted the temporary relief of the possible change in circumstances arising out of the decision of the Administrative Law Judge.

#### § 2423.9 Determination not to issue complaint; review of action by the Regional Director.

(a) If the Regional Director determines that the charge has not been timely filed, that the charge fails to state an unfair labor practice, or for other appropriate reasons, the Regional Director may request the charging party to withdraw the charge, and in the absence of such withdrawal within a reasonable time, decline to issue a complaint.

(b) If the Regional Director determines not to issue a complaint on a charge which is not withdrawn, the Regional Director shall provide the parties with a written statement of the reasons for not issuing a complaint.

(c) The charging party may obtain a review of the Regional Director's decision not to issue a complaint by filing a request for review with the General Counsel within ten (10) days after service of the Regional Director's decision. The request for review shall contain a complete statement setting forth the facts and reasons upon which it is based and a copy shall also be filed with the Regional Director. In addition the charging party shall notify all other parties of the action it has taken, but any failure to give such notice shall not affect the validity of the request for review.

(d) A request for extension of time to file a request for review shall be in writing and received by the General Counsel not later than three (3) days before the date the request for review is due.

(e) The General Counsel may sustain the Regional Director's refusal to issue or re-issue a complaint, stating the grounds of affirmance, or may direct the Regional Director to take further action. The General Counsel's decision shall be served on all the parties. The decision of the General Counsel shall be final.

**§ 2423.10 Settlement or adjustment of issues.**

(a) At any stage of a proceeding prior to hearing, where time, the nature of the proceeding, and the public interest permit, all interested parties shall have the opportunity to submit to the Regional Director with whom the charge was filed, for consideration, all facts and arguments concerning offers of settlement, or proposals of adjustment.

(b) Prior to the issuance of any complaint or the taking of other formal action, the Regional Director will permit the charging party and the respondent a reasonable period of time in which to enter into a settlement agreement to be approved by the Regional Director. Upon approval by the Regional Director and compliance with the terms of the settlement agreement, no further action shall be taken in the case. If the respondent fails to perform its obligations under the settlement agreement, the Regional Director may determine to institute further proceedings. In the event that the charging party fails or refuses to become a party to a settlement agreement offered by the respondent, if the Regional Director, in the Regional Director's discretion, believes that the offered settlement will effectuate the policies of the Federal Service Labor-Management Relations program, the agreement shall be between the respondent and Regional Director and the latter shall decline to issue a complaint. The charging party may obtain a review of the Regional Director's action by filing a request for review with the general counsel in accordance with § 2423.9(c). The General Counsel shall take action on such review as set forth in § 2423.9(e).

(c) Consistent with the policy reflected in paragraph (a) of this section, even after the issuance of a complaint, the Authority favors the settlement of issues. Such settlements may be either informal or formal. Informal settlement agreements shall be accomplished as provided in paragraph (b) of this section. Formal settlement agreements are subject to the approval of the Authority. In such settlement agreements, the parties shall agree to waive their right to a hearing and agree further that the Authority may issue an order requiring the respondent to take action appropriate to the terms of the settlement. The Authority may require, as a condition of its approval, the respondent's consent to the Authority's application for the entry of a decree by the appropriate federal court enforcing the Authority's order.

(d) If, after issuance of a complaint but before opening of the hearing, the charging party fails or refuses to become a party to a formal settlement agreement offered by the respondent, and the Regional Director, in the Regional Director's discretion, believes that the offered settlement will effectuate the policies of the Federal Service Labor-Management Relations program, the agreement shall be between the respondent and Regional Director. If the formal settlement is accepted by the Regional Director, the charging party will be so informed and provided a brief written statement of the reasons therefor. The formal settlement agreement together with the charging party's objections, if any, and the Regional Director's written statements, shall be submitted to the Authority for approval. The Authority may approve or disapprove the settlement agreement or return the case to the Regional Director for other appropriate action: *Provided, however,* That after the issuance of a complaint if the Regional Director, in the Regional Director's discretion, believes that it will effectuate the policies of the Federal Service Labor-Management Relations program, the Regional Director may withdraw the complaint and approve a settlement agreement pursuant to paragraph (b) of this section.

**§ 2423.11 Issuance and contents of the complaint.**

(a) After a charge is filed, if it appears to the Regional Director that formal proceedings in respect thereto should be instituted, the Regional Director shall issue and cause to be served on all other parties a formal complaint: *Provided, however,* That a determination by a Regional Director to issue a complaint shall not be subject to review.

(b) The complaint shall include:

- (1) Notice of the charge;
- (2) Notice that a hearing will be held before an Administrative Law Judge;
- (3) Notice of the time and place fixed for the hearing which shall not be earlier than five (5) days after service of the complaint;
- (4) A statement of the nature of the hearing;
- (5) A clear and concise statement of the facts upon which assertion of jurisdiction by the Authority is predicated;
- (6) A reference to the particular sections of chapter 71 of title 5 of the United States Code and the rules and regulations involved; and
- (7) A clear and concise description of the acts which are claimed to constitute unfair labor practices, including, where known, the approximate dates and

places of such acts and the names of respondent's agents or other representatives by whom committed.

(c) The Chief Administrative Law Judge may, upon such judge's own motion or upon proper cause shown by any other party, extend the date of the hearing or may change the place at which it is to be held.

(d) A complaint may be amended, upon such terms as may be deemed just, prior to the hearing, by the Regional Director issuing the complaint; at the hearing and until the case has been transferred to the Authority pursuant to § 2423.25, upon motion by the Administrative Law Judge designated to conduct the hearing; and after the case has been transferred to the Authority pursuant to § 2423.25, upon motion by the Authority at any time prior to the issuance of an order based thereon by the Authority.

(e) Any such complaint may be withdrawn before the hearing by the Regional Director.

**§ 2423.12 Answer to the complaint; extension of time for filing; amendment.**

(a) Except in extraordinary circumstances as determined by the Regional Director, within ten (10) days after the complaint is served upon the respondent, the respondent shall file the original and four (4) copies of the answer thereto, signed by the respondent or its representative, with the Regional Director who issued the complaint. The respondent shall serve a copy of the answer on the Chief Administrative Law Judge and on all other parties.

(b) The answer: (1) Shall specifically admit, deny, or explain each of the allegations of the complaint unless the respondent is without knowledge, in which case the answer shall so state; or (2) Shall state that the respondent admits all of the allegations in the complaint. Failure to file an answer or to plead specifically to or explain any allegation shall constitute an admission of such allegation and shall be so found by the Authority, unless good cause to the contrary is shown.

(c) Upon the Regional Director's own motion or upon proper cause shown by any other party, the Regional Director issuing the complaint may by written order extend the time within which the answer shall be filed.

(d) The answer may be amended by the respondent at any time prior to the hearing. During the hearing or subsequent thereto, the answer may be amended in any case where the complaint has been amended, within such period as may be fixed by the

Administrative Law Judge or the Authority. Whether or not the complaint has been amended, the answer may, in the discretion of the Administrative Law Judge or the Authority, upon motion, be amended upon such terms and within such periods as may be fixed by the Administrative Law Judge or the Authority.

**§ 2423.13 Conduct of hearing.**

(a) Hearings shall be conducted not earlier than five (5) days after the date on which the complaint is served. The hearing shall be open to the public unless otherwise ordered by the Administrative Law Judge. A substitute Administrative Law Judge may be designated at any time to take the place of the Administrative Law Judge previously designated to conduct the hearing. Such hearing shall, to the extent practicable, be conducted in accordance with the provisions of subchapter II of chapter 5 of title 5 of the United States Code, except that the parties shall not be bound by the rules of evidence, whether statutory, common law, or adopted by a court.

(b) An official reporter shall make the only official transcript of such proceedings. Copies of the official transcript may be examined in the appropriate regional office during normal working hours and copies of the transcript will be provided in accordance with Part 2411 of this chapter.

**§ 2423.14 Intervention.**

Any person involved and desiring to intervene in any proceeding pursuant to this part shall file a motion in accordance with the procedures set forth in § 2423.21. The motion shall state the grounds upon which such person claims involvement.

**§ 2423.15 Rights of parties.**

A party shall have the right to appear at any hearing in person, by counsel, or by other representative, and to examine and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence, and to submit rebuttal evidence, except that the participation of any party shall be limited to the extent prescribed by the Administrative Law Judge. Two (2) copies of documentary evidence shall be submitted and a copy furnished to each of the other parties. Stipulations of fact may be introduced in evidence with respect to any issue.

**§ 2423.16 Rules of evidence.**

The parties shall not be bound by the rules of evidence, whether statutory,

common law, or adopted by court. Any evidence may be received, except that an Administrative Law Judge may exclude any evidence which is immaterial, irrelevant, unduly repetitious or customarily privileged.

**§ 2423.17 Burden of proof before the Administrative Law Judge.**

The General Counsel shall have the responsibility of presenting the evidence in support of the complaint and shall have the burden of proving the allegations of the complaint by a preponderance of the evidence.

**§ 2423.18 Duties and powers of the Administrative Law Judge.**

It shall be the duty of the Administrative Law Judge to inquire fully into the facts as they relate to the matter before such judge. Upon assignment of the case and before transfer of the case to the Authority, the Administrative Law Judge shall have the authority to:

- (a) Grant requests for subpoenas pursuant to § 2429.7 of this subchapter;
- (b) Rule upon petitions to revoke subpoenas pursuant to § 2429.7 of this subchapter;
- (c) Administer oaths and affirmations;
- (d) Take or order the taking of a deposition whenever the ends of justice would be served thereby;
- (e) Order responses to written interrogatories;
- (f) Call, examine and cross-examine witnesses and introduce into the record documentary or other evidence;
- (g) Rule upon offers of proof and receive relevant evidence and stipulations of fact with respect to any issue;
- (h) Limit lines of questioning or testimony which are immaterial, irrelevant, unduly repetitious, or customarily privileged;

(i) Regulate the course of the hearing and, if appropriate, exclude from the hearing persons who engage in contemptuous conduct and strike all related testimony of witnesses refusing to answer any questions ruled to be proper;

(j) Hold conferences for the settlement or simplification of the issues by consent of the parties or upon the judge's own motion;

(k) Dispose of procedural requests, motions, or similar matters, including motions referred to the Administrative Law Judge by the Regional Director and motions for summary judgment or to amend pleadings; dismiss complaints or portions thereof; order hearings reopened; and, upon motion, order proceedings consolidated or severed

prior to issuance of the Administrative Law Judge's decision;

(l) Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(m) Continue the hearing from day-to-day or adjourn it to a later date or to a different place, by announcement thereof at the hearing or by other appropriate notice;

(n) Prepare, serve and submit the decision pursuant to § 2423.25;

(o) Take official notice of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice: *Provided, however,* That the parties shall be given adequate notice, at the hearing or by reference in the Administrative Law Judge's decision of the matters so noticed, and shall be given adequate opportunity to show the contrary;

(p) Accept requests for withdrawal based on settlements occurring after the opening of the hearing pursuant to § 2423.10 and transmit such requests to the Authority for approval;

(q) Grant or deny requests made at the hearing to intervene and to present testimony;

(r) Correct or approve proposed corrections of the official transcript when deemed necessary;

(s) Sequester witnesses where appropriate; and

(t) Take any other action deemed necessary under the foregoing and not prohibited by the regulations in this subchapter.

**§ 2423.19 Unavailability of Administrative Law Judges.**

In the event the Administrative Law Judge designated to conduct the hearing becomes unavailable, the Chief Administrative Law Judge shall designate another Administrative Law Judge for the purpose of further hearing or issuance of a decision on the record as made, or both.

**§ 2423.20 Objection to conduct of hearing.**

(a) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing accompanied by a short statement of the grounds for such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing. Such objection shall not stay the conduct of the hearing.

(b) Automatic exceptions will be allowed to all adverse rulings. Except by special permission of the Authority,

rulings by the Administrative Law Judge shall not be appealed prior to the transfer of the case to the Authority, but shall be considered by the Authority only upon the filing of exceptions to the Administrative Law Judge's decision in accordance with § 2423.26.

#### § 2423.21 Motions.

(a) *Filing of Motions.* (1) Motions made prior to a hearing and any response thereto shall be made in writing and filed with the Regional Director: *Provided, however,* That after the issuance of a complaint by the Regional Director any motion to postpone the hearing should be filed with the Chief Administrative Law Judge at least five (5) days prior to the opening of the scheduled hearing. Motions made after the hearing opens and prior to the transfer of the case to the Authority shall be made in writing to the Administrative Law Judge or orally on the record. After the transfer of the case to the Authority, motions and any response thereto shall be filed in writing with the Authority: *Provided, however,* That a motion to correct the transcript shall be filed with the Administrative Law Judge.

(2) A response to a motion shall be filed within five (5) days after service of the motion, unless otherwise directed.

(3) An original and two (2) copies of the motions and responses shall be filed, and copies shall be served on the parties. A statement of such service shall accompany the original.

(b) *Rulings on motions.* (1) Regional Directors may rule on all motions filed with them before the hearing, or they may refer them to the Administrative Law Judge.

(2) Except by special permission of the Authority, rulings by the Regional Director shall not be appealed prior to the transfer of the case to the Authority, but shall be considered by the Authority when the case is transferred to it for decision.

(3) Administrative Law Judges may rule on motions referred to them prior to the hearing and on motions filed after the beginning of the hearing and before the transfer of the case to the Authority. Such motions may be ruled upon by the Chief Administrative Law Judge in the absence of an Administrative Law Judge.

#### § 2423.22 Waiver of objections.

Any objection not made before an Administrative Law Judge shall be deemed waived.

#### § 2423.23 Oral argument at the hearing.

Any party shall be entitled, upon request, to a reasonable period prior to the close of the hearing for oral argument, which shall be included in the official transcript of the hearing.

#### § 2423.24 Filing of brief.

Any party desiring to submit a brief to the Administrative Law Judge shall file the original and two (2) copies within seven (7) days after the close of the hearing. Copies of any brief shall be served on all other parties to the proceeding and a statement of such service shall be filed with the Administrative Law Judge: *Provided, however,* That prior to the close of the hearing and for good cause, the Administrative Law Judge may grant a reasonable extension of time for filing briefs. Requests for additional time in which to file a brief under authority of this section not addressed to the Administrative Law Judge during the hearing shall be made to the Chief Administrative Law Judge, in writing, and copies thereof shall be served on the other parties. A statement of such service shall be furnished. Requests for extension of time shall be received not later than three (3) days before the date such briefs are due. No reply brief may be filed except by special permission of the Administrative Law Judge.

#### § 2423.25 Submission of the Administrative Law Judge's decision to the Authority; exceptions.

(a) After the close of the hearing, and the receipt of briefs, if any, the Administrative Law Judge shall prepare the decision expeditiously. The decision shall contain findings of fact, conclusions, and the reasons or basis therefor including credibility determinations, and conclusions as to the disposition of the case including, where appropriate, the remedial action to be taken and notices to be posted.

(b) The Administrative Law Judge shall cause the decision to be served promptly on all parties to the proceeding. Thereafter, the Administrative Law Judge shall transfer the case to the Authority including the judge's decision and the record. The record shall include the charge, complaint, service sheet, motions, rulings, orders, official transcript of the hearing, stipulations, objections, depositions, interrogatories, exhibits, documentary evidence and any briefs or other documents submitted by the parties.

(c) An original and six (6) copies of any exception to the Administrative Law Judge's decision and briefs in

support of exceptions may be filed by any party with the Authority within twenty (20) days after service of the decision: *Provided, however,* That the Authority may for good cause shown extend the time for filing such exceptions. Requests for additional time in which to file exceptions shall be in writing, and copies thereof shall be served on the other parties. Requests for extension of time must be received no later than three (3) days before the date the exceptions are due. Copies of such exceptions and any supporting briefs shall be served on all other parties, and a statement of such service shall be furnished to the Authority.

#### § 2423.26 Contents of exceptions to the Administrative Law Judge's decision.

(a) Exceptions to an Administrative Law Judge's decision shall:

(1) Set forth specifically the questions upon which exceptions are taken;

(2) Identify that part of the Administrative Law Judge's decision to which objection is made; and

(3) Designate by precise citation of page the portions of the record relied on, state the grounds for the exceptions, and include the citation of authorities unless set forth in a supporting brief.

(b) Any exception to a ruling, finding or conclusion which is not specifically urged shall be deemed to have been waived. Any exception which fails to comply with the foregoing requirements may be disregarded.

#### § 2423.27 Briefs in support of exceptions; oppositions to exceptions; cross-exceptions.

(a) Any brief in support of exceptions shall contain only matters included within the scope of the exceptions and shall contain, in the order indicated, the following:

(1) A concise statement of the case containing all that is material to the consideration of the questions presented;

(2) A specification of the questions involved and to be argued; and

(3) The argument, presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific page reference to the transcript and the legal or other material relied on.

(b) Any party may file an opposition to exceptions and cross-exceptions and a supporting brief with the Authority within seven (7) days after service of any exceptions to an Administrative Law Judge's decision. Copies of the opposition to exceptions and the cross-exceptions and any supporting briefs shall be served on all other parties, and

a statement of service shall be filed with the opposition to exceptions and cross-exceptions and any supporting briefs.

**§ 2423.28 Action by the Authority.**

(a) After considering the Administrative Law Judge's decision, the record, and any exceptions and related submissions filed, the Authority shall issue its decision affirming or reversing the Administrative Law Judge, in whole, or in part, or making such other disposition of the matter as it deems appropriate: *Provided, however*, That unless exceptions are filed which are timely and in accordance with § 2423.26, the Authority may, at its discretion, adopt without discussion the decision of the Administrative Law Judge, in which event the findings and conclusions of the Administrative Law Judge, as contained in such decision shall, upon appropriate notice to the parties, automatically become the decision of the Authority.

(b) Upon finding a violation, the Authority shall issue an order:

(1) To cease and desist from any such unfair labor practice in which the agency or labor organization is engaged;

(2) Requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Authority and requiring that the agreement, as amended, be given retroactive effect;

(3) Requiring reinstatement of an employee with backpay in accordance with 5 U.S.C. 5596; or

(4) Including any combination of the actions described in subparagraphs (1) through (3) of this paragraph or such other action as will carry out the purpose of the Federal Service Labor-Management Relations program.

(c) Upon finding no violation, the Authority shall dismiss the complaint.

**§ 2423.29 Compliance with decisions and orders of the Authority.**

When remedial action is ordered, the respondent shall report to the appropriate Regional Director within a specified period that the required remedial action has been effected. When the General Counsel finds that the required remedial action has not been effected, the General Counsel shall take such action as may be appropriate, including referral to the Authority for enforcement.

**§ 2423.30 Backpay proceedings.**

After the entry of an Authority order directing payment of backpay, or the entry of a court decree enforcing such order, if it appears to the Regional Director that a controversy exists

between the Authority and a respondent which cannot be resolved without a formal proceeding, the Regional Director may issue and serve on all parties a backpay specification and/or a notice of hearing. The respondent shall, within fifteen (15) days after the service of a backpay specification, file an answer thereto with the Regional Director issuing such specification. No answer need be filed by the respondent to a notice of hearing issued where the controversy does not involve the amount of backpay. Thereafter, the procedures provided in §§ 2423.13 to 2423.26, inclusive, shall be followed insofar as applicable.

**PART 2424—REVIEW OF NEGOTIABILITY ISSUES**

**Subpart A—Instituting an Appeal**

Sec.

2424.1 Conditions governing review.

2424.2 Who may file a petition.

2424.3 Time limits for filing.

2424.4 Content of petition; service.

2424.5 Position of the agency; time limits for filing; service.

2424.6 Response of the exclusive representative; time limits for filing; service.

2424.7 Hearing.

2424.8 Authority decision.

**Subpart B—Criteria for Determining Compelling Need for Agency Rules and Regulations**

2424.11 Illustrative criteria.

Authority: 5 U.S.C. 7134.

**Subpart A—Instituting an Appeal**

**§ 2424.1 Conditions governing review.**

The Authority will consider a negotiability issue under the conditions prescribed by 5 U.S.C. 7117 (b) and (c), namely: If an agency involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter proposed to be bargained because, as proposed, the matter is inconsistent with law, rule or regulation, the exclusive representative may appeal the allegation to the Authority when—

(a) It disagrees with the agency's allegation that the matter as proposed to be bargained, is inconsistent with any Federal law or any Government-wide rule or regulation; or

(b) It believes, with regard to any agency rule or regulation asserted by the agency as a bar to negotiations on the matter, as proposed, that:

(1) The rule or regulation violates applicable law, or rule or regulation of appropriate authority outside the agency;

(2) The rule or regulation was not issued by the agency or by any primary national subdivision of the agency, or otherwise is not applicable to bar negotiations with the exclusive representative, under 5 U.S.C. 7117(a)(3); or

(3) No compelling need exists for the rule or regulation to bar negotiations on the matter, as proposed, because the rule or regulation does not meet the criteria established in subpart B of this part.

**§ 2424.2 Who may file a petition.**

A petition for review of a negotiability issue may be filed by an exclusive representative which is a party to the negotiations.

**§ 2424.3 Time limits for filing.**

The time limit for filing a petition for review is fifteen (15) days after the date the agency's allegation that the duty to bargain in good faith does not extend to the matter proposed to be bargained is served on the exclusive representative. The exclusive representative shall request such allegation in writing and the agency shall make the allegation in writing and serve a copy on the exclusive representative: *Provided, however*, That review of a negotiability issue may be requested by an exclusive representative under this subpart without a prior written allegation by the agency if the agency has not served such allegation upon the exclusive representative within five (5) days after the date of the receipt by any agency bargaining representative at the negotiations of a written request for such allegation.

**§ 2424.4 Content of petition; service.**

(a) A petition for review shall be dated and shall contain the following:

(1) A statement setting forth the matter proposed to be negotiated as submitted to the agency; and

(2) A copy of all pertinent material, including the agency's allegation in writing that the matter, as proposed, is not within the duty to bargain in good faith, and other relevant documentary material.

(b) A copy of the petition shall be served on the agency head and on the principal agency bargaining representative at the negotiations.

**§ 2424.5 Position of the agency; time limits for filing; service.**

(a) Within thirty (30) days after the date of the receipt by the head of an agency of a copy of a petition for review of a negotiability issue the agency shall file a statement—

(1) Withdrawing the allegation that the duty to bargain in good faith does not extend to the matter proposed to be negotiated; or

(2) Setting forth in full its position on any matters relevant to the petition which it wishes the Authority to consider in reaching its decision, including a full and detailed statement of its reasons supporting the allegation. The statement shall cite the section of any law, rule or regulation relied upon as a basis for the allegation and shall contain a copy of any internal agency rule or regulation so relied upon.

(b) A copy of the agency's statement of position shall be served on the exclusive representative.

**§ 2424.6 Response of the exclusive representative; time limits for filing; service.**

(a) Within fifteen (15) days after the date of the receipt by an exclusive representative of a copy of an agency's statement of position the exclusive representative shall file a full and detailed response stating its position and reasons for:

(1) Disagreeing with the agency's allegation that the matter, as proposed to be negotiated, is inconsistent with any Federal law or Government-wide rule or regulations; or

(2) Believing that the agency's rules or regulations violate applicable law, or rule or regulation of appropriate authority outside the agency; that the rules or regulations were not issued by the agency or by any primary national subdivision of the agency, or otherwise are not applicable to bar negotiations under 5 U.S.C. 7117(a)(3); or that no compelling need exists for the rules or regulations to bar negotiations.

(b) The response shall cite the particular section of any law, rule or regulation believed to be violated by the agency's rules or regulations; or shall explain the grounds for contending the agency rules or regulations are not applicable to bar negotiations under 5 U.S.C. 7117(a)(3), or fail to meet the criteria established in subpart B of this part or were not issued at the agency headquarters level or at the level of a primary national subdivision.

(c) A copy of the response of the exclusive representative shall be served on the agency head and on the agency's representative of record in the proceeding before the Authority.

**§ 2424.7 Hearing.**

A hearing may be held, in the discretion of the Authority, before a determination is made under 5 U.S.C. 7117(b) or (c). If a hearing is held, it shall

be expedited to the extent practicable and shall not include the General Counsel as a party.

**§ 2424.8 Authority decision.**

Subject to the requirements of this subpart the Authority shall expedite proceedings under this part to the extent practicable and shall issue to the exclusive representative and to the agency a written decision on the allegation and specific reasons therefor at the earliest practicable date.

**Subpart B—Criteria for Determining Compelling Need for Agency Rules and Regulations**

**§ 2424.11 Illustrative criteria.**

A compelling need exists for an agency rule or regulation concerning any condition of employment when the rule or regulation meets one or more of the following illustrative criteria:

(a) The rule or regulation is essential, as distinguished from helpful or desirable, to the accomplishment of the mission of the agency or primary national subdivision;

(b) The rule or regulation is essential, as distinguished from helpful or desirable, to the management of the agency or the primary national subdivision;

(c) The rule or regulation is necessary to insure the maintenance of basic merit principles;

(d) The rule or regulation implements a mandate to the agency or primary national subdivision under law or other outside authority, which implementation is essentially nondiscretionary in nature; or

(e) The rule or regulation establishes uniformity for all or a substantial segment of the employees of the agency or primary national subdivision where this is essential to the effectuation of the public interest.

**PART 2425—REVIEW OF ARBITRATION AWARDS**

**Sec.**

2425.1 Who may file an exception; time limits for filing; opposition; service.

2425.2 Content of exception.

2425.3 Grounds for review.

2425.4 Authority decision.

Authority: 5 U.S.C. 7134.

**§ 2425.1 Who may file an exception; time limits for filing; opposition; service.**

(a) Either party to arbitration under the provisions of chapter 71 of title 5 of the United States Code may file an exception to an arbitrator's award rendered pursuant to the arbitration.

(b) The time limit for filing an exception to an arbitration award is

thirty (30) days beginning on the date of the award.

(c) An opposition to the exception may be filed by a party within thirty (30) days after the date of service of the exception.

(d) A copy of the exception and any opposition shall be served on the other party.

**§ 2425.2 Content of exception.**

An exception must be a dated, self-contained document which sets forth in full:

(a) A statement of the grounds on which review is requested;

(b) Evidence or rulings bearing on the issues before the Authority;

(c) Arguments in support of the stated grounds, together with specific reference to the pertinent documents and citations of authorities; and

(d) A legible copy of the award of the arbitrator and legible copies of other pertinent documents.

**§ 2425.3 Grounds for review.**

(a) The Authority will review an arbitrator's award to which an exception has been filed to determine if the award is deficient—

(1) because it is contrary to any law, rule or regulation; or

(2) on other grounds similar to those applied by Federal courts in private sector labor-management relations.

(b) The Authority will not consider an exception with respect to an award relating to:

(1) An action based on unacceptable performance covered under 5 U.S.C. 4303;

(2) A removal, suspension for more than fourteen (14) days, reduction in grade, reduction in pay, or furlough of thirty (30) days or less covered under 5 U.S.C. 7512; or

(3) Matters similar to those covered under 5 U.S.C. 4303 and 5 U.S.C. 7512 which arise under other personnel systems.

**§ 2425.4 Authority decision.**

The Authority shall issue its decision and order taking such action and making such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

**PART 2426—NATIONAL CONSULTATION RIGHTS AND CONSULTATION RIGHTS ON GOVERNMENT-WIDE RULES OR REGULATIONS**

**Subpart A—National Consultation Rights**

**Sec.**

2426.1 Requesting; granting; criteria.

Sec.

2426.2 Requests; petition and procedures for determination of eligibility for national consultation rights.

2426.3 Obligation to consult.

**Subpart B—Consultation Rights on Government-wide Rules or Regulations**

2426.11 Requesting; granting; criteria.

2426.12 Requests; petition and procedures for determination of eligibility for consultation rights on Government-wide rules or regulations.

2426.13 Obligation to consult.

Authority: 5 U.S.C. 7134

**Subpart A—National Consultation Rights**

§ 2461.1 Requesting; granting; criteria.

(a) An agency shall accord national consultation rights to a labor organization that:

(1) Requests national consultation rights at the agency level; and

(2) Holds exclusive recognition for either:

(i) Ten percent (10%) or more of the total number of civilian personnel employed by the agency and the non-appropriated fund Federal instrumentalities under its jurisdiction, excluding foreign nationals; or

(ii) 3,500 or more employees of the agency.

(b) An agency's primary national subdivision which has authority to formulate conditions of employment shall accord national consultation rights to a labor organization that:

(1) Requests national consultation rights at the primary national subdivision level; and

(2) Holds exclusive recognition for either:

(i) Ten percent (10%) or more of the total number of civilian personnel employed by the primary national subdivision and the non-appropriated fund Federal instrumentalities under its jurisdiction, excluding foreign nationals; or

(ii) 3,500 or more employees of the primary national subdivision.

(c) In determining whether a labor organization meets the requirements as prescribed in paragraphs (a)(2) and (b)(2) of this section, the following will not be counted:

(1) At the agency level, employees represented by the labor organization under national exclusive recognition granted at the agency level.

(2) At the primary national subdivision level, employees represented by the labor organization under national exclusive recognition granted at the agency level or at that primary national subdivision level.

(d) An agency or a primary national subdivision of an agency shall not grant national consultation rights to any labor organization that does not meet the criteria prescribed in paragraphs (a), (b) and (c) of this section.

§ 2426.2 Requests; petition and procedures for determination of eligibility for national consultation rights.

(a) Requests of labor organizations for national consultation rights shall be submitted to the headquarters of the agency or the agency's primary national subdivision, as appropriate.

(b) Issues relating to a labor organization's eligibility for, or continuation of, national consultation rights shall be referred to the Authority for determination as follows:

(1) A petition for determination of the eligibility of a labor organization for national consultation rights under criteria set forth in § 2426.1 may be filed by a labor organization.

(2) A petition for determination of eligibility for national consultation rights shall be submitted on a form prescribed by the Authority and shall set forth the following information:

(i) Name and affiliation, if any, of the petitioner and its address and telephone number;

(ii) A statement that the petitioner has submitted to the agency or the primary national subdivision and to the Assistant Secretary a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives;

(iii) A declaration by the person signing the petition, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of such person's knowledge and belief;

(iv) The signature of the petitioner's representative, including such person's title and telephone number;

(v) The name, address, and telephone number of the agency or primary national subdivision in which the petitioner seeks to obtain or retain national consultation rights, and the persons to contact and their titles, if known;

(vi) A showing that petitioner holds adequate exclusive recognition as required by § 2426.1; and

(vii) A statement as appropriate:

(A) That such showing has been made to and rejected by the agency or primary national subdivision, together with a statement of the reasons for rejection, if any, offered by that agency or primary national subdivision; or

(B) That the agency or primary national subdivision has served notice

of its intent to terminate existing national consultation rights, together with a statement of the reasons for termination.

(3) The following regulations govern petitions filed under this section:

(i) A petition for determination of eligibility for national consultation rights shall be filed with the Regional Director for the region wherein the headquarters of the agency or the agency's primary national subdivision is located.

(ii) An original and four (4) copies of a petition shall be filed, together with a statement of any other relevant facts and of all correspondence.

(iii) Copies of the petition together with the attachments referred to in paragraph (b)(3)(ii) of this section shall be served by the petitioner on all known interested parties, and a written statement of such service shall be filed with the Regional Director.

(iv) A petition shall be filed within thirty (30) days after the service of written notice by the agency or primary national subdivision of either its refusal to accord national consultation rights pursuant to a request under § 2426.2 or its intention to terminate existing national consultation rights.

(v) If an agency or primary national subdivision wishes to terminate national consultation rights, notice of its intention to do so shall include a statement of its reasons and shall be served not less than thirty (30) days prior to the intended termination date. A labor organization, after receiving such notice, may file a petition within the time period prescribed herein, and thereby cause to be stayed further action by the agency or primary national subdivision pending disposition of the petition. If no petition has been filed within the provided time period, an agency or primary national subdivision may terminate national consultation rights.

(vi) Within fifteen (15) days after the receipt of a copy of the petition, the agency or primary national subdivision shall file a response thereto with the Regional Director raising any matter which is relevant to the petition.

(vii) The Regional Director shall make such investigation as the Regional Director deems necessary and thereafter shall issue and serve on the parties a report and findings with respect to the eligibility for national consultation rights. A party may obtain a review of such report and findings pursuant to § 2422.6(d) of this subchapter: *Provided, however, That a determination by the Regional Director to issue a notice of hearing shall not be subject to review by*

the Authority. The Regional Director, if appropriate, may cause a notice of hearing to be issued to all interested parties where substantial factual issues exist warranting a hearing. Hearings shall be conducted and decisions issued by Administrative Law Judges and exceptions and related submissions filed with the Authority in accordance with §§ 2423.13 through 2423.27 of this subchapter excluding § 2423.17, with the following exceptions:

(A) The Administrative Law Judge may not make conclusions as to remedial action to be taken or notices to be posted as provided under § 2423.25(a), and

(B) Reference to "charge, complaint" in § 2423.25(b) shall be read as "petition, notice of hearing," respectively. After considering the Administrative Law Judge's decision, the record and any exceptions and related submissions filed by the parties, the Authority shall issue its decision and order as provided under § 2423.28(a) of this subchapter.

#### § 2426.3. Obligation to consult.

(a) When a labor organization has been accorded national consultation rights, the agency or the primary national subdivision which has granted those rights shall, through appropriate officials, furnish designated representatives of the labor organization:

(1) Reasonable notice of any proposed substantive change in conditions of employment; and

(2) Reasonable time to present its views or recommendations regarding the change.

(b) If a labor organization presents any views and recommendations regarding any proposed substantive change in conditions of employment to an agency or a primary national subdivision, that agency or primary national subdivision shall:

(1) Consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(2) Provide the labor organization a written statement of the reasons for taking the final action.

(c) Nothing in this subpart shall be construed to limit the right of any agency or exclusive representative to engage in collective bargaining.

#### Subpart B—Consultation Rights on Government-wide Rules or Regulations

##### § 2426.11 Requesting; granting; criteria.

(a) An agency shall accord consultation rights on Government-wide rules or regulations to a labor organization that:

(1) Requests consultation rights on Government-wide rules or regulations from an agency; and

(2) Holds exclusive recognition for 3,500 or more employees.

(b) An agency shall not grant consultation rights on Government-wide rules or regulations to any labor organization that does not meet the criteria prescribed in paragraph (a) of this section.

##### § 2426.12 Request; petition and procedures for determination of eligibility for consultation rights on Government-wide rules or regulations.

(a) Requests of labor organizations for consultation rights on Government-wide rules or regulations shall be submitted to the headquarters of the agency.

(b) Issues relating to a labor organization's eligibility for, or continuation of, consultation rights on Government-wide rules or regulations shall be referred to the Authority for determination as follows:

(1) A petition for determination of the eligibility of a labor organization for consultation rights under criteria set forth in § 2426.11 may be filed by a labor organization.

(2) A petition for determination of eligibility for consultation rights shall be submitted on a form prescribed by the Authority and shall set forth the following information:

(i) Name and affiliation, if any, of the petitioner and its address and telephone number;

(ii) A statement that the petitioner has submitted to the agency and to the Assistant Secretary a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives;

(iii) A declaration by the person signing the petition, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of such person's knowledge and belief;

(iv) The signature of the petitioner's representative, including such person's title and telephone number.

(v) The name, address, and telephone number of the agency in which the petitioner seeks to obtain or retain consultation rights on Government-wide

rules or regulations, and the persons to contact and their titles, if known;

(vi) A showing that petitioner meets the criteria as required by § 2426.11; and

(vii) A statement, as appropriate:

(A) That such showing has been made to and rejected by the agency, together with a statement of the reasons for rejection, if any, offered by that agency; or

(B) That the agency has served notice of its intent to terminate existing consultation rights on Government-wide rules or regulations, together with a statement of the reasons for termination.

(3) The following regulations govern petitions filed under this section:

(i) A petition for determination of eligibility for consultation rights on Government-wide rules or regulations shall be filed with the Regional Director for the region wherein the headquarters of the agency is located.

(ii) An original and four (4) copies of a petition shall be filed, together with a statement of any other relevant facts and of all correspondence.

(iii) Copies of the petition together with the attachments referred to in paragraph (b)(3)(ii) of this section shall be served by the petitioner on the agency, and a written statement of such service shall be filed with the Regional Director.

(iv) A petition shall be filed within thirty (30) days after the service of written notice by the agency of either its refusal to accord consultation rights on Government-wide rules or regulations pursuant to a request under § 2426.12 or its intention to terminate such existing consultation rights.

(v) If an agency wishes to terminate consultation rights on Government-wide rules or regulations, notice of its intention to do so shall be served not less than thirty (30) days prior to the intended termination date. A labor organization, after receiving such notice, may file a petition within the time period prescribed herein, and thereby cause to be stayed further action by the agency pending disposition of the petition. If no petition has been filed within the provided time period, an agency may terminate such consultation rights.

(vi) Within fifteen (15) days after the receipt of a copy of the petition, the agency shall file a response thereto with the Regional Director raising any matter which is relevant to the petition.

(vii) The Regional Director shall make such investigation as the Regional Director deems necessary and thereafter shall issue and serve on the parties a report and findings with respect to the eligibility for consultation rights. A party

may obtain a review of such report and findings pursuant to § 2422.6(d) of this subchapter: *Provided, however*. That a determination by the Regional Director to issue a notice of hearing shall not be subject to review by the Authority. The Regional Director, if appropriate, may cause a notice of hearing to be issued where substantial factual issues exist warranting a hearing. Hearings shall be conducted and decisions issued by Administrative Law Judges and exceptions and related submissions filed with the Authority in accordance with §§ 2423.13 through 2423.27 of this subchapter, excluding § 2423.17 with the following exceptions:

(A) The Administrative Law Judge may not make conclusions as to remedial action to be taken or notices to be posted as provides under § 2424.25(a); and

(B) Reference to "charge, complaint" in § 2423.25(b) shall be read as "petition, notice of hearing," respectively. After considering the Administrative Law Judge's decision, the record and any exceptions and related submissions filed by the parties, the Authority shall issue its decision and order as provided under § 2423.28(a) of this subchapter.

#### § 2426.13 Obligation to consult.

(a) When a labor organization has been accorded consultation rights on Government-wide rules or regulations, the agency which has granted those rights shall, through appropriate officials, furnish designated representatives of the labor organization:

(1) Reasonable notice of any proposed Government-wide rule or regulation issued by the agency affecting any substantive change in any condition of employment; and

(2) Reasonable time to present its views and recommendations regarding the change.

(b) If a labor organization presents any views or recommendations regarding any proposed substantive change in any condition of employment to an agency, that agency shall:

(1) Consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(2) Provide the labor organization a written statement of the reasons for taking the final action.

### PART 2427—GENERAL STATEMENTS OF POLICY OR GUIDANCE

Sec.  
2427.1 Scope.

Sec.  
2427.2 Requests for general statements of policy or guidance.

2427.3 Content of request.

2427.4 Submissions from interested parties.

2427.5 Standards governing issuance of general statements of policy and guidance.

Authority. 5 U.S.C. 7134.

#### § 2427.1 Scope.

This part sets forth procedures under which requests may be submitted to the Authority seeking the issuance of general statements of policy or guidance under 5 U.S.C. 7105(a)(1).

§ 2427.2 Requests for general statements of policy or guidance.

(a) The head of an agency (or designee), the national president of a labor organization (or designee), or the president of a labor organization not affiliated with a national organization (or designee) may separately or jointly ask the Authority for a general statement of policy or guidance. The head of any lawful association not qualified as a labor organization may also ask the Authority for such a statement provided the request is not in conflict with the provisions of chapter 71 of title 5 of the United States Code or other law.

(b) The Authority will not ordinarily consider a request related to any matter pending before the Authority, General Counsel, Panel or Assistant Secretary.

#### § 2427.3 Content of request.

(a) A request for a general statement of policy or guidance shall be in writing and must contain:

(1) A concise statement of the question with respect to which a general statement of policy or guidance is requested together with background information necessary to an understanding of the question;

(2) A statement of the standards under § 2427.5 upon which the request is based;

(3) A full and detailed statement of the position or positions of the requesting party or parties;

(4) Identification of any cases or other proceedings known to bear on the question which are pending under chapter 71 of title 5 of the United States Code; and

(5) Identification of other known interested parties.

(b) A copy of each document also shall be served on all known interested parties, including the General Counsel, the Panel, the Federal Mediation and Conciliation Service, and the Assistant Secretary, where appropriate.

§ 2427.4 Submissions from interested parties.

Prior to issuance of a general statement of policy or guidance the Authority, as it deems appropriate, will afford an opportunity to interested parties to express their views orally or in writing.

§ 2427.5 Standards governing issuance of general statements of policy and guidance.

In deciding whether to issue a general statement of policy or guidance, the Authority shall consider:

(a) Whether the question presented can more appropriately be resolved by other means;

(b) Where other means are available, whether an Authority statement would prevent the proliferation of cases involving the same or similar question;

(c) Whether the resolution of the question presented would have general applicability to the overall program;

(d) Whether the question currently confronts parties in the context of a labor-management relationship;

(e) Whether the question is presented jointly by the parties involved; and

(f) Whether the issuance by the Authority of a general statement of policy or guidance on the question would promote constructive and cooperative labor-management relationships in the Federal service and would otherwise promote the purposes of the Federal Service Labor-Management Relations program.

### PART 2428—ENFORCEMENT OF ASSISTANT SECRETARY STANDARDS OF CONDUCT; DECISIONS AND ORDERS

Sec.  
2428.1 Scope.  
2428.2 Petitions for enforcement.  
2428.3 Authority decision.

Authority. 5 U.S.C. 7134.

#### § 2428.1 Scope.

This part sets forth procedures under which the Authority, pursuant to 5 U.S.C. 7105(a)(2)(I), will enforce decisions and orders of the Assistant Secretary in standards of conduct matters arising under 5 U.S.C. 7120.

#### § 2428.2 Petitions for enforcement.

(a) The Assistant Secretary may petition the Authority to enforce any Assistant Secretary decision and order in a standards of conduct case arising under 5 U.S.C. 7120. The Assistant Secretary shall transfer to the Authority the record in the case, including a copy of the transcript if any, exhibits, briefs, and other documents filed with the Assistant Secretary. A copy of the

petition for enforcement shall be served on the labor organization against which such order applies.

(b) An opposition to Authority enforcement of any such Assistant Secretary decision and order may be filed by the labor organization against which such order applies twenty (20) days from the date of service of the petition, unless the Authority, upon good cause shown by the Assistant Secretary, sets a shorter time for filing such opposition. A copy of the opposition to enforcement shall be served on the Assistant Secretary.

#### § 2428.3 Authority decision.

(a) A decision and order of the Assistant Secretary shall be enforced unless it is arbitrary and capricious or based upon manifest disregard of the law.

(b) The Authority shall issue its decision on the case enforcing, enforcing as modified, refusing to enforce, or remanding the decision and order of the Assistant Secretary.

### PART 2429—MISCELLANEOUS AND GENERAL REQUIREMENTS

#### Subpart A—Miscellaneous

##### Sec.

- 2429.1 Transfer of cases to the Authority.
- 2429.2 Transfer and consolidation of cases.
- 2429.3 Transfer of record.
- 2429.4 Referral of policy questions to the Authority.
- 2429.5 Matters not previously presented; official notice.
- 2429.6 Oral argument.
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- 2429.9 Amicus curiae.
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- 2429.11 Interlocutory appeals.
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#### Subpart B—General Requirements

- 2429.21 Computation of time for filing papers.
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  - 2429.27 Service; statement of service.
  - 2429.28 Petitions for amendment of regulations.
- Authority. 5 U.S.C. 7134.

#### Subpart A—Miscellaneous

##### § 2429.1 Transfer of cases to the Authority.

(a) In any case under Parts 2422 and 2423 of this subchapter, after the filing of a petition or issuance of a complaint, in which the Regional Director determines that no material issue of fact exists, the Regional Director may transfer the case to the Authority. The Authority shall decide the case on the basis of the papers alone after having allowed ten (10) days for the filing of briefs and/or requests for review of the Regional Director's action. The Authority may remand the case to the Regional Director if it determines that material questions of fact exist. Orders of transfer and remand shall be served on all parties.

(b) In any case under Parts 2422 and 2423 of this subchapter in which it appears to the Regional Director that the proceedings raise questions which should be decided by the Authority, the Regional Director may, at any time, issue an order transferring the case to the Authority for decision or other appropriate action. Such an order shall be served on the parties.

##### § 2429.2 Transfer and consolidation of cases.

In any matter arising pursuant to Parts 2422 and 2423 of this subchapter, whenever it appears necessary in order to effectuate the purposes of the Federal Service Labor-Management Relations program or to avoid unnecessary costs or delay, Regional Directors may consolidate cases within their own region or may transfer such cases to any other region, for the purpose of investigation or consolidation with any proceedings which may have been instituted in, or transferred to, such region.

##### § 2429.3 Transfer of record.

In any case under Part 2425 of this subchapter, upon request by the Authority, the parties jointly shall transfer the record in the case, including a copy of the transcript, if any, exhibits, briefs and other documents filed with the arbitrator, to the Authority.

##### § 2429.4 Referral of policy questions to the Authority.

Notwithstanding the procedures set forth in this subchapter, the General Counsel, the Assistant Secretary, or the Panel may refer for review and decision or general ruling by the authority any case involving a major policy issue that arises in a proceeding before any of them. Any such referral shall be in writing and a copy of such referral shall

be served on all parties to the proceeding. Before decision or general ruling, the Authority shall obtain the views of the parties and other interested persons, orally or in writing, as it deems necessary and appropriate.

##### § 2429.5 Matters not previously presented; official notice.

The Authority will not consider evidence offered by a party, or any issue, which was not presented in the proceedings before the Regional Director, Hearing Officer, Administrative Law Judge, or arbitrator. The Authority may, however, take official notice of such matters as would be proper.

##### § 2429.6 Oral argument.

The Authority or the General Counsel, in their discretion, may request or permit oral argument in any matter arising under this subchapter under such circumstances and conditions as they deem appropriate.

##### § 2429.7 Subpenas.

(a) Any member of the Authority, the General Counsel, any Administrative Law Judge appointed by the Authority under 5 U.S.C. 3105, and any Regional Director, Hearing Officer, or other employee of the Authority designated by the Authority may issue subpenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence. However, no subpoena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel, or training within an agency or between an agency and the Office of Personnel Management.

(b) Where the parties are in agreement that the appearance of witnesses or the production of documents is necessary, and such witnesses agree to appear, no such subpoena need be sought.

(c) A party's request for a subpoena shall be in writing and filed with the Regional Director, in proceedings arising under Parts 2422 and 2423 of this subchapter, or filed with the Authority, in proceedings arising under Parts 2424 and 2425 of this subchapter, not less than fifteen (15) days prior to the opening of a hearing, or with the appropriate presiding official(s) during the hearing.

(d) All requests shall name and identify the witnesses or documents sought, and state the reasons therefor. The Authority, General Counsel, Administrative Law Judge, Regional Director, Hearing Officer, or any other

employee of the Authority designated by the Authority, as appropriate, shall grant the request upon the determination that the testimony or documents appear to be necessary to the matters under investigation and the request describes with sufficient particularity the documents sought. Service of an approved subpoena is the responsibility of the requesting party, the subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

(e) Any person served with a subpoena who does not intend to comply, shall, within five (5) days after the date of service of the subpoena upon such person, petition in writing to revoke the subpoena. A copy of any petition to revoke a subpoena shall be served on the party at whose request the subpoena was issued. Such petition to revoke, if made prior to the hearing, and a written statement of service, shall be filed with the Regional Director, who may refer the petition to the Authority, General Counsel, Administrative Law Judge, Hearing Officer, or any other employee of the Authority designated by the Authority, as appropriate, for ruling. A petition to revoke a subpoena filed during the hearing, and a written statement of service, shall be filed with the appropriate presiding official(s). The Regional Director, or the appropriate presiding official(s) will, as a matter of course, cause a copy of the petition to revoke to be served on the party at whose request the subpoena was issued, but shall not be deemed to assume responsibility for such service. The Authority, General Counsel, Administrative Law Judge, Regional Director, Hearing Officer, or any other employee of the Authority designated by the Authority, as appropriate, shall revoke the subpoena if the evidence the production of which is required does not relate to any matter under investigation or in question in the proceedings, or the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. The Authority, General Counsel, Administrative Law Judge, Regional Director, Hearing Officer, or any other employee of the Authority designated by the Authority, as appropriate, shall make a simple statement of procedural or other ground for the ruling on the petition to revoke. The petition to revoke, any answer thereto, and any ruling thereon shall not become part of the official record except upon the request of the party aggrieved by the ruling.

(f) Upon the failure of any person to comply with a subpoena issued, upon the request of any party to the proceeding, the General Counsel shall, on behalf of such party, institute proceedings in the appropriate district court for the enforcement thereof, unless, in the judgment of the General Counsel, the enforcement of such subpoena would be inconsistent with law and the policies of the Federal Service Labor-Management Relations program. The General Counsel shall not be deemed thereby to have assumed responsibility for the effective prosecution of the same before the court thereafter.

#### § 2429.8 Stay of arbitration award; requests.

(a) A request for a stay shall be entertained only in conjunction with and as a part of an exception to an arbitrator's award filed under Part 2425. The filing of an exception shall not itself operate as a stay of the award involved in the proceedings.

(b) A timely request for a stay of an arbitrator's award to which an exception has been filed shall operate as a temporary stay of the award. Such temporary stay shall be deemed effective from the date of the award and shall remain in effect until the Authority issues its decision and order on the exception, or otherwise acts with respect to the request for the stay.

(c) A request for a stay of an arbitrator's award will be granted only where it appears, based upon the facts and circumstances presented, that:

- (1) There is a strong likelihood of success on the merits of the appeal; and
- (2) A careful balancing of all the equities, including the public interest, warrants issuance of a stay.

#### § 2429.9 Amicus curiae.

Upon petition of an interested person, a copy of which petition shall be served on the parties, and as the Authority deems appropriate, the Authority may grant permission for the presentation of written and/or oral argument at any stage of the proceedings by an amicus curiae and the parties shall be notified of such action by the Authority.

#### § 2429.10 Advisory opinions.

The Authority and the General Counsel will not issue advisory opinions.

#### § 2429.11 Interlocutory appeals.

The Authority and the General Counsel will not ordinarily consider interlocutory appeals.

#### § 2429.12 Service of process and papers by the Authority.

(a) *Methods of service.* Notices of hearings, reports and findings, decisions of Administrative Law Judges, complaints, written rulings on motions, decisions and orders, and all other papers required by this subchapter to be issued by the Authority, the General Counsel, Regional Directors, Hearing Officers and Administrative Law Judges, shall be served personally or by certified mail or by telegraph.

(b) *Upon whom served.* All papers required to be served under paragraph (a) of this section shall be served upon all counsel of record or other designated representative(s) of parties, and upon parties not so represented. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party.

(c) *Proof of service.* Proof of service shall be the verified return by the individual serving the papers setting forth the manner of such service, the return post office receipt, or the return telegraph receipt. When service is by mail, the date of service shall be the day when the matter served is deposited in the United States mail.

#### § 2429.13 Official time.

If the participation of any employee in any phase of any proceeding before the Authority, including the investigation of unfair labor practice charges and representation petitions and the participation in hearings and representation elections, is deemed necessary by the Authority, such employee shall be granted official time for such participation including necessary travel time as occurs during the employee's regular work hours and when the employee would otherwise be in a work or paid leave status. In addition, necessary transportation and per diem expenses shall be paid by the employing activity or agency.

#### § 2429.14 Witness fees.

(a) Witnesses (whether appearing voluntarily, or under a subpoena) shall be paid the fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States: *Provided*, That any witness who is employed by the Federal Government shall not be entitled to receive witness fees in addition to compensation received pursuant to § 2429.13.

(b) Witness fees and mileage allowances shall be paid by the party at whose instance the witnesses appear, except when the witness receives compensation pursuant to § 2429.13.

**§ 2429.15 General remedial authority.**

The Authority shall take any actions which are necessary and appropriate to administer effectively the provisions of chapter 71 of title 5 of the United States Code.

**Subpart B—General Requirements****§ 2429.21 Computation of time for filing papers.**

In computing any period of time prescribed by or allowed by this subchapter, except in agreement bar situations described in § 2422.3 (c) and (d) of this subchapter, and except as to the filing of exceptions to an arbitrator's award under § 2425.1 of this subchapter, the day of the act, event, or default from or after which the designated period of time begins to run, shall not be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or a Federal legal holiday in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or a Federal legal holiday: *Provided, however,* in agreement bar situations described in § 2422.3 (c) and (d), if the sixtieth (60th) day prior to the expiration date of an agreement falls on Saturday, Sunday or a Federal legal holiday, a petition, to be timely, must be received by the close of business of the last official workday preceding the sixtieth (60th) day. When the period of time prescribed or allowed is seven (7) days or less, intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computations. When this subchapter requires the filing of any paper, such document must be received by the Authority or the officer or agent designated to receive such matter before the close of business of the last day of the time limit, if any, for such filing or extension of time that may have been granted.

**§ 2429.22 Additional time after service by mail.**

Whenever a party has the right or is required to do some act pursuant to this subchapter within a prescribed period after service of a notice or other paper upon such party, and the notice or paper is served on such party by mail, five (5) days shall be added to the prescribed period: *Provided, however,* That five (5) days shall not be added to the period for filing a petition for review of a negotiability issue as provided in § 2424.3 of this subchapter, or in any instance where an extension of time has been granted.

**§ 2429.23 Extension, waiver.**

(a) Except as provided in subsection (d) of this section, the Authority or General Counsel, or their designated representatives, as appropriate, may extend any time limit provided in this subchapter for good cause shown, and shall notify the parties of any such extension. Requests for extensions of time shall be filed in writing no later than three (3) days before the established time limit for filing, shall state the position of the other parties on the request for extension, and shall be served on the other parties.

(b) Except as provided in subsection (d) of this section, the Authority or General Counsel, or their designated representatives, as appropriate, may waive any expired time limit in this subchapter in extraordinary circumstances. Request for a waiver of time limits shall state the position of the other parties and shall be served on the other parties.

(c) The time limits established in this subchapter may not be extended or waived in any manner other than that described in this subchapter.

(d) Time limits established in chapter 71 of title 5 of the United States Code, such as those in 5 U.S.C. 7117(c)(2), (3) and (4) and 7122(b), may not be extended or waived under this section.

**§ 2429.24 Place and method of filing; acknowledgment.**

(a) A document submitted to the Authority pursuant to this subchapter shall be filed with the Authority at the address set forth in the Appendix.

(b) A document submitted to the General Counsel pursuant to this subchapter shall be filed with the General Counsel at the address set forth in the Appendix.

(c) A document submitted to a Regional Director pursuant to this subchapter shall be filed with the appropriate regional office, as set forth in the Appendix.

(d) A document submitted to an Administrative Law Judge pursuant to this subchapter shall be filed with the appropriate Administrative Law Judge, as set forth in the Appendix.

(e) All documents filed pursuant to paragraphs (a), (b), (c) and (d) of this section shall be filed by certified mail or in person.

(f) All matters filed under paragraphs (a), (b), (c) and (d) of this section shall be printed, typed, or otherwise legibly duplicated; carbon copies of typewritten matter will be accepted if they are clearly legible.

(g) Documents in any proceedings under this subchapter, including

correspondence, shall show the title of the proceeding and the case number, if any.

(h) The original of each document required to be filed under this subchapter shall be signed by the party or by an attorney or representative of record for the party, or by an officer of the party, and shall contain the address and telephone number of the person signing it.

(i) A return postal receipt may serve as acknowledgment of receipt by the Authority, General Counsel, Administrative Law Judge, Regional Director, or Hearing Officer, as appropriate. The receiving officer will otherwise acknowledge receipt of documents filed only when the filing party so requests and includes an extra copy of the document or its transmittal letter which the receiving office will date stamp upon receipt and return. If return is to be made by mail, the filing party shall include a self-addressed, stamped envelope for the purpose.

**§ 2429.25 Number of copies.**

Unless otherwise provided by the Authority or the General Counsel, or their designated representatives, as appropriate, or under this subchapter, any document or paper filed with the Authority, General Counsel, Administrative Law Judge, regional Director, or Hearing Officer, as appropriate, under this subchapter, together with any enclosure filed therewith, shall be submitted in an original and three (3) copies.

**§ 2429.26 Other documents.**

(a) The Authority or the General Counsel, or their designated representatives, as appropriate, may in their discretion grant leave to file other documents as they deem appropriate.

(b) A copy of such other documents shall be served on the other parties.

**§ 2429.27 Service; statement of service.**

(a) Except as provided in § 2423.9(c), any party filing a document as provided in this subchapter is responsible for serving a copy upon all counsel of record or other designated representative(s) of parties, upon parties not so represented, and upon any interested person who has been granted permission by the Authority pursuant to § 2429.9 to present written and/or oral argument as amicus curiae. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party.

(b) Service shall be made by certified mail or in person. A return post office

receipt or other written receipt executed by the party or person served shall be proof of service.

(c) A signed and dated statement of service shall be submitted at the time of filing. The statement of service shall include the names of the parties and persons served, their addresses, the date of service, the nature of the document served, and the manner in which service was made.

(d) The date of service or date served shall be the day when the matter served is deposited in the U.S. mail or is delivered in person.

#### § 2429.28 Petitions for amendment of regulations.

Any interested person may petition the Authority or General Counsel in writing for amendments to any portion of these regulations. Such petition shall identify the portion of the regulations involved and provide the specific language of the proposed amendment together with a statement of grounds in support of such petition.

### SUBCHAPTER D—FEDERAL SERVICE IMPASSES PANEL

#### PART 2470—GENERAL

##### Subpart A—Purpose

Sec.  
2470.1 Purpose.

##### Subpart B—Definitions

2470.2 Definitions.  
Authority: 5 U.S.C. 7119, 7134.

##### Subpart A—Purpose

#### § 2470.1 Purpose.

The regulations contained in this subchapter are intended to implement the provisions of § 7119 of title 5 of the United States Code. They prescribe procedures and methods which the Federal Service Impasses Panel may utilize in the resolution of negotiation impasses when voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve the disputes.

##### Subpart B—Definitions

#### § 2470.2 Definitions.

(a) The terms "agency," "labor organization," and "conditions of employment" as used herein shall have the meanings set forth in 5 U.S.C. 7103(a).

(b) The term "Executive Director" means the Executive Director of the Panel.

(c) The terms "designated representative" or "designee" of the

Panel means a Panel member, a staff member, or other individual designated by the Panel to act on its behalf.

(d) The term "hearing" means a factfinding hearing, arbitration hearing, or any other hearing procedure deemed necessary to accomplish the purposes of 5 U.S.C. 7119.

(e) The term "impasse" means that point in the negotiation of conditions of employment at which the parties are unable to reach agreement, notwithstanding their efforts to do so by direct negotiations and by the use of mediation or other voluntary arrangements for settlement.

(f) The term "Panel" means the Federal Service Impasses Panel described in 5 U.S.C. 7119(c) or a quorum thereof.

(g) The term "party" means the agency or the labor organization participating in the negotiation of conditions of employment.

(h) The term "quorum" means three or more members of the Panel.

(i) The term "voluntary arrangements" means any method adopted by the parties for the purpose of assisting them in their resolution of a negotiation dispute which is not inconsistent with the provisions of 5 U.S.C. 7119.

#### PART 2471—PROCEDURES OF THE PANEL

Sec.

2471.1 Request for Panel consideration; request for Panel approval of binding arbitration.

2471.2 Request form.

2471.3 Content of request.

2471.4 Where to file.

2471.5 Copies and service.

2471.6 Investigation of request; Panel recommendation and assistance; approval of binding arbitration.

2471.7 Preliminary hearing procedures.

2471.8 Conduct of hearing and prehearing conference.

2471.9 Report and recommendations.

2471.10 Duties of each party following receipt of recommendations.

2471.11 Final action by the Panel.

2471.12 Inconsistent labor agreement provisions.

Authority: 5 U.S.C. 7119, 7134.

§ 2471.1 Request for Panel consideration; request for Panel approval of binding arbitration.

If voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve a negotiation impasse:

(a) Either party, or the parties jointly, may request the Panel to consider the matter by filing a request as hereinafter provided; or the Panel may, pursuant to 5 U.S.C. 7119(c)(1), undertake

consideration of the matter upon request of (i) the Federal Mediation and Conciliation Service, or (ii) the Executive Director; or

(b) The parties may jointly request the Panel to approve any procedure, which they have agreed to adopt, for binding arbitration of the negotiation impasse by filing a request as hereinafter provided.

#### § 2471.2 Request form.

A form has been prepared for use by the parties in filing a request with the Panel for consideration of an impasse or approval of a binding arbitration procedure. Copies are available from the Office of the Executive Director, Suite 209, 1730 K Street NW., Washington, D.C. 20006.

#### § 2471.3 Content of request.

(a) A request from a party or parties to the Panel for consideration of an impasse must be in writing and include the following information:

(1) Identification of the parties and individuals authorized to act on their behalf;

(2) Statement of issues at impasse and the summary positions of the initiating party or parties with respect to those issues; and

(3) The number, length, and dates of negotiation and mediation sessions held, including the nature and extent of all other voluntary arrangements utilized.

(b) A request for approval of a binding arbitration procedure must be in writing, jointly filed by the parties, and include the following information:

(1) Identification of the parties and individuals authorized to act on their behalf;

(2) Statement of issues at impasse;

(3) The number, length, and dates of negotiation and mediation sessions held, including the nature and extent of all other voluntary arrangements utilized;

(4) Statement of the issues to be submitted to the arbitrator;

(5) Statement that the proposals to be submitted to the arbitrator contain no questions concerning the duty to bargain; and

(6) Statement of the arbitration procedures to be used, including the type of arbitration, the method of selecting the arbitrator, and the arrangement for paying for the proceedings.

#### § 2471.4 Where to file.

Requests to the Panel provided for in this part, and inquiries or correspondence on the status of impasses or other related matters, should be directed to the Executive Director, Federal Service Impasses

Panel, Suite 209, 1730 K Street NW., Washington, D.C. 20006.

**§ 2471.5 Copies and service.**

Any party submitting a request for Panel consideration of an impasse or request for approval of a binding arbitration procedure and any party submitting a response to such requests shall file an original and one copy with the Panel, shall serve a copy promptly on the other party to the dispute and on any mediation service which may have been utilized, and shall file a statement of such service with the Executive Director. When the Panel acts on a request from the Federal Mediation and Conciliation Service or acts on a request from the Executive Director, it will notify the parties to the dispute and any mediation service which may have been utilized.

**§ 2471.6 Investigation of request; Panel recommendation and assistance; approval of binding arbitration.**

(a) Upon receipt of a request for consideration of an impasse, the Panel or its designee will promptly conduct an investigation, consulting when necessary with the parties and with any mediation service utilized. After due consideration, the Panel shall either:

(1) Decline to assert jurisdiction in the event that it finds that no impasse exists or that there is other good cause for not asserting jurisdiction, in whole or in part, and so advise the parties in writing, stating its reasons; or

(2) Recommend to the parties procedures, including but not limited to arbitration, for the resolution of the impasse and/or assist them in resolving the impasse through whatever methods and procedures the Panel considers appropriate which may include, but not be limited to, consultation, factfinding and recommendations.

(b) Upon receipt of a request for approval of a binding arbitration procedure, the Panel or its designee will promptly conduct an investigation, consulting when necessary with the parties and with any mediation service utilized. After due consideration, the Panel shall either approve or disapprove the request, and so advise the parties in writing, stating its reasons.

**§ 2471.7 Preliminary hearing procedures.**

When the Panel determines that a hearing is necessary under § 2471.6, it will:

(a) Appoint one or more of its designees to conduct such hearing; and

(b) Issue and serve upon each of the parties a notice of hearing and a notice of prehearing conference, if any. The

notice will state (i) the names of the parties to the dispute; (ii) the date, time, place, type, and purpose of the hearing; (iii) the date, time, place, and purpose of the prehearing conference, if any; (iv) the name of the designated representative appointed by the Panel; and (v) the issues to be resolved.

**§ 2471.8 Conduct of hearing and prehearing conference.**

(a) A designated representative of the Panel, when so appointed to conduct a hearing, shall have the authority on behalf of the Panel to:

(1) Administer oaths, take the testimony or deposition of any person under oath, receive other evidence, and issue subpoenas;

(2) Conduct the hearing in open or in closed session, at the discretion of the designated representative, for good cause shown;

(3) Rule on motions and requests for appearance of witnesses and the production of records;

(4) Designate the date on which posthearing briefs, if any, shall be submitted. (An original and one copy of each brief, accompanied by a statement of service, shall be submitted to the designated representative of the Panel with a copy to the other party.); and

(5) Determine all procedural matters concerning the hearing, including the length of sessions, conduct of persons in attendance, recesses, continuances, and adjournment; and take any other appropriate procedural action which, in the judgment of the designated representative, will promote the purpose and objectives of the hearings.

(b) A prehearing conference may be conducted by the designated representative of the Panel in order to:

(1) Inform the parties of the purpose of the hearing and the procedures under which it will take place;

(2) Explore the possibilities of obtaining stipulations of fact;

(3) Clarify the positions of the parties with respect to the issues to be heard; and

(4) Discuss any other relevant matters which will assist the parties in the resolution of the dispute.

(c) An official reporter shall make the only official transcript of a hearing. Copies of the official transcript may be examined and copied at the Office of the Executive Director in accordance with part 2411 of this chapter.

**§ 2471.9 Report and recommendations.**

(a) When a report is issued after a hearing conducted pursuant to §§ 2471.7 and 2471.8, it normally shall be in

writing and, when authorized by the Panel, shall contain recommendations.

(b) A report of the designated representative containing recommendations shall be submitted to the parties, with two copies to the Executive Director, within a period normally not to exceed 30 calendar days after receipt of the transcript or briefs, if any.

(c) A report of the designated representative not containing recommendations shall be submitted to the Panel with a copy to each party within a period normally not to exceed 30 calendar days after receipt of the transcript or briefs, if any. The Panel shall then take whatever action it may consider appropriate or necessary to resolve the impasse.

**§ 2471.10 Duties of each party following receipt of recommendations.**

(a) Within 30 calendar days after receipt of a report containing recommendations of the Panel or its designated representative, each party shall, after conferring with the other, either:

(1) Accept the recommendations and so notify the Executive Director; or

(2) Reach a settlement of all unresolved issues and submit a written settlement statement to the Executive Director; or

(3) Submit a written statement to the Executive Director setting forth the reasons for not accepting the recommendations and for not reaching a settlement of all unresolved issues.

(b) A reasonable extension of time may be authorized by the Executive Director for good cause shown when requested in writing by either party prior to the expiration of the time limits.

(c) All papers submitted to the Executive Director under this section shall be filed in duplicate, along with a statement of service showing that a copy has been served on the other party to the dispute.

**§ 2471.11 Final action by the Panel.**

(a) If the parties do not arrive at a settlement as a result of or during actions taken under §§ 2471.6(a)(2), 2471.7, 2471.8, 2471.9, and 2471.10, the Panel may take whatever action is necessary and not inconsistent with 5 U.S.C. chapter 71 to resolve the impasse, including but not limited to, methods and procedures which the Panel considers appropriate, such as directing the parties to accept a factfinder's recommendations, ordering binding arbitration conducted according to whatever procedure the Panel deems

suitable, and rendering a binding decision.

(b) In preparation for taking such final action, the Panel may hold hearings, administer oaths, take the testimony or deposition of any person under oath, and issue subpoenas as provided in 5 U.S.C. 7132, or it may appoint or designate one or more individuals pursuant to 5 U.S.C. 7119(c)(4) to exercise such authority on its behalf.

(c) When the exercise of authority under this section requires the holding of a hearing, the procedure contained in § 2471.8 shall apply.

(d) Notice of any final action of the Panel shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the agreement, unless they agree otherwise.

(e) Within 30 calendar days after receipt of such notice of final action by the Panel, each party shall send to the Executive Director of the Panel evidence of compliance with the decision.

(f) All papers submitted to the Executive Director under this section shall be filed in duplicate, along with a statement of service showing that a copy has been served on the other party to the dispute.

#### § 2471.12 Inconsistent labor agreement provisions.

Any provisions of the parties' labor agreements relating to impasse resolution which are inconsistent with the provisions of either 5 U.S.C. 7119 or the procedures of the Panel shall be deemed to be superseded, unless such provisions are permitted under 5 U.S.C. 7135.

Note.—The Federal Labor Relations Authority, the General Counsel of the Federal Labor Relations Authority and the Federal Service Impasses Panel have determined that this document does not require preparation of a Regulatory Analysis Statement as required under section 3 of Executive Order 12044.

Dated: July 25, 1979.

Ronald W. Haughton,  
Chairman.

Henry B. Frazier III,  
Member.

H. Stephan Gordon,  
Acting General Counsel.

Federal Labor Relations Authority.

Howard G. Gamser,  
Chairman.

Federal Service Impasses Panel

#### Appendix A—Authority, General Counsel, Chief Administrative Law Judge, Regional Directors and Panel

##### Temporary Addresses and Geographic Jurisdictions

(a) The Office address of the Authority is as follows: 1900 E Street, NW., Room 7469, Washington, D.C. 20424. Telephone: Office of Executive Director, FTS—832-3920. Commercial—(202) 632-3920. Office of Operations, FTS—254-7362. Commercial—(202) 254-7362.

(b) The Office address of the General Counsel is as follows: 1900 E Street, NW., Room 7469, Washington, D.C. 20424 or 200 Constitution Avenue, NW., Room N 5857, Washington, D.C. 20216. Telephone FTS—523-7262. Commercial—(202) 523-7262.

(c) The Office address of the Chief Administrative Law Judge is as follows: 1111 20th Street, NW., Suite 705, Washington, D.C. 20036. Telephone: FTS—653-5042. Commercial—(202) 653-5042.

(d) The office address of Regional Directors of the Authority, are as follows:

(1) *Boston Regional Office*, 441 Stuart Street, 8th Floor, Boston, MA 02116. Telephone: FTS—223-0920. Commercial—(617) 223-0920.

(2) *New York Regional Office*, Room 1751, 26 Federal Plaza, New York, NY 10007. Telephone: FTS—264-5640. Commercial—(212) 264-5640.

(3) *Washington Regional Office*, Room 416, Vanguard Building, 1111—20th Street, NW., P.O. Box 19257, Washington, D.C. 20036. Telephone: FTS—254-6581. Commercial—(202) 254-6581.

(4) *Atlanta Regional Office*, Suite 540, 1365 Peachtree Street, NE, Atlanta, GA 30309. Telephone: FTS—257-2324 or 257-2325. Commercial—(404) 881-2324 or 881-2325.

(5) *Chicago Regional Office*, Room 1638, Dirksen Federal Building, 219 South Dearborn Street, Chicago, IL 60604. Telephone: FTS—353-6306. Commercial—(312) 353-6306.

(6) *Dallas Regional Office*, Downtown Post Office Station, Bryan and Ervay Streets, P.O. Box 2640, Dallas, TX 75221. Telephone: FTS—729-4996. Commercial—(214) 767-4996.

(7) *Kansas City Regional Office*, City Center Square, 1100 Main Street, Suite 680, Kansas City, MO 64105. Telephone: FTS—758-2199. Commercial—(816) 374-2199.

(8) *Los Angeles Regional Office*, Room 4041, Federal building, 300 N. Los Angeles Street, Los Angeles, CA 90012. Telephone: FTS—798-3805. Commercial—(213) 688-3805.

(9) *San Francisco Regional Office*, 450 Golden Gate Avenue, Room 11408, P.O. Box 36016, San Francisco, CA 94102. Telephone: FTS—556-8105. Commercial—(415) 556-8105.

(e) The Office address of the Panel is as follows: 1730 K Street, NW., Suite 209, Washington, D.C. 20006. Telephone: FTS—653-7078. Commercial—(202) 653-7078.

(f) The geographic jurisdictions of the Regional Directors of the Authority, are as follows:

State or other locality	Regional office
Alabama	Atlanta
Alaska	San Francisco
Arizona	Los Angeles
Arkansas	Dallas
California	Los Angeles/San Francisco <sup>1</sup>
Colorado	Kansas City
Connecticut	Boston
Delaware	Washington, D.C.
District of Columbia	Washington, D.C.
Florida	Atlanta
Georgia	Atlanta
Hawaii and all land and water areas west of the continents of North and South America (except coastal islands) to long. 90°E.	Los Angeles
Idaho	San Francisco
Illinois	Chicago
Indiana	Chicago
Iowa	Kansas City
Kansas	Kansas City
Kentucky	Atlanta
Louisiana	Dallas
Maine	Boston
Maryland	Washington, D.C.
Massachusetts	Boston
Michigan	Chicago
Minnesota	Chicago
Mississippi	Atlanta
Missouri	Kansas City
Montana	Kansas City
Nebraska	Kansas City
Nevada	San Francisco
New Hampshire	Boston
New Jersey	New York
New Mexico	Dallas
New York	Boston/New York <sup>2</sup>
North Carolina	Atlanta
North Dakota	Kansas City
Ohio	Chicago
Oklahoma	Dallas
Oregon	San Francisco
Pennsylvania	Washington, D.C.
Puerto Rico	New York
Rhode Island	Boston
South Carolina	Atlanta
South Dakota	Kansas City
Tennessee	Atlanta
Texas	Dallas
Utah	Kansas City
Vermont	Boston
Virginia	Washington, D.C.
Washington	San Francisco
West Virginia	Washington, D.C.
Wisconsin	Chicago
Wyoming	Kansas City
Virgin Islands	New York
Canal Zone	New York
All land and water areas east of the continents of North and South America to long. 90°E, except the Virgin Islands, the Canal Zone, Puerto Rico and coastal islands.	Washington, D.C.

<sup>1</sup> San Francisco includes the following California counties: Monterey, Kings, Tulare, Inyo, and all counties north thereof. All counties in California south thereof are within the Los Angeles jurisdiction.

<sup>2</sup> New York includes the following counties: Ulster, Sullivan, Greene, Columbia and all counties south thereof. All counties in New York state north thereof are in the jurisdiction of Boston.

**Appendix B—Forms**

Forms of the Federal Labor Relations Authority and the Federal Service Impasses Panel should be used where prescribed in the interim rules and regulations. However, where such forms are not available, preexisting forms of the Assistant Secretary of Labor for Labor-Management Relations, in other than Standards of Conduct matters, and of the Panel shall be used by the Authority and the Panel respectively, in the processing of all matters by the Authority and the Panel under chapter XIV of title 5 of Code of Federal Regulations. The word "Authority" shall be substituted wherever the words "Assistant Secretary" appear in such forms; and wherever the forms refer to subordinate personnel of the Assistant Secretary, such reference shall be to equivalent subordinate personnel of the Authority.

[FR Doc. 79-23326 Filed 7-27-79; 8:45 am]

BILLING CODE 6325-19-M

## FEDERAL LABOR RELATIONS AUTHORITY

### Memorandum Describing the Authority and Assigned Responsibilities of the General Counsel

**ACTION:** Federal Labor Relations Authority memorandum describing the authority and assigned responsibilities of the General Counsel of the Federal Labor Relations Authority.

**SUMMARY:** This memorandum of the Federal Labor Relations Authority describes the statutory authority and sets forth the prescribed duties and authority of the General Counsel of the Federal Labor Relations Authority.

**EFFECTIVE DATE:** July 30, 1979.

**FOR FURTHER INFORMATION CONTACT:** Harold D. Kessler, Deputy Executive Director, Authority, (202) 632-3920. S. Jesse Reuben, Associate General Counsel, (202) 523-7262.

**SUPPLEMENTARY INFORMATION:** The Federal Labor Relations Authority and the General Counsel of the Federal Labor Relations Authority were established by Reorganization Plan No. 2 of 1978, effective January 1, 1979. Since January 11, 1979, the provisions of the Federal Service Labor-Management Relations Statute (92 Stat. 1191) have governed the operations of the Authority and its General Counsel. Pursuant to 5 U.S.C. 552(a)(1), the Authority hereby separately states and currently published in the Federal Register the following memorandum of the Authority describing the authority and assigned responsibilities of its General Counsel.

#### Memorandum

The statutory authority and responsibility of the General Counsel of the Federal Labor Relations Authority are stated in section 7104(f), subsections (1), (2) and (3), of the Federal Service Labor-Management Relations Statute as follows:

(1) The General Counsel of the Authority shall be appointed by the president, by and with the advice and consent of the Senate, for a term of 5 years. The General Counsel may be removed at any time by the President. The General Counsel shall hold no other office or position in the Government of the United States except as provided by law.

(2) The General Counsel may—

(A) investigate alleged unfair labor practices under this chapter,

(B) file and prosecute complaints under this chapter, and

(C) exercise such other powers of the Authority as the Authority may prescribe.

(3) The General Counsel shall have direct authority over, and responsibility for, all employees in the office of the General Counsel, including employees of the General Counsel in the regional offices of the Authority.

This memorandum is intended to describe the statutory authority and set forth the prescribed duties and authority of the General Counsel of the Federal Labor Relations Authority, effective 1979.

#### I. Case handling.

A. *Unfair labor practice cases.* The General Counsel has full and final authority and responsibility, on behalf of the Authority, to accept and investigate charges filed, to enter into and approve the informal settlement of charges, to approve withdrawal requests, to dismiss charges, to determine matters concerning the consolidation and severance of cases before complaint issues, to issue complaints and notices of hearing, to appear before Administrative Law Judges in hearings on complaints and prosecute as provided in the Authority's and the General Counsel's rules and regulations, and to initiate and prosecute injunction proceedings as provided for in section 7123(d) of the statute. After issuance of the Administrative Law Judge's decision, the General Counsel may file exceptions and briefs and appear before the Authority in oral argument, subject to the Authority's and the General Counsel's rules and regulations.

B. *Compliance actions (injunction proceedings).* The General Counsel is authorized and responsible, on behalf of the Authority, to seek and effect compliance with the Authority's orders and make such compliance reports to the Authority as it may from time to time require.

On behalf of the Authority, the General Counsel will, in full accordance with the directions of the Authority, initiate and prosecute injunction proceedings as provided in section 7123(d) of the statute: *Provided however*, that the General Counsel will initiate and conduct injunction proceedings under section 7123(d) of the statute only upon approval of the Authority.

C. *Representation cases.* The General Counsel is authorized and has responsibility, on behalf of the Authority, to receive and process, in accordance with the decisions of the Authority and with such instructions and rules and regulations as may be issued by the Authority from time to

time, all petitions filed pursuant to sections 7111, 7113, 7115, and 7117(d) of the statute. The General Counsel is also authorized and has responsibility to supervise or conduct elections pursuant to section 7111 of the statute and to enter into consent election agreements in accordance with section 7111(g) of the statute.

The authority and responsibility of the General Counsel in representation cases shall extend, in accordance with the rules and regulations of the Authority and the General Counsel, to all phases of the investigation through the conclusion of the hearing (if a hearing should be necessary to resolve disputed issues), but all matters involving decisional action after such hearings are reserved by the Authority to itself. In the event a direction of election should issue by the Authority, the authority and responsibility of the General Counsel, as herein prescribed, shall attach to the conduct of the ordered election, the initial determination of the validity of challenges and objections to the conduct of the election and other similar matters, except that if appeals shall be taken from the General Counsel's action on the validity of challenges and objections, such appeals will be directed to and decided by the Authority in accordance with its procedural requirements. If challenged ballots would not affect the election results and if no objections are filed within five days after the conduct of the Authority-directed election under the provisions of section 7111 of the statute, the General Counsel is authorized and has responsibility, on behalf of the Authority, to certify to the parties the results of the election in accordance with regulations prescribed by the Authority and the General Counsel.

Appeals from the refusal of the General Counsel to issue a notice of hearing, from the conclusions contained in a report and findings issued by the General Counsel, or from the dismissal by the General Counsel of any petition, will be directed to and decided by the Authority, in accordance with its procedural requirements.

In processing election petitions filed pursuant to section 7111 of the statute and petitions filed pursuant to section 7115(c) of the statute, the General Counsel is authorized to conduct an appropriate investigation as to the authenticity of the prescribed showing of interest and, upon making a determination to proceed, where appropriate, to supervise or conduct a secret ballot election or certify the validity of a petition for determination of eligibility for dues allotment. After an

election, if there are no challenges or objections which require a hearing by the Authority, the General Counsel shall certify the results thereof, with appropriate copies lodged in the Washington, D.C. files of the Authority.

II. *Liaison with other governmental agencies.* The General Counsel is authorized and has responsibility, on behalf of the Authority, to maintain appropriate and adequate liaison and arrangements with the Office of the Assistant Secretary of Labor for Labor-Management Relations with reference to the financial and other reports required to be filed with the Assistant Secretary pursuant to section 7120(c) of the statute and the availability to the Authority and the General Counsel of the contents thereof. The General Counsel is authorized and has responsibility, on behalf of the Authority, to maintain appropriate and adequate liaison with the Federal Mediation and Conciliation Service with respect to functions which may be performed by the Federal Mediation and Conciliation Service.

III. *Personnel.* Under 5 U.S.C. 7105(d), the Authority is authorized to appoint Regional Directors. In order better to ensure the effective exercise of the duties and responsibilities of the General Counsel described above, the General Counsel is delegated authority to recommend the appointment, transfer, demotion or discharge of any Regional Director. However, such actions may be taken only with the approval of the Authority. The General Counsel shall have authority to direct and supervise the Regional Directors. Under 5 U.S.C. 7104(f)(3), the General Counsel shall have direct authority over, and responsibility for all employees in the Office of the General Counsel and all personnel of the General Counsel in the field offices of the Authority. This includes full and final authority subject to applicable laws and rules, regulations and procedures of the Office of Personnel Management and the Authority over the selection, retention, transfer, promotion, demotion, discipline, discharge and in all other respects of such personnel except the appointment, transfer, demotion or discharge of any Regional Director. Further, the establishment, transfer, or elimination of any regional office or non-regional office duty location may be accomplished only with the approval of the Authority. The Authority will provide such administrative support functions, including personnel management, financial management and procurement functions, through the Office of Administration of the Authority as are required by the General

Counsel to carry out the General Counsel's statutory and prescribed functions.

IV. To the extent that the above-described duties, powers and authority rest by statute with the Authority, the foregoing statement constitutes a prescription and assignment of such duties, powers and authority, whether or not so specified.

Dated: July 25, 1979.

Federal Labor Relations Authority.  
Ronald W. Haughton,  
*Chairman.*  
Henry B. Frazier III,  
*Member.*

[FR Doc. 79-23329 Filed 7-27-79; 8:45 am]  
BILLING CODE 6325-01-M



**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**Office of Assistant Secretary for  
Community Planning and Development**

[24 CFR Part 570]

[Docket No. R-79-681]

**Community Development Block  
Grants—Reallocation**

**AGENCY:** Department of Housing and  
Urban Development (HUD).

**ACTION:** Proposed Rule.

**SUMMARY:** This proposed rule revises the policies and procedures for the use of reallocated Community Development Block Grant funds. The rule also establishes the priorities—meeting financial settlement needs and providing increased housing opportunities for low income and minority households—for the use of reallocated funds.

**DATES:** Comments must be received on or before: September 28, 1979.

**ADDRESS:** Comments should be addressed to: Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, 451 7th Street S.W., Washington, D.C. 20410.

**FOR FURTHER INFORMATION CONTACT:** Richard Kennedy, Small Cities Division, Office of Community Planning and Development, Washington, D.C. 20410; telephone (202) 755-1871. (This is not a toll free number.)

**SUPPLEMENTARY INFORMATION:** Sections 24 CFR 570.107, "Reallocation of funds", and 570.409, "Reallocated funds", govern the reallocation of funds originally approved under 24 CFR 570, Subparts D (Entitlement Grants), F (Small Cities Program), and H (Categorical Program Settlement Grants) and § 570.401 (Urgent needs funds). The proposed revision to these regulations is necessary: To reflect that "Urgent Needs Fund" is now designated "Financial settlement"; To reflect that Small Cities Program metropolitan funds are now allocated on a statewide basis; To establish the policies and procedures for use of reallocated and recaptured funds; and To establish the priorities for the use of the reallocated funds.

The first two points are in response to changes made by the Housing and Community Development Act of 1977. The latter two points address a requirement currently contained in § 570.107, the general section about reallocation, that the Department will establish priorities each year for the use of reallocated funds. Section 570.409

currently establishes these priorities for the use of reallocated funds: funding financial settlement needs and adding the funds to the Small Cities Program competition. The proposed revision adds a new priority, that of increasing housing opportunities outside areas or jurisdictions containing undue concentrations of low income or minority households.

Since the Department does not necessarily intend to revise its priorities each year and since § 570.409 was designed for that purpose, § 570.409 is being cancelled. All regulations, both general and specific, governing reallocation of funds will therefore be contained in § 570.107.

The following paragraphs highlight the changes being made and explain generally the provisions of the proposed revision.

**§ 570.107(a) General**

Paragraph (a) establishes the priorities for the use of reallocated funds. Metropolitan entitlement funds will be used primarily to meet financial settlement needs and to increase housing opportunities outside areas or jurisdictions containing undue concentrations of low income or minority households. The language about housing opportunities is the same as that used at 24 CFR 891, Subpart E, "Approval of Areawide Housing Opportunity Plans". Although financial settlement needs are to be met first and funds in amounts less than \$350,000 will be assigned to the Small Cities metropolitan discretionary balance, it is anticipated that the majority of funds will be used to increase housing opportunities.

Nonmetropolitan entitlement funds will also be used first to fund financial settlement needs. If there are none, remaining funds will be assigned to the Small Cities nonmetropolitan discretionary balance.

Funds to be reallocated will only be used in the State in which they originate. Furthermore, for administrative simplicity for both HUD and potential applicants, funds will remain within the jurisdiction of the Area Office where they originate in States served by two Area Offices. These two provisions, however, do not apply to recaptured financial settlement and urgent needs funds.

**§ 570.107(b) Financial Settlement Funds**

A new provision in these regulations provides that recaptured financial settlement funds, including recaptured urgent needs funds, will be used by

Central Office to meet financial settlement needs anywhere.

**§ 570.107(c) Eligible Applicants**

Eligible applicants generally remain the same. However, once financial settlement needs are met, metropolitan entitlement cities and urban counties may only apply to use reallocated entitlement funds when the funds exceed \$350,000. Participating units of an urban county may not apply individually.

Metropolitan or nonmetropolitan applicants may apply only for funds which originate in metropolitan or nonmetropolitan areas, respectively. This provision does not apply to recaptured financial settlement and urgent needs funds.

**§ 570.107(d) Assignment of Funds To Be Reallocated**

Paragraph (d) explains the new procedures in assigning funds to be reallocated to new uses. Entitlement funds to be reallocated will be used as soon as practicable to meet financial settlement needs, if any exist. During each Federal Fiscal Year Quarter, remaining funds to be reallocated will accumulate in funding pools categorized by State, by metropolitan or nonmetropolitan, and by entitlement or Small Cities Program origins of the funds. At the end of each quarter, the Area Manager will reallocate the funds in each funding pool according to the following:

When metropolitan entitlement funds are \$350,000 or more, they will be used to increase housing opportunities, as explained in paragraph (f).

When metropolitan entitlement funds are less than \$350,000 they will be assigned to the appropriate Small Cities discretionary balance to be used according to paragraph (g) or held over to the next quarter. The second option enables the Area Manager to add together metropolitan entitlement funds which become available in different quarters and to use them to increase housing opportunities according to paragraph (f) when, and if, the funds exceed \$350,000. Because funds are to be used as soon as practicable, however, funds may not be held over from the last quarter of a Fiscal Year to the first quarter of the next Fiscal Year.

Nonmetropolitan entitlement funds will be assigned to the appropriate Small Cities discretionary balance and used according to paragraph (g).

Small Cities discretionary funds will remain in the same balance to which they were originally assigned and used according to paragraph (g).

**§ 570.107(e) Timing**

Because the Act no longer requires that funds be reallocated within the program year, the requirement that funds be reallocated within six months is eliminated. HUD will, however, reallocate funds as soon as practicable.

**§ 570.107(f) Reallocation of Metropolitan Entitlement Funds of \$350,000 or More**

After financial settlement needs are met, metropolitan entitlement funds of \$350,000 or more to be reallocated will only be used to increase housing opportunities outside areas or jurisdictions containing undue concentrations of low income or minority households.

To the extent they have the needs and capacity to use the funds within a reasonable time, jurisdictions participating in an Area-wide Housing Opportunity Plan (AHOP) will be awarded these funds. The procedures already established according to 24 CFR 570.404(e), "Area-wide programs, selection process" (published in the Federal Register on August 2, 1978), will be used to select jurisdictions to receive these funds.

If a State's AHOP(s) does not have both the needs and capacity to use all the funds or if the State has no AHOP, the Area Manager will invite applicants and award funds to them. A formal competition need not be held, but more applications will be invited than the amount of funds available can accommodate in order to assure quality applications.

Activities undertaken with grants made to increase housing opportunities must be eligible for funding according to 24 CFR 570 Subpart C, "Eligible Activities", and 24 CFR 570.404(c), "Area-wide programs, Eligible activities" (published on August 2, 1978).

**§ 570.107(g) Reallocation of Small Cities Discretionary Funds**

New options are available for the use of Small Cities discretionary funds to be reallocated, and entitlement funds assigned to the Small Cities balances. The Area Manager will use these funds: (1) to fund an application(s) not funded in the most recent Small Cities competition due to a procedural error by HUD; (2) to fund the best unfunded application(s) from the most recent competition; or (3) to add the funds to the next Small Cities competition. In selecting one of the three alternatives, the Area Manager will use the policy that funds are to be reallocated as soon

as practicable. There is no priority among the three alternatives.

**§ 570.107(h) Application Requirements**

The requirements placed upon applications for funds to be reallocated follow, as applicable, requirements for financial settlement applications, applications for Area-wide Program funds, and Small Cities Program applications.

Interested persons are invited to participate in making the final rule by submitting written comments or views about the proposed revision. To facilitate HUD's consideration and review of the written comments, the reviewer should refer to the docket number below and clearly identify the paragraph(s) to which the comments are addressed. Comments should be filed with the Rules Docket Clerk (address above) before the date specified above in order to be considered for adoption of the final rule. Copies of comments will be available for examination and copying during business hours in the Office of the Rules Docket Clerk.

A Finding of Inapplicability with respect to Environmental Impact has been prepared in accordance with HUD's 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.

I. Accordingly, it is proposed that § 570.107 be revised to read as follows:

**§ 570.107 Reallocation.**

(a) *General.* This section governs reallocated funds originally approved under 24 CFR 570, Subparts D (Entitlement Grants), F (Small Cities Program), and H (Categorical Program Settlement Grants), and Section 570.401 (Urgent needs fund).

(1) *Purpose of reallocated funds.* Entitlement funds to be reallocated shall be used to meet financial settlement needs. After financial settlement needs are met, metropolitan entitlement funds of \$350,000 or more to be reallocated shall be used for increasing housing opportunities outside areas or jurisdictions containing undue concentrations of low income or minority households. Nonmetropolitan entitlement funds, metropolitan entitlement funds of less than \$350,000, and discretionary grant funds to be reallocated shall be assigned to the Small Cities discretionary balances and used according to § 570.107(g).

(2) Except for Financial Settlement Funds to be reallocated according to § 570.107(d), funds to be reallocated shall remain in the State in which they

originate. If the funds originate in a State served by two Area Offices, then use of the funds shall be limited to the jurisdiction of the Area Office from which the funds originate.

(3) Funds to be reallocated are—

(i) Amounts allocated to metropolitan cities, urban counties, or other units of general local government for formula grants or hold-harmless grants in metropolitan areas or nonmetropolitan areas which are not applied for, or which are disapproved by the Secretary as part of the application review or program monitoring process;

(ii) Other amounts allocated to metropolitan areas or nonmetropolitan areas which the Secretary determines, on the basis of applications and other evidence available, are not likely to be fully obligated by the Secretary within a reasonable time after the end of the fiscal year for which the allocation has been made;

(iii) Amounts recovered as a result of an adjustment, reduction or withdrawal under 24 CFR 570.910, "Corrective and remedial actions";

(iv) Amounts available as a result of a Secretarial adjustment of an annual grant under 24 CFR 570.911, "Reduction of Annual Grant";

(v) Amounts recovered under the provisions of 24 CFR 570.913, "Other remedies for noncompliance";

(vi) Amounts returned to HUD as a result of a termination of, withdrawal from, or failure to complete an approved Community Development Program; or

(vii) Amounts remaining after closeout of all approved block grant activities.

(b) *Financial Settlement Funds.* Financial Settlement Funds recaptured under 24 CFR 570 Subpart H, "Categorical Program Settlement Grants", including recaptured urgent needs funds under 24 CFR 570.401, shall be returned to the Central Office for use anywhere for other financial settlement needs only.

(c) *Eligible applicants.* (1) States and units of general local government as defined in 24 CFR 570.3(v), except those participating in an urban county, are eligible to apply for reallocated funds. Only those applicants eligible to apply under 24 CFR 570 Subpart F, "Small Cities Program", however, are eligible to apply for reallocated funds assigned to Small Cities discretionary balances.

(2) Funds to be reallocated which were originally allocated to a metropolitan area shall be used only by metropolitan applicants. Funds which were originally allocated to a nonmetropolitan area shall be used only by nonmetropolitan applicants.

(d) *Assignment of funds to be reallocated.* (1) Metropolitan and nonmetropolitan entitlement funds to be reallocated shall be used first for financial settlement needs in the metropolitan and nonmetropolitan areas, respectively, in the State in which the funds originate. These funds shall be reallocated as soon as practicable. For the purpose of this section, a financial settlement need occurs when there are one or more otherwise approvable financial settlement applications pending which were not approved in the last financial settlement competition because of a lack of funds.

(2) During each Federal fiscal year quarter, funds to be reallocated that are not used to meet financial settlement needs shall accumulate in funding pools separated according to: the State in which the funds originate; whether the funds are from metropolitan or nonmetropolitan allocations; and whether the funds are entitlement or Small Cities discretionary balances funds. At the end of each quarter, the Area Manager shall reallocate the funds in each funding pool, according to the following:

(i) Metropolitan entitlement funds to be reallocated which are \$350,000 or more shall be used for increasing housing opportunities outside areas or jurisdictions containing undue concentrations of low income or minority households, according to § 570.107(f).

(ii) At the discretion of the Area Manager, metropolitan entitlement funds to be reallocated in amounts less than \$350,000 shall be: assigned to the Area Office's metropolitan Small Cities discretionary balance for the State in which the funds originate, and used according to § 570.107(g); or held over to the next quarter to be added to additional metropolitan funds that may become available for reallocation. At the end of the last quarter in the fiscal year, however, these funds shall only be used according to § 570.107(g).

(iii) Nonmetropolitan Entitlement (hold-harmless) funds to be reallocated shall be assigned to the Area Office's nonmetropolitan Small Cities discretionary balance for the State in which the funds originate. These funds shall be used according to § 570.107(g).

(iv) Small cities discretionary funds to be reallocated shall remain in the Small Cities metropolitan or nonmetropolitan discretionary balance to which they were originally assigned. These funds shall be used according to the provisions of § 570.107(g).

(e) *Timing.* Funds to be reallocated shall be used as soon as practicable

after they have been assigned according to § 570.107(d).

(f) *Reallocation of metropolitan entitlement funds in excess of \$350,000.* Funds allocated according to § 570.107(d)(2)(f) shall be used to increase housing opportunities outside areas or jurisdictions containing undue concentrations of low income or minority households. The Area Manager shall reallocate the funds to jurisdictions participating in an approved Areawide Housing Opportunity Plan (AHOP) to the extent that the State's AHOP(s) has the needs and capacity to use the funds within a reasonable time. If the State's AHOP(s) does not have the needs and capacity to use all the funds or if the State has no AHOP, the Area Manager shall use his/her discretion to reallocate the funds to invited applicants.

(1) In reallocating the funds to jurisdictions participating in an approved AHOP, the following apply:

(i) An approved AHOP is one which has been approved by the Secretary in accordance with Subpart E, "Approval of Areawide Housing Opportunity Plan", of 24 CFR 891, and is in effect at the time funds are allocated to its participating jurisdictions.

(ii) In selecting jurisdictions to receive these funds, HUD and the Areawide Planning Organization which developed the AHOP shall use the procedures established in accordance with 24 CFR 570.404(e), "Areawide programs, Selection process".

(iii) If the State has more than one approved AHOP, the Area Manager shall determine the division of funds among the AHOPs, considering: the amount of funds available; whether the funds originated in the metropolitan area covered by one of the AHOPs; each AHOP's relative proportion of total goals; and the ability of the jurisdictions participating in each AHOP to use the funds to increase housing opportunities.

(2) In inviting applicants from States where there are no AHOPs or where the AHOPs do not have the needs and capacity to use all the funds, the Area Manager shall consider which metropolitan areas have the greatest concentrations of low income or minority households, where there is the greatest opportunity for success, the applicant's past history, and an applicant's willingness to increase housing opportunities. Although a formal competition need not be held, the Area Manager shall invite applications from more applicants than the amount of funds available can accommodate.

(3) Grants made under the provisions of § 570.107(f) shall only be made for activities which increase housing

opportunities outside areas or jurisdictions containing undue concentrations of low income or minority households. These activities must be eligible for funding in accordance with 24 CFR 570 Subpart C, "Eligible Activities", and be listed as eligible in 24 CFR 570.404 (c), "Areawide programs, Eligible activities". If no fundable applications are received, the Secretary reserves the right to reallocate the funds for other purposes.

(g) *Reallocation of Small Cities Discretionary Funds.* The Area Manager shall use Small Cities discretionary funds to be reallocated (including entitlement funds which have been assigned to the Small Cities discretionary balances under § 570.107 (d)(2))—

(1) to fund any application not selected for funding in the most recent Small Cities discretionary competition due to a procedural error made by HUD; or

(2) to fund the most highly ranked unfunded application or applications from the most recent Small Cities discretionary competition; or

(3) to add the funds to the next Small Cities discretionary competition.

(h) *Application requirements for reallocated funds.* Applicants for funds reallocated pursuant to this section shall comply with the following application requirements:

(1) *Financial settlement.* When reallocated funds are to be used to meet financial settlement needs, the application shall meet the requirements set forth in 24 CFR 570 Subpart H, "Categorical Program Settlement Grants".

(2) *Other entitlement funds.* Applications for metropolitan entitlement funds to be reallocated according to § 570.107(f) shall meet the requirements set forth in 24 CFR 570.404(d), "Areawide programs, Application requirements". Requirements for applications for entitlement funds which are added to a Small Cities discretionary balance are described in § 570.107(h)(3).

(3) *Small Cities Discretionary funds.* Applications and preapplications for funds to be reallocated which are added to a Small Cities discretionary balance shall meet the requirements set forth in 24 CFR Subpart F, "Small Cities Program". In many instances, an applicant described in § 570.107(g)(1) or (2) will have met all or some of the application requirements.

**§ 570.409 [Reserved]**

II. For conformity with § 570.107, § 570.409 is cancelled and reserved for future use.

(Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.); Title I, Housing and Community Development Act of 1977 (Pub. L. 95-128); sec 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3536(d)).) (Section 7(o) of the Department of HUD Act, 42 U.S.C. 3535(o), Section 324 of the Housing and Community Development Amendments of 1978.)

Issued at Washington, D.C., June 28, 1979.

**Robert C. Embry, Jr.,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 79-23353 Filed 7-27-79; 8:45 am]

BILLING CODE 4210-01-M



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Monday  
July 30, 1979

**PERMITS TO FISH OFF THE COAST OF THE UNITED STATES**

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**Part VII**

**Department of State**

**Fishery Conservation and Management  
Act of 1976; Applications for Permits to  
Fish Off the Coast of the United States**

**DEPARTMENT OF STATE**

[Public Notice 677]

**Fishery Conservation and Management Act of 1976; Applications for Permits to Fish Off the Coasts of the United States**

The Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) as amended (the "Act") provides that no fishing shall be conducted by foreign fishing vessels in the Fishery Conservation Zone of the United States after February 28, 1977, except in accordance with a valid and applicable permit issued pursuant to section 204 of the Act.

The Act also requires that a notice of receipt of all applications for such permits, a summary of the contents of such applications, and the names of the Regional Fishery Management Councils that receive copies of these applications, be published in the Federal Register.

Applications have been received from Ireland for fishing during 1979 and are reproduced herewith.

An individual vessel application for fishing during 1979 has been received from Ireland and is summarized herein.

If additional information regarding any applications is desired, it may be obtained from: Permits and Regulations Division (F37), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, (Telephone: (202) 634-7265).

Dated: July 18, 1979.

**James A. Storer,**

*Director, Office of Fisheries Affairs.*

[FR Doc. 79-23405 Filed 7-27-79; 8:45 am]

BILLING CODE 4710-09-M

FISHERY CODES AND DESIGNATION OF REGIONAL COUNCILS WHICH  
REVIEW APPLICATIONS FOR INDIVIDUAL FISHERIES ARE AS FOLLOWS:

<u>CODE</u>	<u>FISHERY</u>	<u>REGIONAL COUNCIL</u>
ARS	Atlantic Billfishes and Sharks	New England Mid-Atlantic South Atlantic Gulf of Mexico Caribbean
BSA	Bering Sea and Aleutian Islands Trawl, Longline and Herring Gillnet	North Pacific
CRB	Crab (Bering Sea)	North Pacific
GOA	Gulf of Alaska	North Pacific
NWA	Northwest Atlantic	New England Mid-Atlantic
SMT	Seamount Groundfish (Pacific Ocean)	Western Pacific
SNA	Snails (Bering Sea)	North Pacific
WOC	Washington, Oregon, California Trawl	Pacific

ACTIVITY CODES SPECIFY CATEGORIES OF FISHING OPERATIONS  
APPLIED FOR AS FOLLOWS:

<u>ACTIVITY CODE</u>	<u>FISHING OPERATIONS</u>
1	Catching, processing, and other support.
2	Processing and other support only.
3	Other support only.

<u>NATION/VESSEL NAME/VESSEL TYPE</u>	<u>APPLICATION NO.</u>	<u>FISHERY</u>	<u>ACTIVITY</u>
<u>IRELAND</u>			
ERIN FISHER LARGE STERN TRAWLER	FI-79-0001	NWA	1



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Monday  
July 30, 1979

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**Part VIII**

**Federal Emergency  
Management Agency**

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**Ratification of Actions, Establishment of  
Offices, Continuity of Functions, and  
Delegations of Authority**

**FEDERAL EMERGENCY  
MANAGEMENT AGENCY**
**Ratification of Actions**

Executive Order 12148 entitled "Federal Emergency Management" effective July 15, 1979, is dated July 20, 1979.

There is published in the Federal Register, this date, a "Continuity of Functions" statement together with a series of delegations of authority to FEMA officials which are made effective July 15 and which contain certain reaffirmations and revocations of authority. (See Table of Contents)

Notwithstanding revocations of authority, any action of the Defense Civil Preparedness Agency, Department of Defense, and the director thereof; the Federal Disaster Assistance Administration, Department of Housing and Urban Development, and the Administrator thereof, the Federal Preparedness Agency, General Services Administration, and the Director thereof, the Department of Commerce, and the Secretary thereof and the Office of Science and Technology Policy, Executive Office of the President and the Director thereof, with respect to the functions transferred by the Order and prior to July 23, 1979 are hereby ratified and are actions of the Federal Emergency Management Agency.

Dated: July 23, 1979.

Gordon Vickery,  
Acting Director.

[FR Doc. 79-23407 Filed 7-27-79; 8:45 am]  
BILLING CODE 4210-23-M

**Establishment of Offices, Continuity of  
Functions, Ratifications, and  
Delegation of Authority**

Reorganization Plan No. 3 of 1978 (43 CFR 41943, established the Federal Emergency Management Agency (FEMA). The Plan was activated by Executive Order 12127 of March 31, 1979 (44 CFR 19347).

The Plan vested certain functions and authorities in the Director, FEMA. These are described in a Federal Register Notice of April 6, 1979 (44 CFR 20962), which also contain certain delegations of authority.

However, it was contemplated that additional functions would be assigned to the Director, FEMA, and these functions have now been delegated to the Director by Executive Order 12148, (44 FR 43239), dated July 20, 1979, effective July 15, 1979.

Executive Order 12148 transferred and reassigned functions, including:

(A) All functions vested in the President that have been delegated or assigned to the Defense Civil Preparedness Agency, Department of Defense,

(B) All functions vested in the President that have been delegated or assigned to the Federal Disaster Assistance Administration, Department of Housing and Urban Development, including any of those functions to be redelegated or reassigned to the Department of Commerce with respect to assistance to communities in the development of readiness plans for severe weather-related emergencies,

(C) All functions vested in the President that have been delegated or assigned to the Federal Preparedness Agency, General Services Administration,

(D) All functions vested in the President by the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. § 7701 *et. seq.*), including those functions performed by the Office of Science and Technology Policy.

The April 6 Federal Register Notices continued in effect prior regulations and actions of the predecessor agencies until changed. The Notices also made certain changes in nomenclature and contained delegation of authorities to two program offices of FEMA. All of the foregoing remain in full force and in addition there are herewith published orders establishing offices, providing for continuity of functions and for delegation of authority.

The agencies, offices, officers and employees performing transferred functions and exercising transferred responsibilities shall continue to use the nomenclature existing and applicable before the transfer except that:

1. Federal Emergency Management Agency shall be substituted for

(a) "Defense Civil Preparedness Agency, Department of Defense,"

(b) "Federal Disaster Assistance Administration, Department of Housing and Urban Development,"

(c) "Federal Preparedness Agency, General Services Administration,"

(d) and with reference to functions under the Earthquake Hazards Reduction Act, "Office of Science and Technology Policy."

2. Director, Federal Emergency Management Agency, shall be substituted for the titles of the heads of the organizations as listed in 1 above,

Dated: July 23, 1979.

Gordon Vickery,  
Acting Director.

[FR Doc. 79-23408 Filed 7-27-79; 8:45 am]  
BILLING CODE 4210-23-M

**Establishment of Offices**

Pursuant to the provisions of Section 106 of Reorganization Plan No. 3 of 1978, there are hereby established within the Federal Emergency Management Agency the following organizational units, in each of which there is further created the position of Director, who shall be appointed by the Director, FEMA:

Office of Operations Support;  
Office of Program Analysis and Evaluation.

There is further established the Office of Training and Education, and the position of Assistant Director, FEMA, for Training and Education, who shall be appointed by the Director.

Dated: July 15, 1979.

Gordon Vickery,  
Acting Director.

[FR Doc. 79-23409 Filed 7-27-79; 8:45 am]  
BILLING CODE 4210-23-M

**Continuity of Functions**

Reorganization Plan No. 3 of 1978 (43 FR 41943), which establishes the Federal Emergency Management Agency (FEMA), was placed into effect by Executive Order 12127 of March 31, 1979 (44 FR 19367).

Executive Order 12148 of July 20, 1979, entitled "Federal Emergency Management" transfers emergency planning, management, mitigation and assistance functions to the Federal Emergency Management Agency, including:

(1) All functions vested in the President that have been delegated or assigned to the Defense Civil Preparedness Agency, Department of Defense.

(2) All functions vested in the President that have been delegated or assigned to the Federal Disaster Assistance Administration, Department of Housing and Urban Development, including any of those functions redelegated or reassigned to the Department of Commerce with respect to assistance to communities in the development of readiness plans for severe weather-related emergencies.

(3) All functions vested in the President that have been delegated or assigned to the Federal Preparedness

Agency, General Services Administration.

(4) All functions vested in the President by the Earthquake Hazards Reduction Act of 1977 including functions vested in the Office of Science and Technology Policy, Executive Office of the President.

Pursuant to Executive Order 12148, all regulations (including, as used herein, regulations, rules, orders, policies, determinations, directives, authorizations, delegations of authority, permits, privileges, requirements, designations or other actions) of the Defense Civil Preparedness Agency, Department of Defense, and the Director thereof; the Federal Disaster Assistance Administration, Department of Housing and Urban Development, and the Administrator thereof, the Federal Preparedness Agency, General Services Administration, and the Director thereof, the Department of Commerce and the Secretary thereof and the Office of Science and Technology Policy, Executive Office of the President and the Director thereof, with respect to the functions transferred by the order and in effect immediately prior to the transfer shall remain in full force and effect for all other Departments and agencies; offices, officers and employees transferred to FEMA by reason of the order, but as regulations of the Federal Emergency Management Agency, except that:

1. To the extent made inapplicable by Executive Order 12148, such regulations shall be suspended, and

2. The authority to make rules and regulations, issue notices or rulemaking and issue agency-wide directives shall, unless otherwise delegated, be exercised by the Director, FEMA.

3. Such regulations may be specifically revoked or suspended.

The agencies, offices, officers, and employees performing transferred functions and exercising transferred responsibilities and authorities shall continue to use the nomenclature existing and applicable before the transfer, except that

1. "Federal Emergency Management Agency" shall be substituted for "Defense Civil Preparedness Agency", "Federal Disaster Assistance Administration", or "Federal Preparedness Agency" as applicable.

2. "Director, Federal Emergency Management Agency" shall be substituted for the titles of the heads of the organizations listed in 1, above.

Dated: July 15, 1979.  
Gordon Vickery,  
Acting Director.  
[FR Doc. 79-23410 Filed 7-27-79; 8:45 am]  
BILLING CODE 4210-43-M

#### Regional Directors; Delegation of Authority

Section A. Each Regional Director, Federal Emergency Management Agency, established pursuant to Reorganization Plan No. 3 of 1978 and Executive Order 12127, is hereby authorized to exercise the power and authority of the Director, FEMA pursuant to the provisions of sections 1-102, 4-201, 4-202 and 4-203 of E.O. 12148 of July 20, 1979, except:

1. The authority to issue rules and regulations pursuant to the Disaster Relief Act of 1974, hereinafter referred to as "the Act".

2. The authority to make grants to states for the development of disaster preparedness plans pursuant to section 201 of the Act.

3. The authority concerning disaster warnings contained in section 202 of the Act, except to the extent that the Regional Director shall have:

a. The authority to insure that all appropriate Federal agencies are prepared to issue warnings of disasters to State and local officials;

b. The authority to provide general policy guidance and coordination to the Secretary of the Interior, the Secretary of Commerce, and the Secretary of Agriculture with respect to their Delegations of Authority from the Secretary of Housing and Urban Development concerning disaster warnings pursuant to section 202 of the Act;

c. The authority contained in section 202(b) of the Act to direct appropriate Federal agencies to provide technical assistance to State and local governments to insure that timely and effective disaster warning is provided;

d. The authority to issue such rules and regulations as may be necessary and appropriate to effectuate this delegation; and

e. The authority contained in Section 202(d) of the Act to approve agreements to be entered into between the Secretary of the Interior, the Secretary of Agriculture, or the Secretary of Commerce (pursuant to their above-mentioned Delegations of Authority for Disaster Warnings) and the officers or agents of any private or commercial communications systems who volunteer the use of their systems on a reimbursable basis for the purpose of

providing warning to governmental authorities and the civilian population endangered by disasters.

4. The authority to make recommendation to the President concerning the determination that an emergency exists pursuant to section 301(a) of the Act.

5. The authority to make recommendations to the President concerning the issuance of a major disaster declaration pursuant to section 301(b) of the Act; and

6. The authority contained in that portion of section 413 of the Act to provide professional counseling services (with the exception of the authority to provide financial assistance to State or local agencies or private mental health organizations to provide professional counseling services or training of disaster workers to victims of major disasters in order to relieve mental health problems caused or aggravated by such major disaster or its aftermath).

7. The authority contained in section 407 of the Act concerning unemployment assistance.

8. The authority to appoint a Federal Coordinating Officer pursuant to section 303 of the Act;

9. The authority to enter into agreements with the American National Red Cross, the Salvation Army, the Mennonite Disaster Service and other relief or disaster assistance organizations pursuant to section 312(b) of the Act;

10. The authority to determine that a State plan of self-insurance is satisfactory pursuant to section 314 of the Act;

11. The authority to sell or otherwise make available temporary housing units directly to States, other governmental entities and voluntary organizations pursuant to section 404(d)(2) of the Act;

12. The authority to approve a community disaster loan pursuant to section 414 of the Act;

13. The authority to provide assistance for the suppression of fires pursuant to section 417 of the Act.

Section B. Each Regional Director is further authorized to exercise the power and authority of the Director, FEMA, with respect to Sections 302(b), 306(a) and 309 of the Disaster Relief Act of 1974.

Section C. The Regional Director is further authorized to exercise the powers and authorities of the Director FEMA to the extent delineated in 32 CFR Part 1800 6(c); which authorities were formerly delegated to the Regional Directors of the Defense Civil Preparedness Agency.

Section D. In exercising any authority delegated to them, the Regional Directors shall coordinate (to the maximum extent practicable) technical matters and routine actions with appropriate program officials on the staffs of the various Administrators, Associate Directors, Assistant Directors, or Office Directors who shall render policy guidance and program direction.

Section E. Accepts service of process on behalf of the agency and its officials. Upon so doing, the Regional Director shall notify the General Counsel as soon as possible.

Section F. *Authority to Redelegate.* Each Regional Director of FEMA is hereby authorized to redelegate the authorities contained herein to employees of FEMA in their respective regions.

Section G. *Delegations Revoked.* This delegation supersedes any other delegation of authority issued prior to the effective date hereof issued to any official of any other agency who is now an employee of FEMA pertaining to any of the subject matter hereof.

Dated: July 15, 1979.

Gordon Vickory,

Acting Director.

[FR Doc. 79-23411 Filed 7-27-79; 8:45 am]

BILLING CODE 4210-23-M

### Director, Office of Response and Recovery; Delegation of Authority

Pursuant to Section 106 of Reorganization Plan No. 3 of 1978, there is hereby established within the Federal Emergency Management Agency, the Office of Response and Recovery, and the position of Director, Office of Response and Recovery. The Director, Office of Response and Recovery, shall supervise the operation of the said office and shall be delegated the powers and authorities to act for and on behalf of the Director, FEMA as hereinafter set forth:

Section A. The Director of the Office of Response and Recovery, Federal Emergency Management Agency, is hereby authorized to exercise the power and authority of the Director, FEMA pursuant to sections 1-102, 4-201, 4-202, and 4-203 of E.O. 12148 of July 20, 1979, except:

1. The authority to establish a disaster preparedness program, provide technical assistance to the states in developing disaster preparedness plans and programs, and making grants to states for the development of disaster preparedness plans pursuant to section 201 of the Disaster Relief Act of 1974 (hereinafter, "the Act").

2. The authority concerning disaster warnings contained in section 202 of the Act; except to the extent that the Director of Office of Response and Recovery, shall have:

a. The authority to insure that all appropriate Federal agencies are prepared to issue warnings of disasters to State and local officials;

b. The authority to provide general policy guidance and coordination to the Secretary of the Interior, the Secretary of Commerce, and the Secretary of Agriculture with respect to their Delegations of Authority from the Secretary of Housing and Urban Development concerning disaster warnings pursuant to section 202 of the Act;

c. The authority contained in section 202(b) of the Act to direct appropriate Federal agencies to provide technical assistance to State and local governments to insure that timely and effective disaster warning is provided;

d. The authority to issue such rules, and regulations and notices thereof as may be necessary and appropriate to effectuate this delegation; and

e. The authority contained in Section 202(d) of the Act to approve agreements to be entered into between the Secretary of the Interior, the Secretary of Agriculture, or the Secretary of Commerce (pursuant to their above-mentioned Delegations of Authority for Disaster Warnings) and the officers or agents of any private or commercial communications systems who volunteer the use of their systems on a reimbursable basis for the purpose of providing warning to governmental authorities and the civilian population endangered by disasters.

3. The authority to make recommendations to the President concerning the determination that an emergency exists pursuant to section 301(a) of the Act.

4. The authority to make recommendations to the President concerning the issuance of a major disaster declaration pursuant to section 201(b) of the Act; and

5. The authority contained in that portion of section 413 of the Act to provide professional counseling services (with the exception of the authority to provide financial assistance to State or local agencies or private mental health organizations to provide professional counseling services or training of disaster workers to victims of major disasters in order to relieve mental health problems caused or aggravated by such major disaster or its aftermath).

6. The authority contained in section 407 of the Act concerning unemployment assistance.

Section B. In the event that the Director of FEMA, is unavailable, the authority to make the recommendations referred to in subsection A3 and A4 above, shall be exercised by the Deputy Director of FEMA. If both the Director and the Deputy Director are unavailable, said authority shall be exercised by the Director, Office of Response and Recovery.

Section C. The Director of the Office of Response and Recovery is authorized to exercise the power and authority of the Director of FEMA with respect to Sections 302(b), 306(a) and 309 of the Disaster Relief Act of 1974.

Section D. *Authority to Redelegate.* The Director of the Office of Response and Recovery is authorized to redelegate to employees of FEMA any of the authority delegated herein, except the authority to issue rules and regulations.

Section E. *Delegations Revoked.* This delegation of authority supersedes any other delegation of authority issued prior to the effective date hereof pertaining to the subject matter hereof.

Dated: July 15, 1979.

Gordon Vickory,

Acting Director.

[FR Doc. 79-23412 Filed 7-27-79; 8:45 am]

BILLING CODE 4210-23-M

### Director, Office of Plans and Preparedness; Delegation of Authority

Pursuant to the provisions of section 106 of Reorganization plan No. 3 of 1978, there is hereby established within the Federal Emergency Management Agency the Office of Plans and Preparedness, the position of Director, Office of Plans and Preparedness. The Director of Plans and Preparedness shall supervise the operation of the said office and shall be delegated the powers and authorities to act for and on behalf of the Director, FEMA, as hereinafter set forth.

Section A. The Director, Office of Plans and Preparedness, Federal Emergency Management Agency, is hereby authorized to exercise all the power and authority of the Director, FEMA pursuant to sections 1-101, 1-103, 4-101, 4-102, 4-103, 4-104, 4-105, 4-106 and 4-107 of E. O. 12148 of July 20, 1979, except:

1. Those authorities relating to international preparedness functions, which are reserved to the Director, FEMA.

2. Those authorities relating to provision of telecommunications and data processing systems and to the operations of the special facility.

3. Those authorities delegated to the Director in Section 501 of E. O. 10480.

Section B. The Director, Office of Plans and Preparedness is further authorized to exercise all the power and authority of the Director, FEMA pursuant to section 1-102 of E. O. 12148 of July 20, 1979, concerning section 201 of the Disaster Relief Act of 1974; to the extent that this authority is exercised with respect to mitigation, the Director, Office of Plans and Programs will coordinate with the Director, Office of Mitigation and Research.

Section C. The Director, Office of Plans and Preparedness is further authorized to exercise all the power and authority of the Director, FEMA pursuant to section 203 of Reorganization Plan No. 3 of 1978 (43 CFR 41943) as further amplified in sections 1-103(b) and 1-105 of E. O. 12127 of March 31, 1979.

Section D. The Director, Plans and Preparedness is further authorized to exercise the powers and authorities of the Director, FEMA pursuant to section 2-101 of E. O. 12148 of July 20, 1979 relating to establishing Federal policies for, and coordinating all civil defense and civil emergency planning and management functions of Executive agencies; and section 2-103 relating to coordination of preparedness and planning to reduce the consequences of major terrorism incidents.

Section E. The Director, Office of Plans and Preparedness is empowered to exercise the Director, FEMA's authority with respect to classification of documents pursuant to Executive Order 12065 of June 28, 1978. This authority may not be redelegated.

Section F. *Authority of Redelegate.* Except as provided herein, the Director, Office of Plans and Preparedness is hereby authorized to redelegate the authorities contained above to employees of FEMA.

Section G. *Delegation Revoked.* This delegation of authority supercedes any other delegation of authority issued prior to the effective date hereof pertaining to the subject matter hereof.

Dated: July 15, 1979.

Gordon Vickery,  
Acting Director.

[FR Doc. 79-23413 Filed 7-27-79; 8:45 am]  
BILLING CODE 4210-23-M

#### Director, Office of Mitigation and Research; Delegation of Authority

Pursuant to the provisions of section 106 of Reorganization Plan No. 3 of 1978, there is hereby established with the Federal Emergency Management Agency the Office of Mitigation and Research and the position of Director, Office of Mitigation and Research. The Director, Office of Mitigation and Research shall supervise the operation of the said office and shall be delegated the powers and authorities to act for and on behalf of the Director, FEMA as hereinafter set forth.

Section A. The Director of the Office of Mitigation and Research, Federal Emergency Management Agency, is authorized to exercise all the power and authority of the Director, FEMA pursuant to section 1-104 and 4-204 of E.O. 12148 of July 20, 1979.

Section B. The Director of the Office of Mitigation and Research is authorized to exercise all the power and authority of the Director, FEMA pursuant to sections 2-103 of E.O. 12148 of July 20, 1979 as those functions relate to the coordination of efforts to promote dam safety, and 2-101 relating to the coordination of mitigation functions of Executive agencies.

Section C. *Authority to Redelegate.* The Director, Office of Mitigation and Research is authorized to redelegate to employees of FEMA any of the authority delegated herein.

Section D. *Delegation's revoked.* This delegation of authority supercedes any other delegation of authority issued prior to the effective date hereof pertaining to the subject matter hereof.

Dated: July 15, 1979.

Gordon Vickery,  
Acting Director.

[FR Doc. 23414 Filed 7-27-79; 8:45 am]  
BILLING CODE 4210-23-M

#### Director, Office of Finance and Administration; Delegation of Authority

Pursuant to the provisions of section 106 of Reorganization Plan No. 3 of 1978, there is hereby established within the Federal Emergency Management Agency the Office of Finance and Administration, and the position of Director, Office of Finance and Administration shall supervise the operation of the said Office and shall be delegated the powers and authorities to act for and on the behalf of the Director, FEMA as hereinafter set forth.

Section A. The Director of the Office of Finance and Administration of the

Federal Emergency Management Agency is authorized to exercise the following authorities of the Director, FEMA:

1. Serve as chief financial management officer of FEMA; formulate agency policies and principles governing the establishment of budgetary, accounting and financial management systems within the agency, including inventory accounting and pricing goods and services furnished; exercise necessary controls to ensure compliance with agency financial policies, plans and principles; and coordinate the agency's financial programs with the Office of Management and Budget, other Federal agencies, and congressional appropriations committees.

2. Approve requisitions for disbursing funds, reports of current accounts rendered by disbursing officers, and other financial and accounting documents involving FEMA, the General Accounting Office, and the Department of the Treasury.

3. Certify that long-distance telephone calls using commercial facilities are for official business and necessary in the interest of the Government.

4. Certify to the General Accounting Office (GAO) any charge against any officer or agent entrusted with public property, arising from any loss and accruing by his fault, to the Government as to the property so entrusted to him.

5. Make determinations concerning performance of service, the periods of such service, and the amounts of remuneration for social security purposes.

6. Authorize officers and employees to certify vouchers.

7. Approve apportionment and reapportionment requests; reports on appropriation accounts; and reports on status of apportionments, for corporations and enterprises.

8. Approve reports on budget status, obligation basis, and accrual basis, as required by the Antideficiency Act.

9. Waive, deny, or refer to GAO, claims of the United States against FEMA employees for erroneous payment of pay of not more than \$200.

10. Issue primary allowances to Associate Directors, Administrators, Assistant Directors, Office Directors, and Regional Directors.

11. Receive and credit amounts received to the applicable appropriation of FEMA.

12. Request cashier designation and resolution from the Department of the Treasury, and designate persons to serve in FEMA.

13. Maintain official FEMA payroll, retirement, leave and travel records.

14. Make purchases and contracts by advertising for operating equipment and supplies, administrative equipment, office supplies, professional services, transportation of persons and property, and nonpersonal services, and determines that the rejection of all bids is in the public interest.

15. Negotiate purchases and contracts for operating equipment and supplies, professional services, transportation of persons and property, and non-personal services without advertising; and makes and issues determinations related thereto pursuant to section 302(c) (1)-(10), (14) and (15) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. § 252(c) (1)-(10), (14) and (15)).

16. Make purchases and contracts for the procurement of printing and binding services in accordance with the current Government Printing and Binding Regulations of the Joint Committee on Printing and Title 44 of the United States Code.

17. Establish, modify, and maintain a continuing program for the management of records and files within FEMA, including records creation, organization, maintenance, and disposal.

18. Make assignments and reassignments of real and personal property within FEMA.

19. Establish and maintain a system of accountability for property.

20. Issue determinations of excess property and transfer same as required.

**Section B. Authority to Redelegate.** The Director, Office of Finance and Administration is hereby authorized to redelegate to employees of FEMA any of the authority delegated herein.

**Section C. Delegation Revoked.** This delegation of authority supersedes any other delegation of authority issued prior to the effective date hereof pertaining to the subject matter hereof.

Gordon Vickery,  
Acting Director.

July 15, 1979.

[FR Doc. 79-23416 Filed 7-27-79; 8:45 am]

BILLING CODE 4210-23-M

### Director of Personnel; Delegation of Authority

Pursuant to the provisions of Section 106 of Reorganization Plan No. 3 of 1978, there is hereby established within the Federal Emergency Management Agency the Office of Personnel, and the position of Director of Personnel. The Director of Personnel shall supervise the operation of the said Office, and shall be delegated the power and authorities to act for and on the behalf of the Director, FEMA, as hereafter set forth:

**Section A. The Director of the Office of Personnel, Federal Emergency Management Agency, is authorized to exercise the following authorities of the Director, FEMA:**

1. Establish and classify positions.  
2. Appoint to positions employees and applicants for employment. All actions to fill attorney positions at all levels require the approval of the General Counsel. The prior approval of the Director is required for all actions to fill positions at grade GS-13 or above, except reassignments or changes to lower grade entitlement to the position as a result of a reorganization, the application of reduction-in-force or transfer of functions regulations, or a redescription.

3. Procure, by appointment, with or without compensation, the temporary (not in excess of one year) or intermittent services of experts or consultants. All such appointments shall be approved by the Director.

4. Administer the oath to be taken by officers and employees incident to their entrance into FEMA or any other oath required by law in connection with employment.

5. Effect personnel actions to suspend, furlough without pay, reduce in rank or pay, or remove employees; and effects all other types of separation actions by issuing notifications of personnel action.

6. Grant cost-of-living and living quarters allowances and authorizes the payment of post differentials, in accordance with Department of State regulations, to eligible employees stationed in foreign countries. Grant cost-of-living allowances and authorizes the payment of differentials, in accordance with Office of Personnel Management regulations, to eligible employees stationed outside the continental United States in nonforeign areas. (FPM chap. 591 and FPM supp. 990-1, Book II, part 591; 5 CFR 591.101-591.401. For foreign areas see Department of State Standardized Regulations (Government Civilians, Foreign Areas).)

7. Utilize the services of officials, officers, and other personnel in other executive agencies, including personnel of the armed services.

8. Determine the eligibility of employees for advance payments, evacuation payments, and special evacuation allowances; approves waivers of recovery; and grant extensions for the continuation of evacuation payments in accordance with 5 U.S.C. §§ 5521-5527, Executive Order 10982 of December 25, 1961, appropriate Office of Personnel Management regulations and

"Departmental Regulations" prescribed by the Office of Personnel Management (for employees in United States areas), and the Standardized Regulations (Government Civilians, Foreign Areas) issued by the Department of State.

9. Designate Agency officials to represent FEMA at labor relations hearings or other proceedings before or directed by the Federal Service Impasses Panel, Federal Labor Relation Authority, as required by Pub. L. 94-451; Civil Service Reform Act of 1978, and approve labor agreements negotiated by other officials of FEMA, with the concurrence of the General Counsel.

10. Accord national exclusive recognition, national consultation rights, or exclusive recognition for units comprised of FEMA to labor organizations meeting the requirements of Pub. L. 94-451.

11. Withdraw or suspend existing national exclusive recognition, national consultation rights, or exclusive recognition for units comprised of FEMA employees from labor organizations which do not meet the requirements of Pub. L. 94-451.

12. Appoint individuals to serve as grievance examiners for grievances.

13. Issue wage rate schedules for positions, the rates of pay for which are fixed with reference to prevailing local wage rates. (5 U.S.C. § 5341)

14. Review and prepare final agency decision on all FEMA employee appeals of removal, suspension for more than 30 days, furlough without pay, and reduction in rank or compensation from employees in grade GS-14 or below and any wage system grade except appeals from employees in the Office of Personnel and appeals from employees who allege that discrimination because of race, color, religion, sex, age, or national origin was a cause of the original decision.

**Section B. Authority to Redelegate.** The Director of Personnel is hereby authorized to redelegate the authorities contained herein to employees of FEMA.

**Section C. Delegations Revoked.** This delegation of authority supersedes any other delegation of authority issued prior to the effective date hereof pertaining to the subject matter hereof.

Dated: July 15, 1979.

Gordon Vickery,  
Acting Director.

[FR Doc. 79-23416 Filed 7-27-79; 8:45 am]

BILLING CODE 4210-23-M

**Inspector General; Delegation of Authority**

Pursuant to the provisions of section 106 of Reorganization Plan No. 3 of 1978, there is hereby established within the Federal Emergency Management Agency the Office of Inspector General, and the position of Inspector General. The Inspector General shall supervise the operation of the said office, and shall be delegated the powers and authorities to act for and on behalf of the Director, FEMA as hereinafter set forth.

**Section A.** The Inspector General of the Federal Emergency Management Agency is hereby authorized to exercise the following authorities of the Director, FEMA:

1. Audit the accounting, financial, and other operations of FEMA, including grants, contracts, and other expenditures of funds.

2. Audit the books and records of grantees of FEMA and contractors doing business with FEMA, or of subcontractors as appropriate.

3. Enter into contracts for professional services with public accounting firms and Certified Public Accountants for the performance of audits.

4. Authorize officers and employers having investigatory functions, while engaged in the performance of their duties in conducting investigations, to administer oaths.

5. Take possession from FEMA employees of any official FEMA documents, including, but not limited to, books, records, and workpapers necessary to conduct investigations.

6. Establish within FEMA a program for personnel and physical security and administer same.

7. Serve as the FEMA Security Officer and make those determinations required by E.O. 10450 of April 27, 1953, as amended, and by E.O. 12065 of June 28, 1978, as amended, with respect to security requirements for Government employment and the safeguarding of classified material.

**Section B. Authority to Redelegate.** The Inspector General is authorized to redelegate to employees of the Office of the Inspector General the authorities contained in Section A above.

**Section C. Delegations Revoked.** This delegation of authority supercedes any other delegation of authority issued

prior to the effective date hereof pertaining to the subject matter hereof.

Gordon Vickery,  
*Acting Director.*

July 15, 1979.

[FR Doc. 23417 Filed 7-27-79; 8:45 am]

BILLING CODE 4210-23-M

**General Counsel; Delegation of Authority**

Pursuant to the provisions of Section 106 of Reorganization Plan No. 3 of 1978, there is hereby established within the Federal Emergency Management Agency the Office of General Counsel, and the position of General Counsel. The General Counsel shall supervise the operation of the said Office, and shall be delegated the power and authorities to act for and on the behalf of the Director, FEMA, as herewith set forth.

**Section A.** The General Counsel, Federal Emergency Management Agency, is authorized to exercise the following authorities of the Director, FEMA:

1. Accept service of process on behalf of the Agency and its officials.

2. Determine the Agency's legal position with respect to matters in litigation.

3. Refer matters directly to the Attorney General for prosecution or the initiation of litigation.

4. Determine the government's position in connection with any dispute before a Board of Contract Appeals, including the authority to settle or adjust any claim.

5. Consider, compromise and settle tort claims against FEMA, but any award, compromise, or settlement of more than \$25,000 requires the prior written approval of the Attorney General or designee.

6. Except as provided above, compromise, suspend, or terminate collection actions by FEMA on any claim in favor of the government in amounts not exceeding \$20,000 exclusive of interest.

7. Serves as Agency Ethics Counselor.

8. Designate attorneys in the Office of General Counsel to serve as Deputy Ethics Counselors and to provide advice and interpretation of FEMA Standards of Conduct.

**Section B. Authority to Redelegate.** The General Counsel is authorized to redelegate to employees of the Office of General Counsel, FEMA, any of the authority delegated herein, except the

position of Agency Ethics Counselor in Section A, 7, above.

**Section C. Delegation Revoked.** This delegation of authority supersedes any other delegation of authority issued prior to the effective date hereof pertaining to the subject matter hereof.

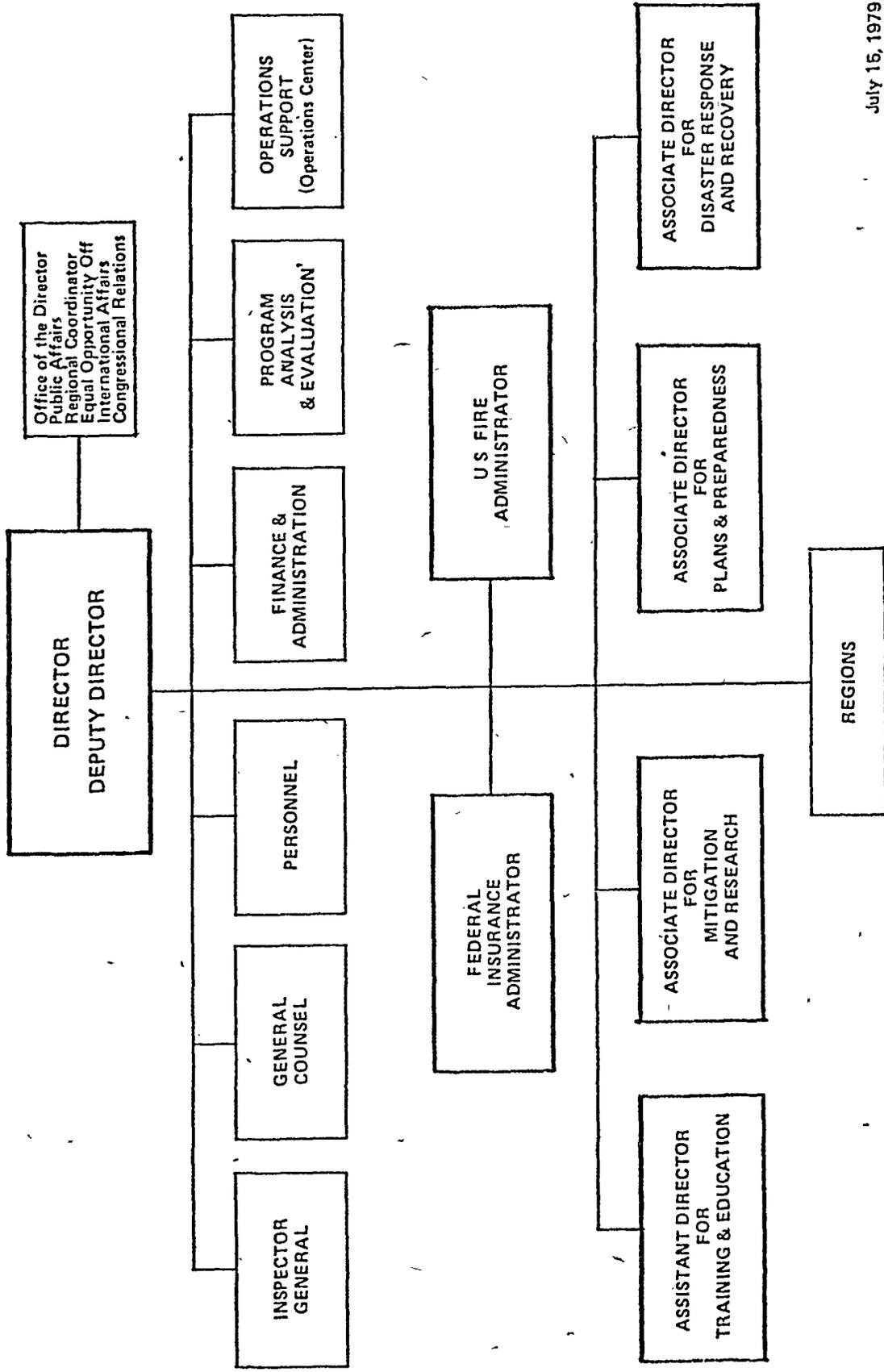
Dated: July 15, 1979.

Gordon Vickery,  
*Acting Director.*

[FR Doc. 79-23418 Filed 7-27-79; 8:45 am]

BILLING CODE 4210-23-M

# FEDERAL EMERGENCY MANAGEMENT AGENCY HEADQUARTERS ORGANIZATION



July 16, 1979

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Monday  
July 30, 1979

RESOURCES

1979-80

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**Part IX**

**Office of  
Management and  
Budget**

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Budget Deferral

**OFFICE OF MANAGEMENT AND BUDGET**

**Budget Deferral**

TO THE CONGRESS OF THE UNITED STATES:

In accordance with the Impoundment Control Act of 1974, I herewith report a new deferral of \$6.2 million in budget authority for the Bureau of Prisons in the Department of Justice.

The details of this deferral are contained in the attached report.

BILLING CODE 3110-01-M

**CONTENTS OF SPECIAL MESSAGE**

(in thousands of dollars)

Deferral No.	Item	Budget Authority
	Department of Justice:	
	Federal Prison System	
D79-58	Buildings and facilities.....	6,200

\* \* \* \* \*

**SUMMARY OF SPECIAL MESSAGES FOR FY 1979**

(in thousands of dollars)

	<u>Rescissions</u>	<u>Deferrals</u>
Tenth special message:		
New item.....	---	6,200
Effect of tenth special message.....	---	6,200
Previous special messages.....	908,692	4,373,810
Total amount proposed in special messages.....	908,692	4,380,010 <sup>1/</sup>
	(in 11 rescission proposals)	(in 58 deferrals)

<sup>1/</sup> This amount represents budget authority except for \$15,809,478 in two Treasury Department deferrals of outlays only (D79-40A and D79-25B).

Deferral No: D/9-58

**DEFERRAL OF BUDGET AUTHORITY**  
Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of Justice	New budget authority (P.L. 95-431) \$ 35,280,000
Bureau Federal Prison System	Other budgetary resources 61,405,092
Appropriation title & symbol  Buildings and Facilities <sup>1/</sup> 15X1003	Total budgetary resources 96,685,092
	Amount to be deferred: Part of year \$ _____
	Entire year 6,200,000
OMB identification code: - 15-1003-0-1-753	Legal authority (in addition to sec. 1013): <input type="checkbox"/> Antideficiency Act
Grant program <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Other _____
Type of account or fund: <input type="checkbox"/> Annual <input type="checkbox"/> Multiple-year _____ (expiration date) <input checked="" type="checkbox"/> No-year	Type of budget authority: <input checked="" type="checkbox"/> Appropriation <input type="checkbox"/> Contract authority <input type="checkbox"/> Other _____

**Justification:** This appropriation finances planning, acquisition of sites, and construction of new penal and correctional facilities as well as construction, remodeling, and equipping of necessary buildings and facilities at existing penal and correctional institutions. Projects are undertaken to reduce overcrowding, close old and antiquated penitentiaries, and provide a safe and humane environment for staff and inmates. These funds were appropriated in the Departments of State, Justice, and Commerce, the Judiciary and Related Agencies Appropriation Act, 1979 and previous years.

The Justice Department has made the determination that a previously planned Metropolitan Correctional Center (MCC) in Detroit, Michigan, is not needed. This decision is in accord with language contained in House Report No. 96-247, accompanying the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Bill, 1980 (H.R. 4392).

These funds are deferred pending an OMB-initiated review of the Justice Department decision of the need for the Detroit project.

**Estimated Effects:** The effect of this deferral is to preserve these funds for use until a final decision is made concerning whether or not to construct this project.

**Outlay Effect:** This deferral will shift an estimated \$1.5 million in outlays from FY 1979 to FY 1980.

<sup>1/</sup> This account was the subject of a deferral during FY 1978 and is presently the subject of another deferral, D79-17A.

THE WHITE HOUSE,  
July 24, 1979.

[FR Doc. 79-23581 Filed 7-27-79; 8:45 am]

BILLING CODE 3110-01-C





## DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 3100

National Environmental Policy Act;  
Final Policies and ProceduresAGENCY: United States Department of  
Agriculture (USDA).

ACTION: Final rule.

**SUMMARY:** On May 1, 1979, the Department of Agriculture, Office of the Secretary, published at 44 FR 25608-25608, proposed rules, setting forth proposed policies and procedures for compliance with the National Environmental Policy Act (NEPA), as amended, 42 U.S.C. 4321 *et seq.*, and the Council on Environmental Quality's (CEQ) National Environmental Policy Act Regulations (40 CFR Parts 1500-1508).

USDA did not receive any comments on the proposed rules. Minor modifications for clarity were made in the final rule, based on suggestions from within the Department.

This rule supercedes Secretary of Agriculture Memorandum No. 1695, Supplement No. 4, Revised (October 25, 1974). This final rule has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations," and has been classified "significant." An Approved Final Impact Statement is available from the Office of Environmental Quality, USDA, Room 412-A.

EFFECTIVE DATE: July 30, 1979.

**FOR FURTHER INFORMATION CONTACT:** Barry R. Flamm, Director, Office of Environmental Quality, USDA, Washington, D.C. 20250, Phone (202) 447-3965.

Dated: July 26, 1979.

Jim Williams,  
Acting Secretary.

**SUPPLEMENTARY INFORMATION:** Title 7 of the Code of Federal Regulations is amended by adding new Chapter XXXI, consisting of Part 3100 to read as set forth below:

CHAPTER XXXI—CULTURAL AND  
ENVIRONMENTAL QUALITYPART 3100—ENVIRONMENTAL  
MATTERS

Subpart A [Reserved].

Subpart B—National Environmental Policy  
Act

Sec.	Purpose.
3100.20	3100.21
3100.21	3100.22
3100.22	3100.23
3100.23	3100.24
3100.24	3100.25
3100.25	3100.26
3100.26	3100.27
3100.27	3100.28
3100.28	3100.29
3100.29	3100.30
3100.30	3100.31
3100.31	3100.32
3100.32	3100.33
3100.33	3100.34
3100.34	3100.35

Authority: National Environmental Policy Act (NEPA), as amended, 42 U.S.C. 4321 *et seq.*; Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977); U.S.C. 301; 40 CFR 1507.3.

Subpart A [Reserved]

Subpart B—National Environmental  
Policy Act

§ 3100.20 Purpose.

(a) This subpart supplements the regulations for implementing the procedural provisions of NEPA, which regulations were published by the Council of Environmental Quality (CEQ) in 40 CFR Parts 1500-1508. This subpart incorporates and adopts these regulations.

(b) Words used in the provisions of this subpart shall have the same meaning as they have in the regulations of CEQ at 40 CFR Part 1508.

(c) References are made in these regulations to appropriate sections of 40 CFR 1500-1508. This has been done to direct the attention of USDA agencies to specific provisions for guidance in the development of agency procedures or to provisions of the CEQ regulations which are the basis for the pertinent section.

§ 3100.21 Policy.

(a) All policies and programs of the various USDA agencies shall be planned, developed and implemented so as to achieve the goals declared by NEPA in order to assure responsible stewardship of the environment for present and future generations.

(b) Each USDA agency is responsible for compliance with the provisions of this subpart, the regulations of CEQ and the provisions of NEPA. Compliance will include the preparation and implementation of specific procedures and processes relating to the programs and activities of the individual agency, as necessary. Those agencies whose programs and activities are of such a nature as to not come within the types of actions covered by Section 102(2) of NEPA should consult with Office of Environmental Quality (OEQ) regarding the need for developing specific implementation procedures.

(§§ 1501.2, 1501.3, 1507)

(c) The Director, OEQ, shall review agencies implementing procedures to show consistency with CEQ's NEPA regulations and will coordinate environmental assessment activities for the Office of the Secretary which come under the purview of NEPA. OEQ, in cooperation with Environmental Quality Committee, will develop the necessary processes to be used by the Office of the Secretary in reviewing, implementing and planning its activities, determinations and policies.

(d) Each agency shall develop appropriate procedures and processes in a style which will promote understanding at the field staff level.

§ 3100.22 Categorical exclusions.

(a) In general, every agency recommendation or report on a proposal for legislation or other major agency action which significantly affects the quality of the human environment entails certain NEPA review procedures. However, the following are categories of agency activities which have been determined not to have a significant individual or cumulative adverse effect on the human environment and are excluded from the NEPA review process, unless individual agency procedures prescribe otherwise (§ 1508.4):

(1) Policy development, planning and implementation which relates to routine activities such as personnel,

organizational changes or similar administrative functions;

(2) Activities which deal solely with the funding of programs, such as program budget proposals, disbursement, transfer, or reprogramming of funds;

(3) Inventories, research activities and studies, such as resource inventories and routine data collection when such actions are clearly limited in context and intensity (1508.27);

(4) Educational and informational programs and activities;

(5) Civil and criminal law enforcement activities;

(6) Activities which are advisory and consultative to other agencies, public and private entities such as legal counselling and representation;

(7) Activities related to trade representation, and market development activities overseas.

(b) Agencies will identify in their own procedures the activities which normally would not require an environmental assessment or environmental impact statement. (§ 1508.4)

(c) Any activity which would normally fall within one of the categories listed in paragraph (a) of this section, or in a category identified in agency procedures, but which is determined to have a potential for significant impact on the human environment shall not be eligible for exclusion from the NEPA process. Agencies shall adopt procedures to assure continuous scrutiny of activities to determine continued eligibility for categorical exclusion.

#### § 3100.23 Lead agency disputes.

The OEQ will coordinate, upon request, the resolution of lead agency disputes. (§ 1501.5(e))

#### § 3100.24 Public involvement.

All NEPA processes developed and followed by USDA agencies shall provide for public involvement. The OEQ will consult with the Office of Policy Analysis and Public Participation to coordinate between agencies in carrying out this section.

(§§ 1501.4(e)(2), 1506.6, 1508.10)

#### § 3100.25 Interagency and interdepartmental cooperation.

(a) The USDA and its agencies shall, to the fullest extent possible, cooperate with other agencies, departments, bureaus, as well as State and local units of government to fulfill their responsibility under NEPA, utilizing memorandum of understanding or other instruments of agreement where possible.

(b) If a USDA agency is unable to cooperate to the extent formally requested by a lead agency, that agency shall reply to the lead agency that other program commitments preclude full involvement. Any such reply shall be referred to the Director, OEQ, within 10 working days of receipt of the request for submission to the lead agency and CEQ (§§ 1501.6(c))

#### § 3100.26 Extra-agency expertise.

The OEQ will work with USDA agencies to identify sources of technical and editorial expertise necessary to supply interdisciplinary needs which have been identified in the scoping process and for which expertise is not available within that particular agency.

#### § 3100.27 Supplements.

A decision to prepare a supplement to an environmental document will be made by the affected agency. New finding and information relating to the decisionmaking process shall be considered in such a decision. The agency may seek advice from OEQ, and such advice shall also be considered in making the determination to prepare a supplement. (§ 1502.9(c))

#### § 3100.28 Distribution.

All USDA agencies shall develop and maintain a distribution list for dissemination of decision documents and notices. Agencies may make distributions in addition to those prescribed in the CEQ regulations. To guide agencies in this regard, Appendix II of 40 CFR Part 1500, published in Federal Register, Vol. 38, No. 147, pages 20557-20562, on August 1, 1973, or other such list as promulgated by CEQ, will serve as reference.

#### § 3100.29 Distribution to OEQ.

A monthly summary of significant agency activity in the NEPA process shall be forwarded to the OEQ. A negative report is not required.

#### § 3100.30 When to prepare an EIS.

(a) In addition to those agency activities identified in § 3100.22(b), USDA agencies shall identify those classes of their activities which normally require an EIS. (§ 1507.3(b))

(b) Agency activities not covered by paragraph (a) of this section shall require an environmental assessment, to support a finding of no significant impact or an agency decision to prepare EIS. (§§ 1501.3, 1501.4)

#### § 3100.31 Impact analysis.

(a) All environmental assessments and impact statements prepared by an

agency regarding legislative proposals or program regulations shall incorporate applicable components of Impact Analysis (see Secretary's Memorandum No. 1955; Executive Order No. 12044; 40 CFR 1506.8).

(b) Incorporation of Impact Analysis procedures into agency NEPA processes is to be coordinated between the OEQ, the Department's Policy Analysis and Public Participation staff and the implementing agency (see Secretary's policy guidance to USDA agencies: Guidelines for Impact Analysis and Environmental Impact Statements, September 25, 1978).

#### § 3100.32 Tiering.

Tiering, as set forth in 40 CFR 1502.20, shall be incorporated by agencies in their NEPA procedures. The OEQ will assist agencies regarding specific questions concerning tiering.

#### § 3100.33 Problems in response to comments.

Problems concerning the appropriate response to comments on environmental impact statements shall be resolved, if possible, at the agency staff level. Problems between USDA agencies not resolved by the final EIS shall be submitted to the heads of respective agencies for resolution with mediation, if necessary, by OEQ. OEQ will also be informed of agency problems with agencies outside USDA and will be available to help resolve disputes as necessary. (§§ 1503.2, 1503.3, 1503.4)

#### § 3100.34 Implementation of Agency determination.

Each agency shall develop NEPA implementing procedures and other appropriate internal procedures to provide for mitigation, monitoring or any other actions or conditions necessary to properly carry out the determinations established during their NEPA process. (§ 1505.3)

#### § 3100.35 Emergencies.

The procedures developed by each agency shall include those NEPA review actions necessary in relation to agency responses to emergency situations. (§ 1506.11)

[FR Doc. 79-23623 Filed 7-27-79; 9:43 am]  
BILLING CODE 3410-01-M





**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 199**

[Docket No. 18694]

**Aircraft Loan Guarantee Program**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** These final rules align the FAA's Aircraft Loan Guarantee Program with recent changes brought about by the Airline Deregulation Act (Pub. L. 95-504), which raised the total amount that can be guaranteed for any eligible participant from 30 million to 100 million dollars; expanded the eligible participants to include charter air carriers, commuter air carriers and intrastate air carriers; extended the term of eligible loans to fifteen years; and required that aircraft purchased under a guaranteed loan comply with the FAA noise standards. The new rules also make related procedural changes and provide additional guidance and information to potential guarantee applicants.

EFFECTIVE DATE: July 30, 1979.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Smith, Office of the Chief Counsel (AGC-500), Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; Telephone (202) 426-3480.

**SUPPLEMENTARY INFORMATION:****Regulatory History**

The FAA's Aircraft Loan Guarantee Program is authorized under the Act of September 7, 1957, as amended (71 Stat. 629; 49 U.S.C. 1324 Note) referenced hereafter as "the Act." The Act provides that this program is the responsibility of the Secretary of Transportation. Section 1.47(c) of the Department of Transportation Regulations (49 CFR 1.47(c)) delegates the Secretary's authority over the Loan Guarantee Program to the Administrator of the Federal Aviation Administration.

To implement the Loan Guarantee Program the FAA promulgated Part 199 of Title 14 of the Code of Federal Regulations (14 CFR Part 199). This Part established the procedural mechanism by which the program is administered.

Recently, Pub. L. 95-504 made substantial amendments to the Act, the most significant of which are as follows:

1. It expands the categories of eligible participants to include "charter air

carriers," "commuter air carriers," and "intrastate air carriers" (as those terms are defined in the new Act). Formerly only local service, Alaskan, Hawaiian and helicopter air carriers were eligible.

2. It expands the term of loans which may be guaranteed to a maximum of 15 years. The former maximum was 10 years.

3. It increases the maximum amount of a loan or combination of loans which can be guaranteed for a single carrier to \$100 million. The former maximum was \$30 million.

4. It adds the requirement that any new turbojet powered aircraft to be purchased under the Loan Guarantee Program must comply with the FAA's noise standards set forth in 14 CFR Part 36.

5. It provides that any guarantee made for the purchase of any all-cargo nonconvertible aircraft by a charter air carrier must be based on the percentage of service provided by that air carrier to small, medium and nonhub airports during the prior twelve months. The maximum amount of the guarantees will be roughly \$1 million for each percent of service to these airports.

6. It re-enacts the authority to guarantee loans for a period of five years effective October 24, 1978. The previous authority expired on September 7, 1977.

In light of these changes the FAA, on January 25, 1979, published Notice No. 79-3 in the Federal Register. This notice proposed revisions to the regulations governing the Loan Guarantee Program and invited public comments. All the public comments were considered in the adoption of these final rules, and as a result of some of the comments, changes were made in the original proposals. All of these changes are explained below.

**A New Program**

As was explained in the original Notice, the Secretary's guarantee authority lapsed on September 6, 1977, and was not revived until October 24, 1978, as a part of the Airline Deregulation Act (Pub. L. 95-504). During the debates of this Act, Congress demonstrated a great deal of concern that deregulation might substantially degrade the quality of air service to small communities. In an evident attempt to lessen any such negative effect, Congress expanded the class of eligible carriers to include additional carriers which typically provide the majority of their service to small communities. This expansion, the heightened emphasis on service to small communities, and the fact that the Loan Guarantee Program was revitalized, not

independently, but as a part of the President's deregulation program lead the FAA to conclude that any program under this new authority must give special emphasis to the needs of the smaller communities, and the financial problems implicit in the financing of smaller air carriers.

**Consideration of Public Comments****Section 199.5**

Some commenters have taken exception to the requirement of § 199.5(c) as proposed, which stated that only aircraft purchased by carriers for their own use in air transportation shall be eligible for a loan guarantee. These objections have taken two forms: that brokers, as a class, should not be excluded from participating as "air carriers" in the Loan Guarantee Program; and, that an eligible carrier, directly engaged in air transportation, should not be precluded from leasing its aircraft to or pooling its aircraft with other carriers during periods of limited use. With respect to the first objection, there is no basis for departing from the position announced in the January 25, 1979, notice. There is no indication that Pub. L. 95-504 was designed to add brokers to the class of eligible carriers. As to the second objection, the FAA acknowledges that, in many circumstances, an eligible carrier—particularly a commuter air carrier—may find it economically necessary to lease or pool its aircraft during periods of reduced use or non-use. Section 199.5(c) does not prohibit such arrangements.

**Section 199.7**

The few comments received on this section were generally favorable. Several commenters questioned the need for any definition of the term "adjacent Canadian Territory," as that term is utilized in describing carriers who operate "within Alaska, between Alaska and the 48 contiguous states, or between Alaska and adjacent Canadian Territory." One commenter proposed that the term be defined to include points as far from the Alaskan border as 700 or 800 miles. The FAA feels that a definition would provide a uniform standard for administering Section 3 of the Act. The FAA accordingly has determined, on balance, that the intent of the Act can be fully effectuated by defining the term "adjacent Canadian Territory" as including the adjacent political subdivisions of Canada—i.e., the Yukon Territory and British Columbia. In other words, an Alaskan carrier will remain eligible for

assistance under Section 3 of the Act so long as a major portion of its operations remain within Alaska, between Alaska and the forty-eight contiguous states, or between Alaska and the adjacent subdivisions of British Columbia and the Yukon Territory.

#### Section 199.9

Numerous comments addressed this section of the proposed rule. Some commenters took exception to subsection (a), which states that loans will be considered for a guarantee only when all financing documents are in final form or when the terms and conditions of all legal commitments are otherwise finally established. The main objection is that, in a time of tight money and high interest rates, lenders will be reluctant to go to the expense of finalizing arrangements and documents without a binding commitment for an FAA guarantee. We agree that, in the interest of facilitating otherwise viable financing arrangements, it would be useful for the FAA to give a preliminary indication of whether particular loans are eligible for guarantees. To that end, the proposed § 199.9(a) has been amended to permit the FAA, as a service to potential applicants, to consider and answer such questions before financing arrangements are reduced to final form; but no legally binding guarantee, or commitment to guarantee, will be issued or effective until such time as all documents, including the guarantee agreements, are in final form.

Subsection (c) of this section has been deleted because at the time of this final rule, no loan will fall within it.

Numerous comments were also received concerning § 199.9(d) (now subsection (c)), which provides generally that "[n]o guarantee may be authorized for the refinancing of an aircraft purchase loan." This rule is subject to qualification, in that the refinancing of some deposits on aircraft will be recognized. Many commenters have suggested that, in effect, the ceiling on such deposits should be raised to 100% of the maximum allowable guarantee. For the reasons stated in the NPRM, the FAA finds no basis for adopting such a position.

Commenters have also suggested that the rule with respect to deposits, should be amended to state specifically that, in multi-aircraft purchases, the 30% limitation will apply for each aircraft purchased. The stated concern is that advance deposits made prior to the issuance of the guarantee for the entire package of aircraft could exceed 30% of the price of one of the aircraft. The rule

has been amended to make clear that the 30% limitation applies on each aircraft purchased. Lenders, however, should note that, in the event that a multi-aircraft purchase is reduced in quantity, an FAA guarantee will recognize deposits only to the extent that such deposits do not exceed 30% of the purchase price of the remaining aircraft. The FAA will not guarantee refinancing of deposits to the extent that they exceed this limitation.

#### Section 199.11

This section basically repeated Section 4 of the Act. A number of carriers and associations commented on § 199.11(a)(7)(ii), which provides that "no guarantee shall be made . . . [u]nless the Administrator finds that the prospective earning power . . . [o]f the applicant commuter air carrier or intrastate air carrier, together with the character and value of the security pledged, furnish . . . reasonable assurances of the applicant's ability and intention to repay the loan . . . , to continue its operations as a commuter air carrier . . . and to the extent found necessary by the Administrator, to continue its operations as a commuter air carrier or intrastate air carrier between the same route or routes being operated by such applicant as the time of the loan guarantee. . . ."

Some commenters suggested that the Administrator make a blanket determination for all commuters that it is not necessary to examine the earning power of a carrier, and the security pledged, to determine whether such provides reasonable assurance that the applicant will continue to operate between the same route or routes. There is merit to the contention that in today's dynamic commuter market it might be unrealistic to tie all commuter carriers strictly to the route or routes serviced by them at the time of a guarantee.

On the other hand, as indicated in the January 25, 1979, NPRM, one major purpose of the new Aircraft Loan Guarantee program is to help offset any deterioration of service to the smaller communities which might result from airline deregulation. To this end, it is clearly useful to examine a commuter carrier's earning power and security pledged in order to determine whether there is reasonable assurance that commuter routes will continue to be serviced. There is, therefore, no basis at this time to support a blanket determination that assurances required in § 199.11(a)(7) are unnecessary.

#### Section 199.13

This provision states simply that no loan which is contrary to the economic, social, or foreign affair interests of the United States may be guaranteed. A number of commenters have objected that this provision is vague, or overly broad, or that denial of loans on the basis of public policy would be in violation of the Act. However, as noted in the January 25, 1979, NPRM, the authority conferred on FAA to guarantee loans is discretionary. Section 199.13 merely states that, in the reasonable exercise of this discretion, the FAA will give due regard to those policies promulgated by the Congress or the Executive Branch which affect the Loan Guarantee Program at the time of each guarantee. No change in this provision is necessary.

#### Section 199.15

Numerous comments were received with respect to the question of priorities. The proposed rule stated that, in the event a ceiling were placed on the number or amount of guarantees to be made in any given year, the FAA would give first priority to applications filed by commuter airlines, with second priority being given to other carriers "in the order of their demonstrated service to the smaller communities." In general, comments relating to this section broke into three classes: some stating that no order or priority was appropriate, or at least that no priority should be granted to commuters; some, that the proposal was a legitimate exercise of FAA discretion; and some saying that, notwithstanding the proposed order of priorities, the dollar limitations proposed in the FY 1979 Supplement Appropriation, and the FY 80 Appropriation, were too low.

Section 199.15 was based upon FAA's perception that, if choices had to be made among eligible carriers, it would be reasonable in light of the legislative history of Public Law 95-504 to give first priority to carriers which predominantly service the smaller communities. The FAA recognizes that the need for priorities is in part dependent upon the scope and nature of restrictions which may be legislatively imposed. The FAA also recognizes that, as the full effects of Airline Deregulation become known, priorities may change. Accordingly, a rule more general than that originally proposed is needed.

Recognizing these facts, § 199.15 has been amended to provide simply that, in the administration of the Loan Guarantee Program, the FAA may, from time to time, establish systems of

priorities when such priorities will facilitate the purpose of the Act and Airline Deregulation. Current policy is specifically set forth in appendix "A" to the rule.

Appendix "A" as currently set forth has as its purpose the aim of assuring that commuters and other air carriers who predominately serve the smaller communities will receive a fair share of loan guarantee assistance. In adopting Appendix "A", the FAA is guided by the needs of the air transportation market; by the emerging consensus in the Congress favoring a limitation on guarantees; and by the statutory purpose of the Act and Pub. L. 95-504.

#### Section 199.17

A few commenters disagreed with this section, which provides that no loan shall be guaranteed if its terms and conditions are substantially less favorable to the purchaser or the grantor than those which are available in the marketplace for similar transactions at the time of the loan. Many commenters feel that the section is too vague. One commenter suggested that the phrase "similar transactions" must be applied with care because of the many variables involved in aircraft financing.

The FAA recognizes that there are many variables in aircraft financing. However, the basic need for the proposed section remains unaltered: the United States is financially liable in the event of a default on a guaranteed loan; and, prior to making any guarantee, the FAA must make a judgment as to the commercial reasonableness of the underlying documents, taking into account the nature of the carrier and its economic position. Accordingly, no change in the proposed rule is necessary.

#### Section 199.19

This section provides generally that a lender or lenders must make application for an aircraft loan guarantee by completing certain FAA forms and by forwarding them together with supporting documentation. One commenter suggested that the forms themselves should become a part of this rule, and that they should be revised in certain ways. Draft revisions were forwarded with this comment. These forms are administrative in nature, and are related only to information which the FAA requires to meet its statutory responsibilities in reviewing loans for the Guarantee Program. Loan guarantee application forms were not made a part of the January 25, 1979 NPRM, and were not a part of the rule published for the

pre-1977 program. There is no basis for expanding the scope of this rule by including such forms as a part of it. Comments with respect to the information requested by the FAA will continue to be processed in the same way as other administrative matters.

#### Section 199.23

This section provides that any lender to whom a guarantee is issued shall pay a guarantee fee at a rate of  $\frac{1}{4}$  of one percent per annum on the average daily amount of the guaranteed portion of the unpaid principal outstanding during the interest period defined in the loan agreement. One commenter has suggested that a "sliding scale" of fees be adopted, which varies directly with the magnitude of the loan or loans made to any single carrier. Under this suggestion, the greater the amount of the guaranteed portion of a loan, the greater becomes the rate used in determining a guarantee fee. The commenter points out that such a provision would encourage purchase of smaller, less expensive equipment. After full consideration, the FAA has determined that, on balance, this comment should not be adopted. The purpose of the guarantee fee is to reimburse the United States for the costs incurred in administering this program. Our experience is that these costs vary only roughly in proportion to the size of a guarantee. Administrative costs are generally higher in the early stages of a guarantee agreement when the outstanding principal is the greatest. Accordingly, the fee proposed in this section is stated in terms of a rate to be applied to the outstanding principal of a loan. It should also be pointed out that because the amount of any guarantee fee will vary in direct proportion to outstanding principal, in a very real sense, the fee also varies in proportion to the size of the loan.

#### Section 199.31

This section provides generally that any guarantee which is issued will be subject to the full faith and credit of the United States. The comments received on this section were generally supportive. One commenter suggested that, even with the rule, the FAA Office of Chief Counsel should not entirely discontinue its practice of issuing legal opinions on such matters. This section, as it stands, does not preclude such opinions from being issued in appropriate cases.

#### Other Issues

**Secondary Market.** A number of commenters suggested that the financing of aircraft purchases, particularly for

commuter airlines, could be facilitated if the FAA guarantee were modified to assist in the creation of a secondary market for the guaranteed portion of these loans. One commenter suggested that, in order to be fully acceptable to investors, a secondary market program must exhibit certain key features, including the following:

1. The secondary investor must not bear any risk in connection with its investment, whether resulting from credit problems of the borrower or of the lenders;
2. Payment in the event a holder of secondary paper fails to receive scheduled payment must be prompt, and must include the full interest accrued to the holder;
3. The holder must be protected against failure of the lender to pay any guarantee fees;
4. No servicing or default notice obligations should be imposed upon holders; and
5. The holder should be able to freely negotiate its guaranteed investment to another holder.

In effect, in order to comply with this type of financing requirement, the FAA would have to guarantee the performance of a lending institution, as well as the performance of borrower (i.e., of an air carrier). To do this would be to substantially expand the scope of the loan guarantee program. Such expansion was not contemplated by the notice of January 25, 1979.

The FAA recognizes that, as this new Loan Guarantee Program matures and the air transportation needs of the country evolve under Airline Deregulation, a secondary market program may become appropriate. The FAA also recognizes that concern has been expressed by Congress about the ramifications of such a program:

The Committee understands that several financial institutions have suggested that the FAA allow for the creation of a secondary market in guaranteed aircraft purchase loans by permitting the originating lender to sell or assign all or part of the guaranteed portion of the loan to other investors or lending institutions. Under this suggestion, the secondary market investor or holder of the assigned portion of the guaranteed loan would be fully protected by the guarantee against any credit risks in connection with its investment, whether resulting from credit problems of the borrower or the original lender. Allowing such a secondary market would be a departure from the aircraft loan guarantee program as it has existed in the past. The Committee expects that before taking action to permit the transfer of the guarantee to secondary market holders, the FAA will review the authority for such action with the General Accounting Office, and will consult with the Committee. (H.R. Rep. No.

96-227, 96th Cong., 1st Sess. (1979) at pp. 112-113).

Accordingly, no action is being taken at this time; and no action will be taken in the future without formal rulemaking.

**Restriction of Aircraft Purchase.** A number of commenters suggested that the FAA guarantee only those loans made for the purchase of smaller aircraft, of the type typically used in commuter operations. For the reasons stated in the discussion of section 199.15, the FAA feels it is not appropriate to adopt a single standard to govern the availability of loan guarantee assistance throughout the life of the program. Accordingly, the "aircraft size" standard will not be adopted. The size of aircraft sought to be purchased may well become relevant, however, in making determinations under Appendix "A".

#### Adoption of Amendment

Accordingly, Part 199 of the Federal Aviation Regulations (14 CFR Part 199) is amended, effective July 30, 1979 by revising the entire part as follows:

### PART 199—AIRCRAFT LOAN GUARANTEE PROGRAM

Sec.

199.1 Applicability.

199.3 Definitions.

199.5 Carriers eligible for an aircraft loan guarantee.

199.7 Alaska and Hawaii.

199.9 Loans made within the Act.

199.11 Conditions and limitations under which loans will be guaranteed.

199.13 National policy considerations.

199.15 Priorities among otherwise eligible guarantee recipients.

199.17 Terms and conditions of loan.

199.19 Applications.

199.21 Action taken on applications.

199.23 Fees.

199.25 Deviation from terms of agreement or guarantee.

199.27 Delegation of Administrator's functions.

199.29 Notices.

199.31 Full faith and credit.

Appendix A—Priorities Among Loan Guarantee Applicants.

Authority: Act of September 7, 1957 (49 U.S.C. 1324 Note; 82 Stat. 1003), as amended, Pub. L. 95-504, secs. 6(a)(3)(A) and 9 of the Department of Transportation Act (49 U.S.C. 1655(a)(3)(A) and 1657) and sec. 1.4(b)(4) of the Regulations of the Office of the Secretary of Transportation (49 CFR 1.4(b)(4)).

#### § 199.1 Applicability.

This part applies to applications for aircraft loan guarantees as provided by the Act of September 7, 1957 (40 U.S.C. 1324 Note), and as extended by Pub. Ls. 90-568 (82 Stat. 1003) and 95-504, and to requests for approval of deviations from

the terms of guarantee and loan agreements concluded after September 7, 1957.

#### § 199.3 Definitions.

*Act*, as used in this part means the Act of September 7, 1957 (49 U.S.C. 1324 Note), as amended.

*Carrier*, as used in this part, includes air carrier, charter air carrier, commuter air carrier and intra-state air carrier as these terms are defined in the Act of September 7, 1957, as amended.

*Short term financing*, means any loan the term of which is less than one year.

#### § 199.5 Carriers eligible for an aircraft loan guarantee.

(a) Only those carriers set forth in section 3 of the Act are eligible for loan guarantee assistance.

(b) Only those carriers identified in (a) above who are directly engaged in air transportation are eligible for loan guarantee assistance.

(c) Only those aircraft purchased by carriers for their own use in air transportation shall be eligible for a loan guarantee.

#### § 199.7 Alaska and Hawaii.

(a) The term *major portion* as used in section 3(1) (b) and (c) of the Act means a portion which is greater than 50%.

(b) The term *operation* as used in section 3(1) (b) and (c) of the Act means a takeoff and the related subsequent landing.

(c) The term *adjacent Canadian territory* as used in section 3(1)(c) of the Act means any point in Canada which is within British Columbia or the Yukon Territory.

#### § 199.9 Loans made within the Act.

(a) For purposes of determining which loans are eligible for guarantee under the Act, only those loans for which all financing documents are in final form, or in which the essential terms and conditions of the parties' legal commitments are otherwise finally established, shall be guaranteed.

(b) Loan agreements which are submitted in final form during the life of the Act shall be deemed to fall within the Act, even if loan amounts are to be paid over after expiration of the Act.

(c) No guarantee may be authorized for the refinancing of an aircraft purchase loan. This prohibition will not extend to aircraft purchase loans which liquidate short term financing made for deposits on one or more aircraft so long as such deposits do not exceed 30% of the purchase price of the aircraft actually purchased.

#### § 199.11 Conditions and limitations under which loans will be guaranteed.

(a) Subject to subsection (b) of this section, no guarantee shall be made:

(1) Extending to more than the unpaid interest and 90% of the unpaid principal of any loan;

(2) On any loan or combination of loans for more than 90% of the purchase price of the aircraft, including spare parts, to be purchased therewith;

(3) On any loan whose terms permit full repayment more than 15 years after the date thereof;

(4) Wherein the total face amount of such loan, and of any other loans to the same carrier, or corporate predecessor of such carrier, guaranteed and outstanding under the terms of the Act exceeds \$100 million;

(5) Unless the Administrator finds that, without such guarantee, in the amount thereof, the carrier would be unable to obtain necessary funds for the purchase of needed aircraft on reasonable terms as such terms are defined in § 199.17;

(6) Unless the Administrator finds that the aircraft to be purchased with the guaranteed loan is needed to improve the service and efficiency of operation of the carrier.

(7) Unless the Administrator finds that the prospective earning power—

(i) Of the applicant air carrier or charter air carrier, together with the character and value of the security pledged, furnish (A) reasonable assurances of the applicant's ability to repay the loan within the time fixed therefor, and (B) Reasonable protection to the United States; and

(ii) Of the applicant commuter air carrier or intrastate air carrier, together with the character and value of the security pledged, furnish (A) reasonable assurances of the applicant's ability and intention to repay the loan within the time fixed therefor, to continue its operations as a commuter air carrier or intrastate air carrier, and to the extent found necessary by the Administrator to continue its operations as a commuter air carrier or intrastate air carrier between the same route or routes being operated by such applicant at the same time of the loan guarantee, and (B) reasonable protection to the United States; and

(8) On any loan or combination of loans for the purchases of any new turbojet-powered aircraft which does not comply with the noise standards prescribed for new subsonic aircraft in regulations issued by the Secretary of Transportation acting through the Administrator (14 CFR Part 36), as such

regulations were in effect on January 1, 1977.

(b) No guarantee may be made by the Administrator under paragraph (a) of this section on any loan for the purchase of any all-cargo nonconvertible aircraft by any charter air carrier in an amount which, together with any other loans guaranteed and outstanding under this Act to such charter air carrier, or corporate predecessor of such charter air carrier, would result in the ratio of the total face amount of such loans to \$100 million exceeding the ratio of the amount of charter air transportation of such charter air carrier provided to medium, small, and nonhub airports during the twelve-month period preceding the date on which the application for such guarantee is made by such charter air carrier to the total amount of charter air transportation of such air carrier during such twelve-month period.

**§ 199.13 National policy considerations.**

No loan which is contrary to law or to the economic, social or foreign affairs interest or policies of the United States may be guaranteed.

**§ 199.15 Priorities among otherwise eligible guarantee recipients.**

(a) In the administration of this program the FAA may, from time to time, find it necessary to establish priorities among otherwise eligible guarantee applicants.

(b) FAA policy with respect to priorities will be published as Appendix A to this Part. Changes to Appendix A will be announced, as necessary, by a general notice published in the Federal Register.

**§ 199.17 Terms and conditions of loan.**

No loan shall be guaranteed if its terms and conditions, including any default provisions, are substantially less favorable to the purchaser or guarantor than those which are available in the marketplace for similar transactions at the time of the loan.

**§ 199.19 Applications.**

(a) The lender shall make application for an aircraft loan guarantee under this part by filing with the Director, Office of Aviation Policy of the FAA an original and five copies of Form FAA 2950-1 and Form FAA 2950-2 prepared by the lender and air carrier, respectively, together with an original and four copies of any supporting documents. These forms may be obtained from the Federal Aviation Administration, Office of Aviation Policy, AVP-1, 800 Independence Avenue, SW., Washington, D.C. 20591.

(b) Application forms (FAA 2950-1 and 2950-2) shall be completed in accordance with instructions which will be mailed together with the requested applications.

**§ 199.21 Action taken on applications.**

(a) Upon receipt of a completed application the Administrator may use available services and facilities of other agencies and instrumentalities of the Federal Government in carrying out the provisions of these regulations.

(b) The Administrator may approve or disapprove applications based on whether or not the requirements and standards of these regulations have been met.

(c) Upon approval of an application, the Administrator may execute any necessary guarantee agreement and such amendments to the guarantee agreement as from time to time become necessary.

**§ 199.23 Fees.**

Any lender to whom a guarantee under this part is issued shall pay to the Administrator a guarantee fee computed at the rate of  $\frac{1}{4}$  of one percent per annum (based on the actual number of days elapsed) on the average daily amount of the guaranteed portion of the unpaid principal outstanding during the interest period defined in the loan agreement.

**§ 199.25 Deviation from terms of agreement or guarantee.**

No deviation from the terms of any guarantee agreements made after September 7, 1957, or from the terms of any underlying loan agreements approved as a part of a loan guarantee transaction shall be made without prior review of each deviation and approval by the Administrator. An original and four copies of requests for such approval, and an original and two copies of any supporting documents, shall be filed with the Director, Office of Aviation Policy of the FAA.

**§ 199.27 Delegation of Administrator's functions.**

The function of the Administrator under this part are exercised by the Director of the Office of Aviation Policy of the FAA in consultation with the Chief Counsel of the FAA.

**§ 199.29 Notices.**

All correspondence required by this part shall be addressed to the Office of Aviation Policy, Attn: AVP-1, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591.

**§ 199.31 Full faith and credit.**

Any guarantee which is issued pursuant to this part shall be secured by and entitled to the full faith and credit of the United States.

**Appendix A—Priorities Among Loan Guarantee Applicants**

(1) Scope. This appendix contains priorities for otherwise eligible loan guarantee applicants under the FAA's Aircraft Loan Guarantee Program.

(2) Priorities. In the event that, by reason of law or public policy, a limitation is placed or becomes necessary upon the dollar amount or number of guarantees made under the Act, the FAA will set aside a portion of the available guarantee assistance as determined by the Administrator for the first or exclusive use of commuter air carriers. The nonset-aside portion of available assistance will be allocated to eligible carriers in the order of their demonstrated service to the smaller communities; in determining service to smaller communities, FAA will consider first, the service rendered to those communities designated as eligible for essential air service by the Civil Aeronautics Board under § 419 of the Federal Aviation Act; then to service rendered to non-hub communities as that term is defined in the latest edition of the publication entitled "Airport Activity Statistics of Certificated Route Air Carriers;" and finally, to service rendered to "small hubs," as defined in that publication. In establishing the size of the set aside portion in any fiscal year, the Administrator will take into account the air transportation needs of the United States; the views of the Congress as they may, from time to time, be expressed; and the basic purposes of the Act, and of Pub. L. 95-504.

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified above under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Washington, D.C., on July 26, 1979.

Langhorne Bond,  
Administrator.

[FR Doc. 79-23624 Filed 7-27-79; 9:49 am]  
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## AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY*	USDA/ASCS		DOT/SECRETARY*	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/FHWA	USDA/FSQS		DOT/FHWA	USDA/FSQS
DOT/FRA	USDA/REA		DOT/FRA	USDA/REA
DOT/NHTSA	MSPB/OPM		DOT/NHTSA	MSPB/OPM
DOT/RSPA	LABOR		DOT/RSPA	LABOR
DOT/SLS	HEW/FDA		DOT/SLS	HEW/FDA
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.

## Listing of Public Laws

Last Listing July 27, 1979

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-275-3030).

H.R. 4537 / Pub. L. 96-39 Trade Agreement Act of 1979. (July 26, 1979; 93 Stat. 144) Price \$4.00

## Rules Going Into Effect Today

## DEFENSE DEPARTMENT

Engineers Corps—

37610 6-28-79 / Puget Sound, Wash., navigation regulations

## ENVIRONMENTAL PROTECTION AGENCY

37915 6-29-79 / Ambient Air Monitoring Reference and Equivalent Methods for Lead

55978 1-29-78 / National Environmental Policy Act regulations, implementation of procedural provisions

[Corrected at 44 FR 873, 1-3-79]

## FEDERAL COMMUNICATIONS COMMISSION

36974 6-25-79 / Providing separation of handheld pilot radio equipment from ship station equipment

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

38226 6-29-79 / Rules of procedure

[Corrected at 44 FR 41178, 7-16-79]

## FEDERAL RESERVE SYSTEM

37600 6-28-79 / Equal credit opportunity; official staff interpretation of Regulation B

37603 6-28-79 / Truth In lending; official staff interpretation of Regulation Z

## INTERIOR DEPARTMENT

Land Management Bureau—

38288 6-29-79 / Outer Continental Shelf Minerals Leasing and Rights-of-Way Granting Program

## LABOR DEPARTMENT

Employment and Training Administration—

37910 6-29-79 / Comprehensive Employment and Training Act; Reference to New Regulations

## SECURITIES AND EXCHANGE COMMISSION

38810 7-2-79 / Safe harbor rule for projections

